

Judicial Absolutism: Propriety of the National Industrial Court as the First and Final Court in Labour and Other Related Matters in Nigeria

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Abstract

The likelihood of appealing against the decision of a court of first instance is no doubt an acceptable culture in every judicial system. In fact, it is implicit in every adjudicatory process that a court cannot mostly be a court of first approach as well as that of last resort. Right of appeal of litigants constitutes a fundamental element of a fair judicial practice and plays a significant role in the Nigerian justice system. The right provides avenue for the Appellate Courts to function in correcting legal and factual errors; encouraging the development and refinement of legal principles; increasing uniformity and standardization in the application of legal rules and promoting respect for the rule of law. In criminal cases, the right plays an additional role in guarding against wrongful conviction of the innocent. This paper attempts to analyze the provision of the amended Nigeria Constitution in respect of the right of appeal of an aggrieved person against the decision of the National Industrial Court of Nigeria as well as contrasting judicial reaction thereon. A case was eventually made for a liberal and all-inclusive interpretation of the provision of the Constitution to avoid a restriction on a litigant's right to appeal to the Nigerian Court of Appeal from the decision of the National Industrial Court of Nigeria.

Keywords: Appeal, Court of Appeal, National Industrial Court of Nigeria, Jurisdiction, Labour Court, Nigeria, South Africa.

1. Introduction

Labour matters constitutes an inevitable component of every human interactions and with the ever expanding and continually complex global society, the need for the establishment of a court to act as an arbiter on issues arising from labour and industrial relations becomes inevitable. While some nations have maintained the regular courts to accommodate labour and industrial disputes, other countries including Nigeria, South Africa, Ghana, Kenya, Trinidad and Tobago, have seen the need to establish specialized labour/industrial courts in that regard. Proponents of the specialized labour/industrial courts felt that the procedures at the non-specialized courts are too slow and cumbersome such that a nation desirous of rapid industrialization and socio-economic development could not afford bogged down by such procedures and delays.¹

The foregoing underscores the importance of the National Industrial Court of Nigeria. Under the amended Nigerian Constitution,² the court has not only been granted constitutional status as a superior court of record, it has also been endowed with exclusive jurisdiction in respect of labour and other related matters while also expanding the scope of the jurisdiction of the court. As laudable as the innovations under the amended Constitution in respect of the jurisdictional scope of the National Industrial Court may seem, these innovations are however blighted by provisions relating to right of appeal from the decisions of the court. Thus, an attempt has been made in this paper to examine the provisions of the amended Constitution as well as the judicial reactions, particularly those of the Court of Appeal, which touches on the issue at stake. An analogy is made to the Labour Court and the Labour Appeal Court in South Africa, only to showcase the existence of a Labour Appeal Court in South Africa and to argue that provision should be made for an appeal from every decision of the National Industrial Court of Nigeria. The paper finally argued that there is the need for an amendment of the relevant provisions of the National Industrial Court Act, 2006 and the Constitution, in order to expressly provide for a right of appeal against every decisions of the National Industrial Court of Nigeria to the Court of Appeal and/or in the meantime, the Court of Appeal should engage in purposeful judicial interpretation of the provisions of the 1999 Constitution, as amended in order to ensure that an aggrieved litigant's constitutionally guaranteed right or access to court is safeguarded.

¹ B. A. Adejumo, "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 at the Otutu Obaseki Auditorium, National Judicial institute, Abuja on the 24th March, 2011, p.1 available at <http://nien.gov.ng/spdf.php?id=3> (last accessed 07/09/2015)

² 1999 Constitution, as amended (1999 CFRN)

2. Historical Origin of National Industrial Court of Nigeria¹

The history of the National Industrial Court (NIC) spans more than three (3) decades. Prior to the establishment of the NIC, industrial relations law and practice was modeled on the non-interventionist and voluntary model of the British system.² By the 1970s and particularly after the Nigerian Civil War,³ this approach was abandoned for an interventionist model. This coincided with the indigenization policy of government where key economic activities were centralized in government.⁴ Consequently, the National Industrial Court was established in 1976 pursuant to the *Trade Disputes Decree No. 7 of 1976*,⁵ which later became the *Trade Disputes Act (TDA) 1990*.⁶ Meanwhile, in 1992, the 1976 Act was amended by the *Trade Disputes (Amendment) Act 1992*. As a product of an interventionist in industrial and trade disputes arena, the NIC was structured in a regimented disputes resolution regime under the firm control of the Minister of Labour.⁷ By virtue of Section 22 of *Decree No. 7 of 1976*, consequential amendments were made to the 1963 Constitution to include the National Industrial Court as one of the courts in the country. Section 21 of the said Decree specifically made certain provisions of the *Supreme Court Act No.12 of 1960* applicable to the NIC. The intention that NIC be a court comparable to the High Court and Supreme Court was well made out.⁸

Problems, however, started when the *1979 Constitution* was promulgated and superior courts of record were specifically listed therein and the NIC was left out. It became doubtful, therefore, whether NIC was a court of superior record under that Constitution. This dilemma was resolved in 1992 when Decree 47 of that year specifically made NIC a superior court of record. Given the then military dispensation, which made decrees superior to the Constitution, there was no doubt as to the efficacy of Decree 47 of 1992.⁹ The problem nonetheless resurfaced under the *1999 Constitution* wherein the Constitution did not make any provision for the establishment of the NIC as a superior court of record in the country.

