

THE CIVIL JURISDICTION OF THE NATIONAL INDUSTRIAL COURT UNDER THE 1999 CONSTITUTION OF THE FEDERAL OF NIGERIA (THIRD ALTERATION) ACT 2010 AND PRE-2010 FUNDAMENTAL RIGHT LABOUR SUITS

David Tarh-Akong Eyongndi*

Abstract

This reviews the Court of Appeal decision in Standard Chartered Bank v. Adebite where the court held that the jurisdiction of the National Industrial Court (NIC) in Sections 254C(1)(a)(d)(g) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act and 7(1) (a) (i) and 11 of the National Industrial Court Act, 2006, the NIC does not have exclusive original jurisdiction over fundamental right enforcement proceedings arising from employment disputes commenced at the High Court prior to the enactment of the 1999 CFRN (Third Alteration) Act. Thus, such matters, in the absence of Sections 254C of 1999 CFRN (Third Alteration) Act providing for abatement, do not abate and the Courts specified in Sections 251, 257 and 272 of the 1999 CFRN pursuant to Section 46 of the same Constitution notwithstanding Section 254C (b) the 1999 CFRN (Third Alteration) Act have jurisdiction. This paper adopts the doctrinal methodology, it argues that this decision clearly defeats the intendment of the draftsmen, and has created a specie of labour cases known as “pre-1999 CFRN (Third Alteration) Act 2010 fundamental rights labour cases” “appealable to the supreme Court contrary to the Supreme Court decision in Skye Bank v. Iwu where all labour matters ought to end at the Court of Appeal. it recommends that Section 254C should be further amended to include abatement of all pending suits and same transferred to the NIC to give effect to the intention of the legislature in enacting the 1999 CFRN (Third Alteration) Act 2010.

Keywords: Jurisdiction of Court, Decree, Court of Law, Justice, National Industrial Court, Nigeria

I INTRODUCTION

Dispute is an inevitable aspect of human existence and it transcends all areas of human relations.¹ However, the occurrence of dispute should not be the end of human interaction.² Thus, disputes must be settled for continuous human interaction. The State as the regulator of human affairs having executive, legislative and judicial powers, have set up the courts as institution for the settlement of disputes arising from human interactions be it political, social, contractual, employment, religious, etc. The State through the instrumentality of the law, create court and the law (statute) which in turn, creates the particular court provides its jurisdiction. Section 6(5) of the 1999 CFRN contains a list of courts described as superior court in Nigeria.³ Prior to the enactment of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, the NIC was not listed as one of the superior courts under the 1999 Constitution which had generated a lot of judicial controversies. Several legislative efforts (such as the promulgation of the Trade Dispute (Amendment) Decree No. 47 of 1992 and the enactment of the NIC Act 2006) had been taken to cure this defect yet the controversies persisted. As a result, in 2010, the National Assembly pursuant to its constitutional powers and function, enacted the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 which *inter alia*, listed the NIC as one of the superior courts of records in Nigeria, gave it exclusive civil original jurisdiction notwithstanding sections 251, 253 and 272 of the 1999 CFRN over labour disputes and matters pertained in chapter IV of the Constitution. Despite this clear provision explicating the intention of the legislature that the NIC as opposed to any other court,

*LLB (Hons) UNICAL, LL.M (Ibadan) BL, Department of Private and Commercial Law, Faculty Law, Bowen University, Iwo, Osun State, Nigeria.

¹ The fact that humans have various interests there is bound to be a clash of interests from time to time leading to conflicts.

² Lew, J. D. M., Mistelis, L. A. and Kroll, S. M., Comparative International Commercial Arbitration (London, Kluwer Law International, 2003) 1.

