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APPRAISAL OF THE LEGAL MECHANISMS FOR RESOLVING LABOURAND INDUSTRIAL RELATIONS DISPUTES IN NIGERIA

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ABSTRACT

It is axiomatic that labour and industrial relations disputes touch on the sustainability of nation's economic growth and development and could constitute a clog in the wheel of rapid economic, social and industrial development of the nation. This research was motivated by the statutory and constitutional challenges of the various legal mechanisms for resolving labour and industrial disputes in Nigeria.It is to appraise the legal mechanisms for resolving labour and industrial disputes in Nigeria,bringing to the fore its challenges and prospects.The legal mechanisms identified and appraised are – Collective bargaining and agreement; mediation; conciliation; industrial arbitration Panel; and Board of inquiry.In appraising these mechanisms, we adopted the doctrinal research method byanalysing legal texts, judicial decisions and scholarly opinions and examined the constitutional provisions in relation to labour and industrial relations disputes. It found that the Minister has overbearing influence on the autonomy of parties in dispute. While appreciating the radical innovations brought about by Third Alteration to the Constitution of the Federal Republic of Nigeria,1999. Recommendations are made for a further review of the Constitution so that the legal mechanisms are strengthened for expeditious, effective and efficient Labour and industrial relations justice delivery in Nigeria. There is the urgent need to build more National Industrial Court Judicial Divisions. Some provisions of the Trade Disputes Act[1] and the National Industrial Act[2] should be reviewed to be in tandem with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Keywords: Collective Bargaining and Agreement, Mediation, Conciliation, Industrial Arbitration Panel, Board of Inquiry

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[1]See s.9
[2]See s.4(b)

Introduction

Conflict is inevitable in any human relationship but combat is optimal.[3] Labour disputes denote the clash of interests and resultant disputes of varying intensity between different individuals, groups and organizations in industrial relations system. Conflict arises because the contract of employment between employers and employees to some extent,may not contain salient and critical issues expected in the normal termsofcontract agreement.The obvious circumstantial harsh socio-economic disposition of the employee (high rate of unemployment) makes him to accept work on anunfavourable terms and conditions. The axiomatic exploitative disposition of the employer who is always concerned with maximization of profits and the vulnerable employee who wantto earn a living and sustainable income often create unequal bargaining position of the parties in a labour relationshipsresulting in disagreement, disharmony, and ultimately to strike action in an organization.

Industrial relations disputes touch on the sustainability of nation's economic growth and development[4]and could constitute a clog in the wheel of rapid economic, social and industrial development of any nation. It also causes losses, hardship to both the employer and employees. Consequently, any nation desirous of rapid economic, social and industrial development cannot afford not to establish internal legal mechanisms to expeditiously handle labour and industrial relations causes and matters. Historically, none of the developed economies have been able to grow without effective legal mechanisms in place for expeditious resolution of labour and industrial disputes.[5]Labour and industrial disputes in Nigeria, date back to the British colonial era in 1941, and since then, there has been efforts by various governments to ensure that labour and industrial relationsharmony which is key to economic growth and development in Nigeria are timeouslysettled.

[3] Oyesola, A. *"Court-Connected ADR and Industrial Resolution: Lessons from South Africa and Guetamala; Labour Law Review: Nigeria Journal of Labour Law & IndustrialRelations, Vol. 6 No*.1, March 2012, p.1.
[4]O. Gbenga,*"Legal Anatomy of the National Industrial Court Act 2006: Need for Legislative Rethinking: Labour Law Review: Nigerian Labour Law and Industrial Relations, Vol. 2 No. 2 June 2008, p.2.*
[5]L. C. Opara, *"The Legal Framework of Trade Union Activism and the Role f the National Industrial Court (NIC) in Handling Trade Disputes. International Journal of Humanities and Social Sciences, Vol. 4, No.3, February 2014 (accessed last on 4th July 2024).*

It is imperative to state that legal mechanisms for resolving labour and industrial relations disputes in Nigeria forms the fulcrum of this paper. This paper appraises the legal mechanisms for resolving labour and industrial disputes in Nigeria, bringing to the fore their suitability and limitations in resolving labour and industrial relations disputes and potential prospects for maintaining industrial harmony in Nigeria. Before exploring into critical discourse of the legal mechanisms, it is pertinent to ask fundamental question of what is labour dispute? It is worthy of note that labour disputes have been variously defined by dictionary, legal scholars and judicial decisions. Garner[6] defined labour disputes as "any disputes between employers and employees or between workers and workers which is connected with the employment and physical conditions of work of any persons. It is also defined as "controversy between an employer and its employees concerning the terms and conditions of employment, or concerning the association or representatives of those who negotiate or seek to negotiate the terms and conditions of employment".[7]The Trade Dispute Act[8]definedit as: "any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person".