In 2006, when the *National Industrial Court Act (NICA) of 2006* was passed¹⁰, the question regarding the constitutional status of the court keeps resurfacing. The issue as to whether or not the court was a superior court of record still elicited diverse commentaries and interpretation by the courts¹¹ notwithstanding the provision of Section 1(3) of the Act which provides that the NIC shall be a superior court of record and shall have all the powers of a High Court.¹² *Ipsa facto*, in *National Union of Electricity Employee v. Bureau of Public*

¹ For the reader interested in a more in-depth analysis of the history of the National Industrial Court of Nigeria; See B. A. Adejumo, *ibid*; B. B. Kanyip, "The National Industrial Court: Yesterday, Today and Tomorrow", available at <http://nicn.gov.ng/spdf.php?id=16> (accessed 07/09/2015)

² See C.K. Agomo, "Law and Industrial Relations – Nigeria" in R. Blanpain (ed.), *International Encyclopedia of Law*, Kluwer Law International, (2000), pp.38 – 39. The major features of the non-interventionist model were that it was totally at the discretion of the parties to determine whether or not they would surrender to the jurisdiction of the Minister. Thus, the Minister could not compel the parties to accept his intervention, could only appoint a Conciliator upon the application of the parties and could only set up an Arbitral Tribunal by the consent of both parties. See also B. A Adejumo *Ibid* at pg. 1

³ There was an apparent setback in the development of industrial law and the National Industrial Court in Nigeria with the outbreak of the Nigerian Civil War in 1967. Due to the ensuing state of emergency, it became expedient to make transitional provisions for the settlement of trade disputes arising during the war period leading to the enactment of the *Trade Disputes (Emergency Provisions) Act No. 21 of 1968* which suspended the *Trade Disputes (Arbitration and Inquiry) Act*. This Act gave the Minister the power of compulsory intervention in trade disputes while still retaining the additional powers of conciliation, formal inquiry and arbitration.

⁴ B. B. Kanyip *Ibid* at p. 2

⁵ Specifically, Section 19(1) of the *Trade Dispute Decree No. 7 of 1976* creates the court

⁶ Cap. 432 LFN 1990

⁷ Only in a few cases could the jurisdiction of the National Industrial Court be activated by the litigants themselves without recourse to the Minister of Labour. In the majority of cases, the jurisdiction of the NIC was activated only upon a referral from the Minister of Labour.

⁸ B. B. Kanyip *Ibid* p. 3

⁹ *Ibid*

¹⁰ *National Industrial Court Act (NICA)*, 2006, Federal Republic of Nigeria, Official Gazette, No. 30, Lagos, 14 June 2006, Vol. 93 (*NICA 2006*)

¹¹ See the conflicting ratios of the four Court of Appeal cases of *Kalango v. Dokubo* (2003) 16 WRN 32; *A. G. Oyo State v. NLC, Oyo State Chapter & Ors.* [2003] 8 NWLR (PT 821) 1; *Ekong v. Oside* [2005] NWLR (PT 929) 102 and *Bureau of Public Enterprise v. National Union of Electricity Employees* [2003] 3 NWLR (Pt. 83?) 382 which involved the interpretation of the precursor of Section 1(3)(a) of the *NICA 2006* in Decree 47 of 1992 which first granted the NIC superior status. In *Kalango*, the Court of Appeal said that though the NIC is "not one of those specified in section 6(5) (a)-(i) of the 1999 Constitution as the only superior courts of record, (it) is, nevertheless, not an inferior court". In *A. G., Oyo State*, the Court of Appeal merely said that the NIC "had the status of a superior court of record". In *Ekong*, however, the Court stated that "(i)t is difficult...to read unconstitutionality in the statutes that created the [NIC]...." Meanwhile, in *Bureau of Public Enterprise*, the Court of Appeal held inter alia that, to the extent to which section 2 of Decree 47 of 1992 confers exclusive jurisdiction on the NIC, it is null and void and of no effect on the authority of section 1(3) of the 1999 Constitution

¹² See *NICA 2006*, Section 1 (3) (a) & (b)

*Enterprise*¹ the Supreme Court held that the NIC is a subordinate court and that it had no exclusive jurisdiction over matters assigned to it under Section 7 of the National Industrial Court Act.² The decision of the Supreme Court in *NUEE* dealt a heavy blow on the status and operation of the National Industrial Court. It, however, also elicited positive reactions from within the judicial and legislative circles as well as within the labour industry. Consequently, a bill to alter the *1999 Constitution* of the Federal Republic of Nigeria with regard to the inclusion of the National Industrial Court (NIC) as a superior court of record was laid before the National Assembly in March 2010 for consideration and was eventually passed into law.³ The President gave his assent to the Bill on the 4th day of March 2011, thus heralding a new chapter in the history of the National Industrial Court of Nigeria. The new law placed the National Industrial Court in the relevant sections of the Constitution.⁴

Section 6 of the Constitution⁵ vests judicial powers of the Federation in the Supreme Court of Nigeria; the Court of Appeal; the Federal High Court; the National Industrial Court; the High Court of the Federal Capital Territory, Abuja; a High Court of a State; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; a Sharia Court of Appeal of a State; the Customary Court of Appeal of the Federal Capital Territory, Abuja; a Customary Court of Appeal of a State; such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly (in case of the federation) or the Houses of Assembly of the states may make laws. Thus, the National Industrial Court of Nigeria became a superior court of record like other superior courts of record in Nigeria recognized under the Constitution. There is no longer room for application for judicial review of the decisions of the NICN as it is now a superior court of record.

3. Composition and Jurisdiction of the NICN under the amended Constitution

The National Industrial Court of Nigeria⁶ was established by virtue of Section 6 of the *Third Alteration Act* which amended the provisions of the Constitution by introducing a new Section 254A – F.⁷ The Court now consists of a President of the National Industrial Court and such number of judges of the National Industrial Court as may be prescribed by an Act of the National Assembly.

Appointment of the President and Judges of the National Industrial Courts is provided under Section 254B. Appointment of a person to the office of President of the National Industrial Court shall be made by the President on the recommendation of the National Judicial Council subject to confirmation of such appointment by the Senate.⁸ The appointment of a person as a Judge of the Court shall be made by the President on the recommendation of the National Judicial Council.⁹ There is no constitutional requirement for confirmation of the appointment of a person as a Judge of the court by the Senate. Nonetheless, a person shall not be eligible for appointment as the President or a Judge of the court unless the person is qualified to practice as a legal practitioner in Nigeria and has been so qualified for a period of not less than ten years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.¹⁰ By this provision, the Alteration Act by implication repeals Section 2 (4) (b) of the *NICA, 2006* which provides that a graduate from a recognized Nigerian university with ten year experience in the law and practice of industrial relations and employment conditions in Nigeria could be appointed a judge of the Court.¹¹ Perhaps, the residue of Section 2 (4) (b) of *NICA, 2006* may be found in Section 254E (3) of the Constitution which states that as may be deemed necessary, the Court may call in aid one or more assessors specially qualified to try and

¹ [2010] 7 NWLR (PT 1194) 538

² *Ibid.* In the words of the Court, Per *Chukwuma-Eneh, JSC* at p. 572, "... It means that by Decree No. 47 of 1992 arrogating to the National Industrial Court a superior court of record as has been contended by the appellants does not by that token make the said National Industrial Court a superior court of record without an amendment of the provisions of Sections 6(3) and (5) of the 1999 Constitution which has listed the only superior courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court..."