³ Some of these courts in cluded the Supreme Court, Court of Appeal, Federal High Court, High Court of the Federal Capital Territory, Abuja, State High Court, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of the States, Customary Court of Appeal of the States, etc.

should have and exercise original civil jurisdiction in all labour matters including those pertaining to chapter IV of the 1999 CFRN this position has been unsettled. Thus, the Court of Appeal in *Standard Chartered Bank Nigeria Ltd. v. Ndidi Adegbite*⁴ held that cases that commenced before the enactment of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010⁵ involving labour disputes pertaining to chapter IV of the 1999 CFRN, (1999 CFRN (Third Alteration) Act) 2010 the NIC does not have exclusive original jurisdiction. The rationale is that the amendment does not include a provision that all such commenced matters before courts other than the NIC abates and should be transferred to the NIC, hence the prevailing substantive law as at the time of the accrual of the dispute is what prevails. Since section 46 of the 1999 CFRN enjoins anybody whose fundamental human right is about to be infringed or has been, to apply to a High Court within the State for its enforcement, section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act cannot revoke that right without an abatement of proceedings provision despite the fact that where there are two conflicting provisions in a statute the later prevails. The issues are, has this pronouncement not defeated the intention of the legislature in enacting the 1999 CFRN (Third Alteration) Act and a setback to the exclusive original civil jurisdiction of the NIC? Would a further amendment of section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act be a possible way out of the quagmire precipitated by the decision of the Court of Appeal on the civil jurisdiction of the NIC? These issues form the crux of this article.

This article is divided into four parts. Part one contains the general introduction. Part two examines the civil jurisdiction of the NIC along its developmental process. Part three discuss the decision in *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite*⁶ with regards to its effect on Nigeria's labour jurisprudence. Part four juxtaposes the Supreme Court decision in *Skye Bank Ltd. v. Victor Iwu*⁷ and the Court of Appeal decision in *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite*⁸ contending that the later has created a specie of labour cases known as "Pre-Third Alteration Act labour cases" which contrary to the SC decision in *Iwu's Case*, could be appealed to the Supreme Court instead of terminating at the Court of Appeal. Part five contains the conclusion and recommendations based on the findings in the preceding sections.

II THE EVOLUTIONARY JOURNEY OF THE NIC AND ITS CIVIL JURISDICTION

The NIC as a court of special jurisdiction has gone through a tumultuous evolutionary journey since its inception as a tribunal. The advent of Europeans in the area now known as Nigeria brought about paid labour as various business concerns were established. The establishment of these business concerns such as Leventis Group, Royal Niger Trading Company, Chanrai Group, etc. necessitated the creation of a legal and institutional framework for dealing with workers agitations.⁹ In recognizing this fact, the colonial government in 1941 promulgated the Trade Dispute (Arbitration and Inquiry) Ordinance for settlement of trade disputes within Lagos. This Ordinance was only applicable in Lagos and there was no permanent structure for settling trade disputes rather, there was only *ad-hoc* and the government could only intervene in trade disputes upon the invitation of a party or parties.¹⁰ In 1957 another Ordinance which was aimed at mending the defects in the earlier Ordinance was promulgated and it was known as Trade Disputes (Arbitration and Inquiry Federal Application) Ordinance.¹¹ This 1957 Ordinance became

⁴ [2019] 1 NWLR (9t. 1653) 348.

⁵ 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 settled the hitherto jurisdictional quagmire that had trailed the NIC.

⁶ [2019] 1 NWLR (Pt. 1653) 348.

⁷ [2017] 6 SC (Pt.)1.

⁸ [2019] 1 NWLR (Pt. 1653) 348.

⁹ Oji, A. E., and Amucheazi, O. D., *Employment and Labour Law in Nigeria* (Lagos, Mbeyi & Associates (Nig.) Ltd., 2015) 253.

¹⁰ *Ibid.* p. 254.

¹¹ Akintayo, J. O. A., and Eyongndi, D. T., "The Supreme Court of Nigeria Decision in *Skye Bank Ltd. v. Victor Iwu*: Matters Arising" 9(3) *The Gravitas Review of Business and Property Law*, September, 2018) 110.