The Court of Appeal in *Attorney-General of Oyo State v NLC*[9] did not define Trade Disputes but rather enumerated the essential ingredients of "Trade Disputes" as:

(1) There must be a dispute
(2) The disputes must involve a trade
(3) The dispute must be between
    (a) Employers and workers or Workers and workers
(4) The dispute must be connected with:
    (a) The employment or non-employment
    (b) The terms of employment
    © The physical condition of work of any person.

It is also pertinent to note that the National Industrial Court Act (NICA)[10] in establishing the jurisdiction of the Court used the term "Labour Disputes" or organizational disputes". The National Industrial Court Act repealed Part II of the Trade Disputes Act and emphasized that wherever there is

[6] Black's Law Dictionary, Ninth edition; Wed A. Thomas Teuters Business 2004.
[7]A. O. Onyaru, "*The National Industrial Court: Regulating Disputes Resolutions in Labour Relations in Nigeria,*<http://www.ganji.com>. Article800/NEWS.837.htm (accessed last on 8th February 2024).
[8] Section 48 CapT8 LFN 2006.
[9] (2004) 1 N.L.L.R. 591 at 597-598.
[10] NIC Act No.1 2006.

conflict between the provisions of the Trade Disputes Act and the National Industrial Court Act, the NICA shall prevail.Trade disputes generally originate from interactions within an organization and can be classified into two categories – individual disputes and collective labour disputes. Individual disputes may arise from termination of contract of employment, dismissal as a result of some unfair labour practices. Collective labour disputes involve intra and inter-union disputes. Intra-union dispute is a dispute between members of a union on the one hand and the union itself. Inter-union dispute is a dispute between one or more members of one union and members of the other union.

For the process of resolving labour and industrial relations disputes to be activated, there must be a dispute in existence or apprehension of its existence. The activation of resolution mechanismscannot be in isolation of labour and industrial disputes existence. Consequently, Section 1 of the Trade Disputes Act[11]provides "where a dispute exists or is apprehended, the provisions of the Part of this Act shall apply in relation to the dispute". The Nigerian Legal system recognized different approaches to resolving labour and industrial relations disputes in order to maintain industrial harmony which is key to economic growth and development. The key actors in the labour and industrial relations disputes are the employees and employers, the Unions representing the workers and the employers' unions. The State is the regulator of the labour and industrial relations through legislations and often times the employer of labour.

The mechanisms for resolving labour and industrial relations under the Trade Dispute Act as amended are:

(i) Collective bargaining
(ii) Collective agreement
(iii) National Industrial Court
(iv) Mediation
(v) Conciliation
(vi) Industrial Arbitration Panel
(vii) Board of Inquiry

2. Conceptual Clarifications

Conceptual clarification is to ensure that readers or parties understand key terms and ideas,clarify nebulous or ambiguous terms in order to avoid misinterpretation. It facilitates deeper understanding and accurate communication.

2.1 Collective Bargaining

[11] Cap T8 No.37 of 1996 LFN 2006.

Collective bargaining is a process of consensual consultation and negotiation of terms and conditions of employment between employers and employees or their respective representatives.In contemporary Industrial Society, it remains the life wire for effective and sustainable industrial relations.[12]Industrial relations harmony and stability in contemporary industrial society are predicated on the effectiveness of the collective bargaining process, the completion of comprehensive collective bargaining as well as their implementation.[13] The British academic, Beatrice Webb reportedly coined the term "Collective bargaining" in the 19th century. According to Oji and Amucheazi[14], collective bargaining applies to those arrangements under which wages and conditions of employment are settled by a bargaining in the form of an agreement made between employers or Association of employers and workers or workers' Organization.It is an effective means of promoting industrial relations where the employer or his representative and the employees or their representative bargain in good faith and arrive at an agreement relating to terms and conditions of employment.[15] It has been defined as "negotiation between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits."[16] Besides providing procedures for settlement of disputes and other conditions of employment, it brings matters within the joint regulation of management and trade unions which otherwise fall within the prerogative of the management.[17]Collective bargaining is defined as "a dialogue, or collective negotiation between the employers' representatives and the workers' representative with a view to reaching a collective agreement on issues under negotiation"[18].It has been described as "voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by collective agreement".[19] Collective bargaining is only a means to an end, which end product is conclusion of a collective agreement.[20]It is Industrial where it involves many employers and can therefore be described as industrial/multi-employer bargaining,and the