³ M. C. Ogwezzy, "A Critical Examination of the Jurisprudence of National Industrial Court of Nigeria" in Y. Akinseye-George SAN *et al.*, (eds.), *Contemporary Issues on Labour Law, Employment and National Industrial Court Practice and Procedures: Essays in Honour of Honourable Justice Babatunde Adeniran Adejumo OFR, President of the National Industrial Court, Abuja: LawLords Publications, (2014), p. 134*

⁴ In general, Sections 6, 84(4), 240, 243, 287(3), 289, 292, 294(4), 316, 318, the Third Schedule, the Seventh Schedule to the *1999 CFRN* have all been altered to include the NICN.

⁵ Amended by Section 2 of the Constitution of the Federal Republic of Nigeria (*Third Alteration*) Act, 2010

⁶ Consequent upon this amendment, the Court known as 'National Industrial Court of Nigeria' replaced the former 'National Industrial Court'.

⁷ O. A. Orifowomo and M. O. Ashiru, "Settlement of Trade Disputes: Nigeria's Labour Court in Perspectives," *Journal of Law, Policy and Globalization* (2015), p. 156

⁸ See *1999 CFRN*, Section 254B (1)

⁹ See *1999 CFRN*, Section 254B (2)

¹⁰ See Section 254B (3) and (4) as it relates to the President and Judge respectively.

¹¹ O. A. Orifowomo and M. O. Ashiru, *supra* p. 156

hear the cause or matter wholly or partly with the assistance of such assessors. An assessor shall be a person who is qualified and experienced in his field of specialization and who has been so qualified for a period not less than ten years.¹

More so, the Court shall have all the powers of a High Court² and shall be duly constituted if it consists of a single Judge or not more than three Judges as the President of the National Industrial Court may direct.³ But for the purpose of exercising its criminal jurisdiction, the President of the Court may hear and determine or assign a single Judge of the Court to hear and determine such matter.⁴

The extent of the jurisdiction of the NICN is well spelt out in Section 254C, wherein the court is vested with exclusive jurisdiction in relation to matters enumerated therein.⁵ The Section provide as follows –

- (1) “Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters –
 - (a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith;
 - (b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen’s Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;
 - (c) relating to or connected with the grant of any order restraining 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 a strike, lock-out or an industrial action and matter connected therewith or related thereto;
 - (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the Constitution as it relates to any employment, labour, industrial relations,, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine;
 - (e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;
 - (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
 - (g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;
 - (h) relating to connected with or pertaining to the application or interpretation of international labour standards;
 - (i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;⁶
 - (j) relating to the determination of question as to the interpretation and application of any –
 - (i) collective agreement;
 - (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;
 - (iii) award or judgment of the Court;
 - (iv) terms of settlement of any trade dispute;
 - (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
 - (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;
 - (vii)dispute relating to or connected with any personnel matter arising from any free trade zone in the

¹ See 1999 CFRN, Section 254E (4)

² See 1999 CFRN, Section 254D (1). The National Assembly may also by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by Section 254D as may appear necessary or desirable for enabling the Court to be more effective in exercising its jurisdiction. See Section 254D (2)

³ See 1999 CFRN, Section 254E (1)

⁴ See 1999 CFRN, Section 254E (2)

⁵ In *N.U.T., Niger State v. COSST, Niger State* [2012] 10 NWLR (Pt. 1307) 89, the Court of Appeal affirmed the exclusivity of the jurisdiction of the NIC in when it held that “Section 254C of the 1999 Constitution as amended by the Third Alteration Act, expanded the jurisdiction of the National Industrial Court by vesting it with exclusive jurisdiction over all labour and employment matters...by virtue of the new provision, the trial court’s jurisdiction completely migrated to the National Industrial Court, which forthwith has the exclusive jurisdiction in all matters enumerated thereunder.”

⁶ It is argued that the Court ought not to have been vested with exclusive jurisdiction in relation to matters under 254C (1) (i) due to the fact that it may overlap with issues or matters which have been placed within the exclusive jurisdiction of other court, especially the Federal High Court. For instance, on issues relating to Immigration, passports and visas provided for under Section 251 (1) (i) of the 1999 Constitution (as amended). Perhaps, it will be convenient to stress that the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act* confers jurisdiction on the Federal High Court, High Court of the Federal Capital Territory and the High Court of the State in respect to the offences created under the Act. See Sections 33 and 64 of the *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*, 2003

- Federation or any part thereof;
- (k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, a judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
 - (l) relating to-
 - (i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;
 - (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and
 - (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
 - (m) relating to or connected with the registration of collective agreements.