applicable within the whole country. In its effort to improve on the trade dispute settlement mechanism, the Federal Military Government (FMG) promulgated two decrees in 1968 and 1969. These are the Trade Disputes (Emergency Provisions) Decree 1968 and Trade Disputes (Emergency Provisions) (Amendment) Decree 1969.¹² The 1969 Decree expressly prohibited strike and lockout and punished partakers with a term of imprisonment without an option of fine, and made it mandatory for parties to report within fourteen days of its occurrence to the Inspector General of Police (IGP) The Decree interestingly, established a permanent tribunal for the settlement of trade disputes known as Industrial Arbitration Tribunal.¹³ In 1976, the Trade Dispute, Decree No. 7 was promulgated to address certain inherent shortcomings in the 1969 Decree.¹⁴ This Decree per sections 19 and 20 thereof for the first time established a permanent court known as the National Industrial Court to adjudicate over trade disputes. The 1979 Constitution of the Federal Republic of Nigeria came into force and by virtue of section 274 thereof, the Trade Disputes Decree was deemed an existing law and continued to exist as an Act of the National Assembly and concomitantly metamorphosed into the Trade Disputes Act. This Act was amended by the Trade Dispute (Amendment) Decree No. 47 of 1992 which ostensibly elevated the NIC to a Superior Court of Record.¹⁵ Pursuant to its purported elevation to the status of a superior court of record with exclusive jurisdiction in labour matters; the Decree held-sway because under the military, Decrees supersedes the unsuspended part of the Constitution. However, when the 1999 Constitution like its 1979 counterpart was made; the NIC was conspicuously omitted among the Superior Courts of Records listed in section 6(5) thereof. This led to the querying of the constitutionality and superior status of the NIC vis-à-vis the State High Court. Thus, disputes that ought to be ordinarily litigated at the NIC were still taken to the regular court as in the cases of *Maritime Workers Union of Nigeria v. Nigerian Labour Congress*¹⁶ and *Kalango v. Dokubo*.¹⁷ In 2006 in a bid to settle the protracted jurisdictional challenges that have trailed the NIC, the National Assembly enacted the National Industrial Court Act (NICA). This Act fortified the jurisdiction of the NIC; its section 7 gave it exclusive original civil jurisdiction over labour matters. In order to finally seal the jurisdictional debacle of the NIC, the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 was enacted. Section 254A (1) of the Act established the NIC, section 254C gave the NIC exclusive original civil jurisdiction over labour matters notwithstanding the provisions of section 251, 257 and 272 of the 1999 Constitution. By section 254C (1) (d) the NIC has the exclusive jurisdiction to adjudicate over labour disputes pertaining to Chapter IV of the Constitution. Section 254C of the 1999 CFRN (Third Alteration) Act provides the exclusive original civil jurisdiction of the NIC. It has and exercises exclusive original civil jurisdiction over every labour, employment, trade dispute, industrial relations, workplace matters, condition of service such as health, safety, welfare of labour, etc.¹⁸, matters pertaining to the administration and application of any labour legislation such as Trade Dispute Act, Labour Act, Employees' Compensation Act, etc.¹⁹ It also exercise this jurisdiction over any dispute relating to or connected with 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 etc.²⁰ it also exclusively adjudicates over any issue relating to national minimum wage of the federation or any part thereof, unfair labour practice or international best practices in labour, employment and industrial relation.²¹ Any matter relating to or connected with any personnel matter

¹²Ibid.

¹³Oji, A. E., and Amucheazi, O. D., (No. 8) Op. cit. P. 254.

¹⁴Ibid. P. 255.

¹⁵Ibid.

¹⁶ [2005] 4 NLLR (Pt. 10)270 at 282.

¹⁷ [2003] 15 WRN 32.

¹⁸ Section 245C (1) (a) of the 1999 CFRN (Third Alteration) Act, 2010.

¹⁹ Section 245C (1) (b) of the 1999 CFRN (Third Alteration) Act, 2010.

²⁰ Section 245C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010.

²¹ Section 245C (1) (e) (f) of the 1999 CFRN (Third Alteration) Act, 2010.

arising from any free trade zone in the federation or any part thereof as well as disputes relating to the determination of any question as to the interpretation and application of any collective agreement; award or order made by an arbitral tribunal in respect of a trade dispute or trade union dispute, terms of settlement of any trade dispute; trade union dispute or any trade dispute, trade union Constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place and child labour, child abuse, human trafficking etc.²²

By virtue of section 254C (2), notwithstanding anything to the contrary in the Constitution (particularly section 12 thereof that requires domestication for international treaties to become enforceable in Nigeria) the NIC has the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty, or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith. In fact, it can be safely argued that the circumference of the civil jurisdiction of the NIC is elastic as can be gleaned from the provisions of section 254C (1) (a)-(m) of the 1999 CFRN (Third Alteration) Act.