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[12]F. C. Nwoke, *Enforcement of Collective Agreement in Nigeria and the New National Industrial Court: A New Dimension, Law in Motion: Nurturing Democracy and Development: Essays in Honour of Chief George Uwechie SAN*(Chenglo Publishers , 2013) 284.
[13] Ibid.
[14]E. A. Oji, and O.D. Amucheazi, Employment and Labour Law in Nigeria, Mbeyi and Associate (Nig) Ltd, Okota, Lagos, 2015, p.212.
[15]A. A. Mir, and A. N. Kamal, Employment Law in Malaysia.
[16] B. Garner, Black's Law Dictionary, WEST a Thomas Business, 2004 p.299.
[17]E. A. Oji, and O. D. Amucheazi, (n.26) p.213.
[18]C. K. Agomo, Nigerian Employment and Labour Relations Law and Practice Concept Publications Ltd,77, Shipeolu Street, Bakare Bus Stop, Palmgrove, Lagos. Nigeria p.292.
[19] ILO Right to Organize and Collective Bargaining Convention, No.98, 1949.
[20] Nwoke, (n.24). .284.

agreement reached usually has nation-wide application and implications within a given industry. It is national where it has nation-wide application as the industry but concerns the Federal Government i.e. that is, the bargaining between Central Labour Organization and the Federal Government, almost in all cases negotiates wage increase and conditions of work.[21] The outcome of such bargaining is sometimes extended to the private sector through the Minimum Wage Act.[22]

To ensure effective settlement of dispute by collective bargaining, the TDA provides that the parties must make effort through existing negotiation machinery to settle their disputes, Section 4 (1) provides:

> If thereexists agreed means for settlement of the disputes apart from this Act, whether by virtue of the provisions of any agreement between organizations representing the interest of the employers and organization of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.[23]

Collective bargaining deals with two types of issues - procedural issues and substantive issues. Procedural clauses deal with the procedures for reaching the substantive agreements and are the basic rules and procedures that enable smooth negotiation.[24]It relates to persons who ordinarily belong to the trade unions but because of the sensitive nature of their offices are not expected to participate in industrial actions for instance, Security, Safety, Medical and Management cadres. Section 3(3) of the Trade Union Act provides:

> No staff recognized as a projection of management structure of any organization shall be a member of or hold office in a trade union (whether or not the member of that union are worker of a rank junior, equal or higher than his own) is such membership or the holding of such office in the trade union will lead to a conflict of his loyalties to either the union or to the management.

2.2 Scope and content of Collective Bargaining

The scope of collective bargaining varies from one bargaining relationship to another and from system to system. Collective bargaining commences with negotiation between parties concerning procedures to be adopted in regulating the relationship between the bargaining parties. It hinges on procedural issues for meetings, arrangement for negotiations and procedures for the settlement of disputes between parties concerned. By this procedure, parties agree to meet at regular intervals or

[21] Ibid.
[22] Ibid.
[23] Cap T8 Laws of the Federation of Nigeria 2004.
[24] Ibid.

when circumstances require, bargain on substantive issues such as wages, terms and conditions of service. The scope of collective bargaining can be extended to include all areas of conflict in the labour relationship.

2.3 Collective Agreement

The term collective agreements have been variously defined by dictionary, judicial decisions, statutory provisions, scholars and international conventions as follows: The Black's Law Dictionary defines it as "a contract that is made between an employer and a labour union that regulates employment conditions".[25]In the case of *Provost, Kwara State Polytechnic v Adetilo*[26], the Court of Appeal adopted the Trade Dispute Act definition of collective agreement thus:

> ... a collective agreement is any agreement in writing for settlement of disputes relating to terms of employment and physical condition of work concluded between (a) an employer, group of employers, representative of employers on the one hand and (b) one or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand.