The Court shall also have jurisdiction in respect of any matter connected with the application of any international legal instruments ratified by Nigeria in relation to labour, industrial and other related matters.¹ By Section 254 (4), the 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.” Whereas, an “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.”²

Section 254C has no doubt laid to final rest, the argument in favour of the inherent jurisdiction of the High Courts, which cannot be abrogated by a mere Act of the National Assembly.³ The extant jurisdiction of the NICN is much wider than it used to be. The new jurisdiction of the NICN is perhaps the widest and most elaborate jurisdiction conferred on any court in the 1999 Constitution. This is so as a result of the experience under the *NICA, 2006* when a lot of subject-matters of the jurisdiction granted the court were enmeshed in controversies as to their extent and consequently hampered from effective fruition. It is abundantly clear that the present approach has retained all the good innovations associated with the *NICA, 2006* while it also tries to avoid the pitfalls associated with it. The couching of the present jurisdiction of the Court has created innovations to tackle the problems associated with the National Industrial Court Act, 2006.⁴ The concept of unfair labour practice is now recognized under Nigerian Labour Laws. More so, not only has jurisdiction in civil causes and matters been enlarged, the court now can entertain criminal causes and matters so long as they relate to issues pertaining to the civil causes and matters that the court has jurisdiction to hear and determine.⁵

4. Right of Appeal from the decision of NICN

With the third alteration of the *1999 Constitution*, particularly as it relates to decisions of the National Industrial Court, the answer to the question as to whether a person aggrieved with the court’s decision has a right of appeal will depend on the nature of the suit. In criminal causes and matters, appeal shall lie from the decision of the National Industrial Court to the Court of Appeal as of right.⁶ In civil causes and matters, an aggrieved party can only appeal to the Court of Appeal from the decision of the National Industrial Court as of right on issues bothering on fundamental rights while the leave of the Court of Appeal must be obtained in other instances where the National Assembly has enacted an Act prescribing that an appeal should lie to the Court of Appeal.

It is apparent from the wordings of Sections 254C (5), (6) and 243 (4) of the Constitution, that appeal shall lie even up to the Supreme Court in respect of matters within the criminal jurisdiction of the National Industrial Court. Put simply, not only can an appeal lie against the decision of the National Industrial Court in respect of criminal matters, the Court of Appeal is not the final appellate court in respect of criminal appeals emanating from the decision of the National Industrial Court. Meanwhile, by virtue of subsection 4 of Section 243, the decision of the Court of Appeal in respect of any matter upon which the National Industrial Court has civil jurisdiction is final, so that an appeal shall not lie to the Supreme Court.

Section 243 of the Constitution which was altered by Section 5 of the *Third Alteration Act* provides:

1. “Any right of appeal to the Court of Appeal from the decisions of the Federal High Court, or a High Court conferred by this Constitution shall be –
 - a. exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court, or High Court or the Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the

¹ See *1999 CFRN, Section 254 (2)*

² See *Ibid, Section 254 (5)*

³ C. K. Agomo, *supra* p. 341

⁴ B. A. Adejumo, *supra* p. 9

⁵ B. B. Kanyip, *supra* p. 21; See also *1999 CFRN, Section 254C (1) (f)*

⁶ See *1999 CFRN, Section 254C (6)*

- provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed;
- b. exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.
 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.¹
 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:²
Provided that where an Act or Law prescribed 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.
 4. Without prejudice to the provisions of section 254C(5) of this Constitution 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.”

It should be noted that there is presently no Act of the National Assembly that prescribes appeal to the Court of Appeal from decisions of the National Industrial Court on civil causes and matters within its jurisdiction. Indeed, the extant *National Industrial Court, Act 2006* (“NICA, 2006”) had in its Section 9 (1) & (2) limited the right of appeal from decisions of the National Industrial Court to questions of fundamental rights. The implication of the foregoing is that until there is the enactment of an Act of the National Assembly prescribing otherwise, decisions of the National Industrial Court in civil causes and matters are, in practical terms, final (except in matters of fundamental rights).³ This constitutional provision generated differing reactions from both the bar and bench in Nigeria. In fact, this has resulted in contrasting interpretation of the provisions of the Constitution bothering on the issue by the Nigerian Court of Appeal.

The case of *Coca-Cola Nigeria Limited & Ors. v. Mrs Titilayo Akinsanya*⁴ decided on 31 July, 2015, seems to be the most popular among the cases where the Court of Appeal has had opportunity of determining the issue at stake. In that case, the appeal was heard and decided by a full panel of the Court of Appeal.⁵ During the pendency of the suit at the trial Court (Coram: *Kanyip, J.* of the Lagos Judicial Division of the National Industrial Court), the Appellant filed an application on notice praying for an order of the lower court for a case stated to the Court of Appeal⁶ for the determination of the constitutional question as to 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 *NICA, 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 the case reference. 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 National Industrial Court 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. Although the Court unanimously (albeit partly)⁷ overruled the Respondent’s objection, the reasons expressed the Justices of the Court in reaching their conclusion nonetheless differs from one another, especially the opinions of *Loluko-*

¹ See *NICA 2006*, Section 9 (2)

² See *NICA 2006*, Section 9 (1)

³ O. A. Orifowomo and M.O. Ashiru., *supra* p. 160

⁴ [2013] 18 NWLR (PT. 1386) 255

⁵ Per *A. A. Augie, JCA* (Presided); *I. H. M. Saulawa, JCA*; *S. D. Bage, JCA*; *A. O Loluko – Sodipe, JCA* (read the leading judgment) and *J. S. Ikyegh, JCA*

⁶ See *1999 CFRN*, Section 295. In fact, Section 295(2) states thus: “Where any question as to the interpretation or application of this Constitution arises in any proceeding in the Federal High Court, National Industrial Court or a High Court, and the court is of the opinion that the question involves substantial question of law, the court may, and shall if any party to the proceedings so requests, refer the question to the Court of Appeal; and where any question is referred in pursuance of this subsection, the court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.”

⁷ The preliminary objection was partly upheld in respect of Ground 4 and 5 of the Appellant’s appeal which does not relate to the decision of the lower court being appealed against. The Grounds and issue 2 arising therefrom were struck out by the Court

Shodipe, JCA; Saulawa, JCA and Ikeygh JCA respectively.