III STANDARD CHARTERED BANK NIG. LTD. V. ADEGBITE AND THE NIC CIVIL JURISDICTION

The brief and succinct facts of this case are as follows. The Appellant employed the Respondent as an Account Relationship Officer. In the course of her employment, she applied for maternity leave which she was granted for the period of 7th February to 6th May 2005. On health grounds as it affect her new born baby, upon the expiration of the leave, she applied for an extension and she was granted. On the 3rd day of February 2006, she had separate meetings with her supervisors and one of the Appellant's Executive Directors where she was informed that her performance appraisal was abysmal. On the 8th day of February, 2006, the Respondent resigned from the Appellant's employ. On the 15th day of June, 2007, she filed a suit against the Appellant contending that the Appellant staff told her that her appraisal was poor and therefore inimical to her continuous employment with the Appellant and she was therefore technically compelled to resign, her resignation was not voluntary and in good faith and it amounted to wrongful dismissal. It was her contention that in evaluating her, the Appellant discriminated against her on the basis of her sex and the fact that she was a nursing mother and the Appellant wrongfully debited her account to the tune of ₦ 1, 628, 209. 64. She therefore sought for several reliefs including a declaration that her dismissal from the Appellant's employ was discriminatory and constitutional same having been done on the basis of her sex and status as a nursing mother and order directing the Appellant to pay her damages to the tune of ₦ 50,000,000, refund of the money wrongfully deducted by the Appellant from her account, etc.

The Appellant denied that the Respondent was wrongfully dismiss as she admitted the facts of her poor performance based on the evaluation report during the meeting with her Supervisor and one of the Directors of the Appellant, thus, her resignation was voluntary. It also denied the allegation that it discriminated against the Respondent on the basis of sex and her status as a nursing mother and that the money deducted from her account was her pension and the mandatory nonrefundable National Housing Fund Scheme contribution. At the trial, the Respondent gave evidence and tendered several documents in proof of her case while the Respondent to the fact that in 2005, the Appellant gave her a target that was higher than her other team members who were neither women nor nursing mothers despite her legitimate absence from work pursuant to the leave and its extension granted her. The Appellant entered defence, call witness and tendered documents absolving itself of any wrongdoing but never controverted the fact that it gave the Respondent a higher target than her other team members. The Trial Court

²²Section 245C (1) (h) (i) (ii) (iii) (iv) (v) (vi) of the 1999 CFRN (Third Alteration) Act, 2010.

delivered its judgment in favour of the Respondent holding that she was discriminated against on the basis of her sex and her status as a nursing mother and that her resignation was not voluntary. It awarded her damages of ₦ 5, 000, 000. The Appellant dissatisfied with the judgment appealed to the Court of Appeal while the Respondent also cross appealed on the quantum of damages contending that it was too small for the breach of her fundamental right to freedom from discrimination.

One of the grounds of appeal of the Appellant was that the learned trial judge erred in law when she²³ assumed jurisdiction and proceeded to enter judgment in favour of the respondent (claimant at High Court of Lagos State) on the 12th day of October, 2012 as per the reliefs contained in the respondent's writ of summons and statement of claim dated 15th June, 2007 and 12th June, 2007 respectively, in direct violation of the provisions of section 254C (1) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 and sections 7 and 11, National Industrial Court Act, 2006, Cap. N 155, Laws of the Federation of Nigeria, 2010. By this ground of appeal, the Appellant was contending that as at 4th day of March, 2010 when the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 came into force, the High Court of Lagos State ceased to have jurisdiction over the subject matter pursuant to section 46 of the 1999 CFRN as same has now been vested in the NIC to the exclusion of any other court and the matter ought to have abated pursuant to sections 7 and 11, National Industrial Court Act, 2006.

The Court of Appeal held that section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 upon it coming into effect, did not sequester the jurisdiction of the High Court of Lagos State to be seised of matters contained in Chapter IV of the 1999 CFRN arising from labour and employment matters as the applicable law to a cause of action is the law prevailing as at the time the cause of action arose and not any other as was held in *Obiuwebi v. CBN*.²⁴ Besides, having failed to expressly provide that upon its coming into effect, all matters pertaining to Chapter IV of the 1999 CFRN relating to matters of labour and employment, pending before any court other than the NIC abates, the provisions of sections 7 and 11, National Industrial Court Act, 2006. Which provides same cannot be legally invoked to repealed section 46 of the 1999 CFRN which is hierarchically superior and prevail rendering null and void section 7 and 11, National Industrial Court Act, 2006 as was held in *African Petroleum Plc. v. Akinnawo*.²⁵ Hence, the point was resolved against the Appellant in favour of the Respondent.