While they are all in agreement 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 the jurisdiction of the court, *Loluko-Shodipe, JCA* was of the opinion that Appellant’s appeal is maintainable as of right having regard to the fact that the issue of jurisdiction raised therein extends to fundamental right. The Learned Justice noted that “it is apparent in the ruling appealed against that the lower court had engaged in an elaborate consideration of its jurisdiction prior to the remark it made as re-produce (sic) above, and amongst others found that ‘since the submissions of the defendants also challenged the jurisdiction of this court to hear and determine the claims of the claimant, this court has the jurisdiction to hear and determine the claimant’s case.’ Against the backdrop of grounds 4 and 5 of the grounds of appeal, I therefore find the appeal of the appellants inasmuch as it raises the issue of jurisdiction, to also raise question of fundamental right in respect of the instant case over which the lower court has held itself as having jurisdiction and therefore maintainable as of right by the appellants. This being my finding, this court eminently has jurisdiction to entertain the appeal.”¹

In his own opinion, *Saulawa, JCA* noted that the Court of Appeal “has an onerous duty to resolve the looming inconsistency inherent in the provisions of the (Constitution) with particular regard to the right of appeal from the Federal and State High Courts on the one hand, and from the National Industrial Court on the other, to (the Court of Appeal)” and that “the provision of Section 243(2) & (3) of the (Constitution) ought to be construed in conjunction with the well set out provisions of sections 240, 241 & 242 of the said Constitution (because) anything to the contrary would amount to a sheer absurdity, and in total negation of veritable fundamental doctrines of interpretation”.

More illuminating and perhaps relevant to the appeal before the court in respect of the case stated, is the view expressed by *Ikeygh, JCA* that “the constitutional right of a litigant to make a case stated at the National Industrial Court for reference to (the Court of Appeal) for a decision on the case stated provided in section 295(2) of The Third Alteration Act in respect of the interpretation and application of the provisions of the Constitution cannot be circumvented under the guise of lack of a right of appeal from the (NICN) to the (Court of Appeal).” The Learned Justice further noted that “the remedy for a refusal by the court below to send a case stated to the (sic) court is not expressly provided for in the Constitution. So any method employed by an aggrieved party to approach (this) court upon refusal of the court below to have case stated sent to the (sic) court would suffice under the umbrella of the Latin maxim *ubi jus, ibi remedium* (where there is a right there is a remedy or a remedy must be created to cover a right).”²

It is instructive to note that the live issue before the Court of Appeal in *Coca-Cola* is in relation to the decision of the lower court on the question submitted by the Appellant to it for reference to the Court of Appeal. In fact, the live question/issue before the court was whether the jurisdiction of the National Industrial Court as contained in Section 254C (1) of the 1999 Constitution extends to all cases of private individual contractual employment or is not limited to industrial relations and employment matters arising from or connected with trade disputes, collective agreements, labour and industrial relations. Therefore, any statement of the law or opinion expressed by the Court as on the question as to whether an aggrieved person can maintain an appeal against the decision of the NICN to the Court of Appeal other than as stated in Section 243 (2) & (3) 1999 Constitution is at best an *obiter*.³

Incidentally, when the question as to the right of appeal from NICN to the Court of Appeal came before another panel of the Lagos Division Court of Appeal in *Lagos Sheraton Hotel and Towers v. Hotel and Personal Services Senior Staff Association*,⁴ on 15 July, 2014, the Court curiously adopted the *obiter* expressed in *Coca-Cola*,⁵ to hold that an appeal can only lie to it from the decision of the NICN “where such decision relates to questions of fundamental rights as contained in Chapter IV of the (Constitution) or in criminal causes as they relate to matters upon which the National Industrial Court has jurisdiction. As to other causes or matters not so specified, appeal shall only lie from decisions of the National Industrial Court to the (Court of Appeal) as may be prescribed by an Act of the National Assembly and such appeal shall be with leave of (the Court of Appeal) only.”⁶ Similar conclusion was also reached by the Court recently on the 26 June, 2015 in *Zenith Bank Plc. v. Durugbor*.⁷

¹ *Coca-Cola, supra* at pp. 315 – 316, paras G – A

² *Ibid* at p. 370, paras C - E

³ As *Ikeygh, JCA* noted in *Coca-Cola, supra* at p. 375, paras D – F, “The written and oral arguments of learned senior counsel for the respective parties forayed into the area of the right of appeal of aggrieved persons from decisions of the National Industrial Court to the Court of Appeal. The issue was not covered by the case stated. I should have left it to lie where it is, but out of respect for the learned senior counsel for the respective parties, I desire to say something, albeit, in passing.”

⁴ CA/L/1218M/2010 (R) reported in (2014) LPELR – 23340 (CA)

⁵ *Ibid* at pp. 38 – 41, paras G – A

⁶ *Ibid* at p. 40, paras A - D

⁷ CA/L/116M/2014 reported in (2015) LPELR – 24898 (CA). Although the Court (*Nimpar, JCA* read the lead ruling) adopted

Meanwhile, before the decision of the Lagos Division of the Court of Appeal in *Coca-Cola*, the Ekiti Judicial Division of the Court was faced with similar questions relating to the right of appeal from the NICN in five appeals before it, viz: *Local Government Service Commission, Ekiti v. Olamiju*¹; *Local Government Service Commission, Ekiti v. Asubiojo*²; *Local Government Service Commission, Ekiti v. Jegede*³; *Local Government Service Commission, Ekiti v. Ajayi*⁴; *Local Government Service Commission, Ekiti v. Bamisaye*⁵ on 15 February, 2013. In all five appeals, the Court granted leave to the Appellants/Applicants to appeal against the decision of the NICN notwithstanding the fact that the questions arising therefrom does not relate to issue of fundamental right and even in the absence of an Act of the National Assembly in that regard.

In *Olamiju* and *Asubiojo*, the Court, Per *Bada, JCA* held that “although there is no Act of National Assembly which prescribed that Appeal shall lie from the decision of the Court of Appeal But (sic) Section 240 of the 1999 Constitution of the Federal Republic of Nigeria as amended which is **THE LAW** (sic) has stated in clear terms that the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine appeals from the National Industrial Court. This is further emphasized by Section 243(4) which stated that among others that the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction (sic) of the National Industrial Court shall be final. The word in respect of any appeal arising from any civil jurisdiction (sic) as shown above revealed that the appellate jurisdiction of the Court of Appeal was not limited, or circumscribed to Fundamental Rights Matters. The said Section gives the right of Appeal to any aggrieved person in any civil matter in the National Industrial Court.”⁶

In *Jegede* and *Ajayi*, Per *Oredola, JCA* noted that “the law is firmly established that if any court and more so an appellate court is to be divested on its appellate jurisdiction, it is done expressly and not impliedly. In a similar vein, a court of law can only be garbed or clothed with the toga of finality by express provision to that effect and not by implication. The substantive power vested in the Court of Appeal to hear and determine appeals, either as of right or with leave, from decisions of subordinate courts, cannot be caged, confined, curbed or curtailed. Statutory provisions which pertain to vested powers or rights are to be given liberal construction, since they are remedial in nature. As such courts must be wary not to foreclose the rights of access to courts, be it original or appellate by intricate cum restrictive interpretation of relevant and applicable statutes.”⁷

Similar opinion was expressed in *Bamisaye*, where Per *Onyemenam, JCA*, emphasized that “the construction of the provisions of the constitution and constitutional powers must therefore not be used to attain unconstitutional result. A court of law must always ensure that whatever interpretation it gives to the provision of the constitution shall not yield or produce fruit that is anti-constitution (sic). It will defeat the ends of the constitution and achieve unconstitutional result to interpret section 243 (2) and (3) to deny a citizen his right of appeal. Accordingly, to avoid harvesting unconstitutional result or defeating the ends of the constitution, (and) since section 243 (3) seeks to oust the jurisdiction of this court; section 243 (3) of the constitution must not only be read and interpreted together with other sections of the constitution but strictly interpreted.”⁸

Incidentally, the cases of *Coca-Cola* as well as *Asubiojo* and *Bamisaye* were relied upon by the parties in support of their respective argument, in *Federal Ministry of Health v. Trade Union Members of the Joint Health Sectors Union (Johesu) & Ors*⁹ decided on 12 May, 2014. The Abuja Division of the Court of Appeal, Per *Tur, JCA* (read the lead Ruling) followed the path of the *Asubiojo* and *Bamisaye* by noting that “section (243(2) of the Constitution of the Federal Republic of Nigeria, Act No. 3 of 2010 is not intended to preclude a party aggrieved by the decision of the National Industrial Court from applying for leave to appeal to the Court of

the *obiter* in *Coca-Cola* and the *ratio decidendi* in *Lagos Sheraton*, it is quite disheartening that notwithstanding the fact that the second ground of the Appellant’s Notice of Appeal relates to the issue of jurisdiction of the NICN in making an order of non-suit, the Court came to a similar conclusion with the earlier decisions, contrary to the view expressed even in *Coca-Cola* by *Loluko-Shodipe, JCA* that in as much as the appeal of the Appellant raises the issue of jurisdiction, it touches on question of fundamental right upon which an appeal may lie to the Court of Appeal.

¹ CA/EK/69/M/2012 reported in (2013) LPELR – 20409 (CA); Per *Bada, JCA* read the lead Ruling

² CA/EK/72/M/2012 reported in (2013) LPELR – 20403 (CA); Per *Bada, JCA* read the lead Ruling

³ CA/EK/07/M/2013 reported in (2013) LPELR – 21131 (CA); Per *Oredola, JCA* read the lead Ruling

⁴ CA/EK/70/M/2012 reported in (2013) LPELR – 21133 (CA); Per *Oredola, JCA* read the lead Ruling

⁵ CA/EK/71/M/2012 reported in (2013) LPELR – 20407 (CA); Per *Onyemenam, JCA* read the lead Ruling

⁶ *Olamiju, supra* at pp. 14 – 15, paras C – A; See also *Asubiojo, supra* at pp. 11 – 13 paras C – B

⁷ *Jegede, supra* at pp. 20 – 21, paras G – B; See also *Ajayi* at p. 14, paras D – G, where the Learned Justice also noted that ‘constitutional or statutory provisions which tend to take away or restrict a person’s guaranteed right or access to court is usually construed in a cautious and strict manner. Hence, in construing or interpreting such a provision, its language will not be extended beyond its least onerous meaning in the absence of clear words used to justify extension or exclusion. This is more so, because it is the established practice of the court to guard their jurisdiction jealously Thus, constitutional right of appeal once granted cannot be taken away or denied, easily or readily. Also, right of access to court must not be hindered/impeded at will’.

⁸ *Bamisaye, supra* at p. 19, paras C – F

⁹ CA/A/461/M/2013 (R) reported in (2014) LPELR – 23546 (CA)

Appeal.”¹

The above-referenced decisions of Justices of the Court of Appeal, who are judges of coordinate jurisdiction, no doubt speak volume of the confusion that they engendered in this area of the law, particularly in relation to the amended Section 243 in respect of the right of appeal of an aggrieved party against the decision of the NICN. The diverse and conflicting verdicts of the Court have even created more problems than before the matter came before the court. Litigants are thus faced with a situation of helplessness and their status is even more compounded by the fact that decision of the Court of Appeal in respect of appeal from the NICN is final.

5. Labour Courts in South Africa²

Chapter 8 of the Constitution of the Republic of South Africa (Constitution)³ contains provisions in respect of the country’s court system and administration of justice. By virtue of Section 165 of the Constitution, judicial authority of the Republic is vested in the court.⁴

Meanwhile, just like the pre-2011 National Industrial Court (NIC) in Nigeria, neither the Labour Court nor the Labour Appeal Court is a direct product of the Constitution, to the extent that it is not listed under Section 166 of the South African Constitution as one the Courts in the Republic. The courts in listed in the Constitution are – “(a) the Constitutional Court; (b) the Supreme Court of Appeal; (c) the High Courts, including any high court of appeal that may be established by the Parliament to hear appeals from High Courts; (d) the Magistrates’ Court; and (e) any other court established or recognized in terms of an Act of Parliament, in court of a similar to either the High Courts or the Magistrate’ Courts.”⁵