This part of the decision of the Court of Appeal is what this article is concerned with as it has far reaching effects on the exclusive original civil of the NIC as far as Chapter IV of the 1999 CFRN is concerned. While it is conceded that the law existing as at the time the cause of action arose is the applicable law as has been repeatedly held in avalanche of judiciary pronouncements such as *Aremu v. Adekanye*²⁶ *Ontario Oil & Gas Nig. Ltd. v. Federal Republic of Nigeria*²⁷ and *Nurudeen Adewale Arije v. Federal Republic of Nigeria*²⁸ it is obvious that the draftsmen had intended a contrary situation as far as section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act was concerned. However, the draftsmen failed to avert their minds judiciously to the subject of abatement of pending dispute and that an Act or any law under a democratic

²³ The use of the word "she" in description of the learned trial judge by the appellant in its notice of appeal runs contrary to the traditional description of judges as "learned brothers." It is unethical for a lawyer to refer to a judge in an inappropriate nomenclature.

²⁴ [2011] 7 NWLR (Pt. 1247) 465.

²⁵ [2012] 4 NWLR (Pt. 1289) 100 at 116-117.

²⁶ [2004] 13 NWLR (Pt. 891) 972.

²⁷ [2015] LPELR-24651 (CA).

²⁸ Suit No. CA/L/770/2009 judgment delivered on 6/11/2014.

dispensation does not have retrospective effect. In fact, retrospective nature of law runs afoul to the ethos of democracy and it is a characteristic nature of military or totalitarian rule which subverts the will of the people. From the phraseology of section 254C (1) (a) of the 1999 CFRN (Third Alteration) Act, 2010, the draftsmen had intended that”

notwithstanding the provisions of sections 251, 257, 272 and anything contained in the 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 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 any other matter which the court has jurisdiction to hear and determine.

An important point is imbedded in the provisions above with regard to the exclusive original civil jurisdiction of the NIC. It is apposite *ipssima verba*, to note that sections 251, 257 and 272 relates to the jurisdictions of the Federal High Court, High Court of the Federal Capital Territory, Abuja and the State High Courts. These Courts are created by the Constitution and their jurisdiction can only be expanded or compressed by the law creating them and not just by an Act of the National Assembly *per se*. The gist is that where a provision of the Constitution is to be amended, for a purported amendment to be valid, it is not enough that the National Assembly enact an Act to that effect. Such an Act must be an Act of a constitutional dimension, i.e. that is must go through the process of constitutional amendment and not just the National Assembly alone exercising its powers and function of law making. The Bill must be sent to all the State Houses of Assembly to get the required percentage altering the particular portion of the Constitution as provided in section 9(2) (3) (4) of the 1999 CFRN which requires a resolution of supporting votes of not less than two third majority of the members of both houses of the National Assembly and approved by a resolution of the House of Assembly of not less than two-third of all the States for any matter not contained in Section 8 of the Constitution while matters in Chapter IV and section 8 of the 1999 CFRN requires a resolution supporting the proposal passed by not less than four-fifth majority votes of members of either Houses of the National Assembly supported by a resolution of the Houses of Assembly of not less than two-thirds of all the States.

Juxtaposing the above with Sections 7 and 11, National Industrial Court Act, 2006 makes the argument of the Appellant for their applicability untenable. For purposes of completeness the Section 7 of the NIC Act pertains to the jurisdiction of the NIC and is *in pari materia* with Section 254C (1) of the 1999 CFRN (Third Alteration) Act, 2010 however, due to it aptness, we take the liberty to reproduce *verbatim ad literatim* the provisions of section 11 (1) (2) of the NIC Act which states as follows:

In so far as jurisdiction is conferred upon the court in respect of the causes or matters mentioned in the foregoing provisions of this Act, the Federal High Court, the High Court of a State, the High Court of the Federal Capital Territory, Abuja, or any other court shall, to the extent that exclusive jurisdiction is so conferred upon the court, cease to have jurisdiction in relation to such causes and matters. Nothing in subsection (1) of this section shall affect the jurisdiction of the Federal High Court, the High Court of a State or of the Federal Capital Territory, Abuja to continue to hear and determine causes and matters which are part heard before the commencement of this Act and any proceedings in any such causes or matters, not determined or concluded at the expiration of one year after the commencement of this Act, shall abate.