Labour related courts in South Africa are specialized courts established under the *Labour Relations Act, No. 66* enacted by the South African Parliament in 1995.⁶ The Act provides for the establishment of the Labour Court as an open court with jurisdiction in all provinces of South Africa. The Labour Court is a court of record and has the same powers and status as a provincial division of the Supreme Court. The Court is presided over by a Judge President,⁷ a Deputy Judge President⁸ and as many judges⁹ as the President may consider necessary. In order to qualify for appointment as a judge on the Labour Court, a person must either be a Judge of the High Court or a legal practitioner who has knowledge, experience and expertise in labour law.¹⁰ The Labour Court has exclusive jurisdiction in respect of all matters that in terms of the Act are to be determined by the Labour Court but does not have jurisdiction to adjudicate an unresolved dispute if the Act requires the dispute to be resolved through arbitration.¹¹ The Labour Court has exclusive jurisdiction over cases arising from the *Labour Relations Act (LRA), 1995*, which deals with collective bargaining, trade unions, strikes and lockouts, unfair dismissal and unfair labour practices; the *Basic Conditions of Employment Act, 1997*, which deals with working hours, leave and remuneration; the *Employment Equity Act, 1998*, which deals with discrimination and affirmative action; and the *Unemployment Insurance Act, 2001*. These matters are removed from the jurisdiction of the ordinary High Courts. Section 157 contains provisions relating to the jurisdiction of the Labour Court. It states:

1. “Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour

¹ *Ibid* at p. 34 para G

² See generally, Grobler P. A. *et al*, Human Resource Management in South Africa, 3rd Edition, London: Thomson Learning, 2006, pp. 619 - 620; See also B. J. Erasmus and H. W. Schenk, South African Human Resource Management: Theory & Practice, B. J Swanepoel (ed.) Capetown: Juta & Co., 2008, pp. 83 - 88

³ *Constitution of the Republic of South Africa (CSRA)*, No. 108 of 1996

⁴ The Section further states that ‘the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.’ See *CSRA*, Section 165 (2)

⁵ See *CRSA*, Section 166

⁶ The Act has been amended severally by the *Labour Relations Act* as amended by *Labour Relations Amendment Act*, No 42 of 1996 Proclamation, No 66 of 1996 *Labour Relations Amendment Act*, No 127 of 1998 as well as the *Labour Relations Amendment Act*, No 12 of 2002

⁷ The Judge President is appointed by the President of South Africa, acting on the advice of National Economic Development and Labour Council (NEDLAC) and the Judicial Service Commission and after consultation with the Minister of Justice. See *CRSA*, Section 153 (1) (a)

⁸ The Deputy Judge President is appointed by the President of South Africa, acting on the advice of National Economic Development and Labour Council (NEDLAC) and the Judicial Service Commission and after consultation with the Minister of Justice the Judge President. See *CRSA*, Section 153 (1) (b). By virtue of Section 153 (3), the Deputy Judge President is mandated act as Judge President of the Labour Court whenever the Judge President is unable to do so for any reason

⁹ They are appointed by the President of South Africa, acting on the advice of the National Economic Development and Labour Council (NEDLAC) and the Judicial Service Commission and after consultation with the Minister of Justice the Judge President. See *CRSA*, Section 153 (4)

¹⁰ See *CRSA*, Section 153 (6)

¹¹ The Court may refuse to hear a matter, other than an appeal or review, if the Court is not satisfied that an attempt has been made to resolve the dispute through conciliation. In any proceedings before the Labour Court, a party to the proceeding may appear in person or be represented by a legal practitioner, a co-employee or by a member, or an office bearer or official of that party’s trade union or employer’s organization and, if the party is juristic person, by a director or an employee

- Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.
2. The Labour Court has concurrent jurisdiction with the High Court in respect of any alleged or threatened violation of any fundamental right entrenched in Chapter 2 of the Constitution of the Republic of South Africa, 1996, and arising from –
 - (a) employment and from labour relations;
 - (b) any dispute over the constitutionality of any executive or administrative act or conduct, or any threatened executive or administrative act or conduct, by the State in its capacity as an employer; and
 - (c) the application of any law for the administration of which the Minister is responsible.
 3. Any reference to the court in the Arbitration Act, 1965 (Act No. 42 of 1965), must be interpreted as referring to the Labour Court when an arbitration is conducted under that Act in respect of any dispute that may be referred to arbitration in terms of this Act.
 4.
 - (a) The Labour Court may refuse to determine any dispute, other than an appeal or review before the Court, if the Court is not satisfied that an attempt has been made to resolve the dispute through conciliation.
 - (b) A certificate issued by a commissioner or a council stating that a dispute remains unresolved is sufficient proof that an attempt has been made to resolve that dispute through conciliation.
 - (c) Except as provided in section 158(2), the Labour Court does not have jurisdiction to adjudicate an unresolved dispute if this Act requires the dispute to be resolved through arbitration.”

It is apparent from the above provision that the status of the South African Labour Court is that of a High Court in the truest sense. No where did the Act restrict the instances upon which a litigant may appeal against the decision of the Labour Court. *Ipso facto*, appeal lie to the Labour Appeal Court from all decisions of the Labour Court.

The Labour Appeal Court (LAC) is the final court in respect of appeals emanating from the judgments and orders made by the Labour Court in respect of matters within its exclusive jurisdiction.¹ The judges of the Labour Appeal Court are appointed in a similar manner to that of the judges of the Labour Court and consist of:² the Judge President of the Labour Court who is also the President of the Labour Appeal Court; the Deputy Judge President who is also the Deputy Judge President of the Labour Court; and such number of other judges of the High Court as may be required for effective functioning of the Labour Appeal Court. In relation to the jurisdiction of the LAC, Section 173 states:

1. “Subject to the Constitution and despite any other law, the Labour Appeal Court has exclusive jurisdiction-
 - (a) to hear and determine all appeals against the final judgments and the final orders of the Labour Court; and
 - (b) to decide any question of law reserved in terms of section 158 (4).
2. *[Deleted]*
3. *[Deleted]*
4. A decision to which any two judges of the Labour Appeal Court agree is the decision of the Court.”

The Labour Appeal Court has a status similar to the Supreme Court of Appeal, and hears appeals from the Labour Court. There is no further appeal except on constitutional matters, in which case appeals may be heard by the SCA and the Constitutional Court.³

6. Conclusion

The Third Alteration to the *1999 Constitution* has no doubt made giant strides in shaping the way in which labour disputes would be resolved in the country. This, it has done not only by establishing the NICN as a superior court under the Constitution but also by expanding the scope and extent of the jurisdiction of the court. However, the moot point remains in relation to the right of appeal from the decision of the court to the Court of Appeal having regard to the wordings of Section 243 (2) – (4). As earlier highlighted, the provision has not only caused confusion to litigants and their counsel; it has also resulted in a form of judicial quagmire having regard to the diverse and contradictory interpretation of the Section by the Court of Appeal.

While the wordings of Section 243 (2) – (4) may seem clear and unambiguous, it is argued that it will be a sheer absurdity to hold that the decisions of the National Industrial Court shall be final in any other cases other than those covered by Section 243 (2) and (3) of the *1999 Constitution*, as amended. The rationale for this argument is not far-fetched. Firstly, it is a primary principle of law that the provisions of the Constitution must be construed together rather than disjointedly in their interpretation. In doing this, a court must tend to tilt towards the construction that would serve the intent of the Constitution and best carry out its object. *Ipso facto*, where the Constitution has used an expression in the wider (or even in the narrower) sense, it is submitted that

¹ See *LRA*, Section 183

² See *LRA*, Section 168

³ As there is a constitutional right to fair labour practices, such appeals are not uncommon

the court should always lean to where the justice of the case so demands to the broader interpretation.¹ Secondly, if an appellate court like the Court of Appeal is to be divested of its jurisdiction, such divesting must be done expressly and not by implication and similarly, a court of law can only be made a final court by express provision and not by implication.² There is nothing both in the Constitution or *NICA 2006* that provides that the NICN shall be a final court in respect of any matter before it. While it is not in dispute that the appeal on questions of fundamental right shall lie as of right to the Court of Appeal and with leave, where the National Assembly prescribes as such, no provision forecloses a right of appeal with leave in other cases from decisions of the NICN. Thirdly, the right of access to courts is basic, constitutional and fundamental. Constitutional or statutory provisions, like Section 243 (2) – (4), which tend to take away or restrict a person’s guaranteed right or access to court³ should be construed in a cautious or strict manner. There is no doubt that the absence of an enactment enabling a person aggrieved to exercise a right of appeal from other decisions of the National Industrial Court may breed judicial laxity and to extent corruption in the justice delivery system. As noted by the Supreme Court,⁴ Per *Irikefe, JSC (of blessed memory)*, “the possibility that decisions by an inferior court may be scrutinized on appeal by a higher court, at the instance of an aggrieved party ... is itself a safeguard against injustice, by acting as it were, as a curb against capriciousness or arbitrariness.”

Some commentators⁵ have argued that a Labour Appeal Court should be established to handle appeals from the NICN. According to those of this school of thought, this is the situation in other jurisdictions like United Kingdom and South Africa. They argued that in countries where they have specialised courts that handle industrial disputes, appeals emanating from the judgements of these courts go to Labour Appeal Court and that such specialised Appeal Court would facilitate hearing of appeal cases and would prevent labour matters from staying too long in the court.⁶ Other stakeholders⁷ (including this writer) are however of the view that there is no need for the establishment of a Labour Appeal Court. They are of the opinion that the Court of Appeal as presently constituted could handle any appeal emanating from the NICN. They argued that the only solution to delay in hearing of cases at the appellate court was for establishment of more divisions Court of Appeal in different parts of the country and appeals arising from the decision of the NICN to the Court of Appeal should be accorded accelerated hearing.

Notwithstanding the foregoing, since an appeal either as of a right or with leave is a review of the trial court’s decision, it is expected that provision should be made for a right of appeal lie against every decision of the NICN so that there is an opportunity not only to check the decisions of the court in terms of how the relevant provisions of law have being applied but also in essence, researches those circumstances which were not examined by the trial court or were given wrong assessment. In any event, whether constituted by a panel of one or three, it is desirable that at least one window of appeal is preserved, in the interest of justice which the court was set up to serve. It may amount to an immorally heavy burden placed on the parties, to realize that loss in a suit before the NICN is tantamount to total and final loss.⁸ It follows then, that the right thing to do is for the Legislature to amend the provisions of Section 9 of *NICA 2006* and/or Section 243 (2) & (3) to the extent that there would be a right of appeal in all matters within the jurisdiction of the NICN to the Court of Appeal thereby putting an end to conflicting interpretation by the Court of Appeal. But before then, it is incumbent on the Court of Appeal to adopt a purposeful interpretation of the provision of the Constitution as it did in *Olamiju, Asubiojo, Jegede, Ajayi, Bamisaye* and *Johesu’s* case as the functional importance of every law is to produce justice. The court should therefore not sacrifice justice upon the altar of legalism. The Court of Appeal as a hallowed temple of justice should adopt a judicial interpretation of the Constitution to meet the course of justice by adopting a liberal interpretation of the provisions of the amended Constitution.

¹ Per *Bello, JSC in Attorney General, Ogun State v. Aberuagba & Ors* [1985] 1 NWLR (PT 3) 395 at 414

² *Asubiojo, supra* at p. 13, paras B – D; *Olamiju, supra* at p. 15, paras D - F

³ See *1999 CFRN*, Section 17 (1) (e)

⁴ See *Nafiu Rabiu v. The State* [1980] 12 NSCC 291 at 310 referred to in *Coca-Cola v. Akinsanya (supra)* at pp. 376 – 377, paras. G – D

⁵ These commentators include Mr. Dosu Ogunniyi and Chief Gani-Adetola Kazeem, SAN. See W. Igbintade, ‘*Lawyers, stakeholders bicker over creation of Labour Appeal Court*’ available at <http://nigeria.gounna.com/show/show/67452/1> (last accessed on 7 September, 2015)

⁶ *Ibid*

⁷ Late Human Rights Lawyer, Bamidele Aturu and Mbagwu. See W. Igbintade, *ibid*

⁸ Orifowomo O. A. and Ashiru M. O., *supra* p. 163