The stage is now set for juxtaposing the constitutional efficacy of the NIC Act 2006 and the 1999 CFRN (Third Alteration) Act, 2010. Noteworthy is the fact that both Acts are Acts of the National Assembly but their legal efficacy differs. The NIC is an Act made by the National Assembly as an act of its ordinary legislative powers and function without any input whatsoever from any quarters. Thus, it can be described as an “ordinary Act” of the National Assembly in the discharge of its traditional functions. However, the later one is an Act of the National Assembly but with the input of four-fifth majority of the State Houses of Assembly and can be rightly categorized as an “Act of a Constitutional dimension.” In fact, it ranks *pari passu* with the unsuspended part of the Constitution and its provisions where so expressed, supersedes any existing provision that runs contrary to it. Put differently, the Act is the Constitution and has the same supreme efficacy over every other law in Nigeria. It enjoins the supremacy efficacy of the 1999 Constitution contained in section 1 (3).

Thus, Section 11(1) (2) of the NIC Act, 2006 which the Appellant assiduously sought to invalidate the jurisdiction conferred on the Lagos State High Court by sections 46 and 272 of the 1999 CFRN with regards to Chapter IV of the same Constitution cannot achieve the intention expressed therein. The reason is, the said section 11(1) (2) of the NIC Act 2006, is subservient to section 46 and 272 of the 1999 CFRN. Thus, the draftsmen intention in section 11(1) (2) of the NIC Act, 2006, can only be legally effectuated pursuant to an Act of the National Assembly of the nature of the 1999 CFRN (Third Alteration) Act, 2010 and not just an ordinary Act. Having failed to transfuse into the provisions of the 1999 CFRN (Third Alteration) Act, 2010 the provisions contained in sections 11 (1) (2) of the NIC Act, 2006, the court was right in coming to the conclusion it did by placing reliance on the dictum of Ogakwu JCA in *Strand Nigeria Limited & Ors. v. Mr. Ngozi Ijeh*²⁹ The trial having commenced before the commencement date of the 1999 CFRN (Third Alteration) Act, 2010, section 254C could not be evoked. This is *in tandem* with the decisions in *Mustapha v. Governor of Lagos State*³⁰, and *National Union of Road Transport Workers & Anor. v. Road Transport Employee Employees Association of Nigeria*.³¹

Thus, while the intention of the draftsmen in section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 is genuine and laudable, as same will ensure that the special nature and stature of the NIC with regards to any matter relating labour and employment irrespective of the nature of cause of action be ventilated at the NIC, the draftsmen by sheer ignorance or oversight, failed to properly effectuate this and same cannot be done through the back door. It is therefore pertinent that the National Assembly set in motion, the judicial machinery to amend section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 to incorporate the provisions of section 11 (1) (2) of the NIC Act short of the permission of the matters to be concluded within a year or abate but for all pending matters commenced before the courts mentioned in section 251, 257 and 272 to abate without immediate effect from the date such an amendment becomes effective.

IV JUXTAPOSING THE EFFECTS OF SKYE BANK LTD. V. IWU AND STANDARD CHARTERED BANK NIG. LTD. V. ADEGBITE

This section juxtapose the decision of the Supreme Court (SC) in the case of *Skye Bank Ltd. v. Victor Iwu*³² where the SC held that all appeals arising from matters contained in the exclusive original civil jurisdiction (whether as of right or with leave) from the decision of the NIC terminates at the Court of Appeal by virtue of section 243 (3) and (4) of the 1999 CFRN (Third Alteration) Act, 2010 and the decision of the Court of

²⁹ Unreported Suit No. CA/L/790/2012.

³⁰ [1987] 2 NWLR (Pt. 58) 539.

³¹ [2012] 10 NWLR (Pt. 1307) 170.

³² [2017] 6SC (Part 1) 1.

Appeal in *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite*³³ wherein the Court of Appeal held that since the Third Alteration Act failed to provide for abatement of labour cases before any other court than the NIC before its coming into force, such cases would continue before such court so long as they deal with fundamental right issues arising from labour relations notwithstanding that section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 has vested exclusive original civil jurisdiction over such causes and matters on the NIC.

It is apposite to state that these cases have created a dichotomy on fundamental right labour cases which can for the purpose of convenience be categorized as “Pre-1999 CFRN (Third Alteration) Act labour cases and Post-1999 CFRN (Third Alteration) Act Labour cases.” The practical effect of this dichotomy is profound when examined against the appellate jurisdiction of the Court of Appeal over labour disputes. In *Adegbite’s Case*, the Court of Appeal made it clear that labour fundamental right matters commenced at the High Court prior to the enactment of the 1999 CFRN (Third Alteration) Act would validly continue. Thus, appeals from such matters by virtue of section 241(1) (d) of the 1999 CFRN dealing with the appellate jurisdiction of the Court of Appeal from the High Courts, shall lie as of right to the Court of Appeal. Hence, such appeals from the High Court to the Court of Appeal, by virtue of section 233(1) (d) of the 1999 CFRN, shall lie to the Supreme Court irrespective of their nature of the dispute once the decision emanated through the appropriate Court.

By this, while labour matters (irrespective of the nature) from the NIC terminates at the Court of Appeal as the final court, fundamental right labour commenced at the High Court prior to the enactment of the 1999 CFRN (Third Alteration) Act can be appealed up to the SC contrary to the decision of the SC in *Skye Bank Ltd. v. Victor Iwu*³⁴ which is *in tandem* with section 243(3) (4) of the 1999 CFRN (Third Alteration) Act. The justification of the above is that since such fundamental right labour matters did not emanate from the NIC to the Court of Appeal but the High Court to the Court of Appeal, it would be overzealousness to seek to apply the decision in *Iwu’s Case*.³⁵ This outcome clearly defeats the mischief sought to be cured by section 243(4) of the 1999 CFRN (Third Alteration) Act with regards to appeals on labour matters. Unfortunately, the finality of the decision of the Supreme Court in the *Iwu’s Case* is being whimsically being questioned. This state of the law is undesirable as it engenders instability on an area of the law that certainty and stability is not only urgent but continuously necessary giving the nature and importance of labour to the economy of Nigeria and its total wellbeing.

V CONCLUSION AND RECOMMENDATIONS

The NIC as a specialized court is a product of necessity for the settlement of labour and related disputes in Nigeria. Its evolutionary journey has been very tumultuous as a lot of controversies have surrounded its jurisdictional status and stature. In an effort to curb the menace, several legislative steps from the military to the democratic eras have been taken and today, the NIC is a constitutional superior court of record with coordinate jurisdiction with the Federal High Court and State High Court. Under the 1999 CFRN (Third Alteration) Act, 2010, the jurisdiction of the NIC has been greatly enhanced. Unlike its hitherto position, the NIC now has both civil and criminal jurisdiction with the civil being exclusive. However, while its original civil jurisdiction is exclusive, with regard to matters relating to Chapter IV of the 1999 CFRN, the NIC cannot exercise this exclusive jurisdiction to the prejudice of the High Court and Federal High as the powers conferred on them by section 46 of the Constitution have not been revoked by section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 as the section failed to make provisions for abatement of actions commenced before the commencement date of the Act hence, such matters continue to

³³ [2019] 1 NWLR (Pt. 1653) 348.

³⁴ [2017] 6SC (Pt. 1) 1.

³⁵ *Ibid.*

subsists before those courts regardless. Also, section 11 of the NIC Act cannot be used to achieve the same result since same is subservient to sections 46, 251, 257 and 272 of the Constitution as was held by the Court of Appeal in *Standard Chartered Bank Nig. Ltd. v. Ndidi Adegbite*.³⁶ Thus, in order to give effect to section 11 of the NIC Act, 2006, there is a need to amend the 1999 CFRN (Third Alteration) Act, 2010. Based on this finding, it is recommended that in order to realize the intention of the draftsmen in amending the 1999 CFRN with regard to the jurisdictional quagmire of the NIC, the 1999 CFRN (Third Alteration) Act, 2010 should be amended by incorporating the provisions of section 11 of the NIC Act to the effect that all proceedings relating to Chapter IV of the CFRN arising from labour and employment matters pending before any court prior or after the commencement of the Act abates and must be transferred to the NIC forthwith.

³⁶ [2019] 1 NWLR (Pt. 1653) 348.