Selwyn[27]defined collective agreement as:

> An agreement made between an employers' association or a single employer, on the one hand, and a trade union on the other which not only lays down the procedure which will govern the relationship between the signatories but also covers terms and conditions of employment of those covered by the agreement.

The International Labour Organization (ILO) defined collective agreement as:

> the term collective agreement means all agreement in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations on the one hand, and one or more representatives of workers duly elected and authorized by them with national law and regulations, on the other.[28]

It is pertinent to note that in Nigeria, for an agreement to qualify as collective agreement, it must meet the following criteria:

[25] Bryan A. Garner (n.4) p.2.
[26] (2007) 15 NWLR (Pt.1056) CA p.48-50.
[27] Selwyn, N.M. *Law of Employment.* (6th EditionButterworths 2011) p.102.
[28] Recommendation No.91 of the ILO, 1960.

(a) it must be in writing,

(b) the parties to such agreement must either be a trade union, a federation of trade unions of workers and employers respectively,

(c) the subject matter of such agreement must be the regulation of the terms and conditions of employment.

2.4 Enforcement of Collective Agreement

As a general rule, it is the contract of employment that determined the relationship between an employee and employer and whatever that is not included in the terms and conditions of employment does not apply. This is basically the common law doctrine especially on the extent to which collective agreement will form part of the contract of employment. It is an axiomatic fact that courts in England were and still not disposed to, or willing to enforce collective agreements on the premise that they are gentleman's agreement binding only in honour. Unless and until it is incorporated into the employee's terms of contract, he cannot get the court to enforce it. In *Ford Motors Ltd v Amalgamated Union of Engineering and Foundry Workers*[29] as follows:

> Agreement such as these composed largely of optimistic aspirations, representing grave practical problems of enforcement and reached against the background of opinion adverse to enforceability, are in my judgment not contracts in the legal sense and are not enforceable in law. Without clear express provision making amenable remain in the realm of undertaking in honour[30]

The Nigerian legal system being fashioned along the Common Law jurisdiction, collective agreement is not enforceable in Nigeria unless it is incorporated into the individual contract on whose behalf they are incorporated. Consequently, in some cases Courts in Nigeria held that collective agreements are not enforceable.[31]This is done by incorporation of the terms so that in the event of a dispute, the collective agreement will be cited as binding on the parties to the agreement.[32]To hold that collective agreements are enforceable only when expressly incorporated in the individual contract of employment of an employee should not apply where there is evidence that both parties have relied on the collective

[29] (1969)2 Q.B. 303 (1969) 2 All E. R. 481.
[30] Ibid at 485.
[31] Nigerian Arab Bank v Shuaibu (1991)4 NWLR (Pt.186) 456; Shuaibu v Nigerian Arab Bank (1998) 4 SC.
[32] Ojiand Amucheazi, (n.26) p.7.

agreement. One case that amounts to judicial absurdity was the case of *Afribank v Osisanya*[33] where despite the reliance placed on the agreement by both parties, the court held that the dismissal procedure contained in it was unenforceable because it is not binding on the employer.In *Cooperative and Commerce Bank (Nig) Ltd v Okonkwo*[34] the letter of dismissal of the employee stated that the employee flouted a clause in an industry-wide collective agreement. At the trial, the employee sought to rely on the collective agreement and the employer contested that it was not enforceable. The Court of Appeal rejected the employer's objection, stating that haven relied on the collective agreement to dismiss the employee it was stopped from arguing that it was not enforceable – principle of *Estoppel*.

The International Labour Organization Recommendation Concerning Collective Agreement, provides that collective agreement should bind the signatories and those on whose behalf the agreement is concluded.[35] It is worthy of note that Section 3(3) of the Trade Disputes Act[36],provides that the Minister upon receipt of copies of a collective agreement deposited in accordance with subsection (1) of this section make an Order, the terms of which may in respect of the agreement specify that the provisions of the agreement or any part thereof as may be stated in the Order shall be binding on the employers and workers to whom they relate". This prerogative power of the Minister should be reviewed, as the Minister may not be willing to do so if it is not in the interest of the Government who is the employer.

One of the radical innovations brought about by the Constitution of the Federal Republic of Nigeria 1999 (Third Alternation) Act,2010 was the exclusive jurisdiction "relating to, connected with or pertaining to the application or interpretationof international labour standards". According to Chianu[37]"rather than insist on express incorporation of a collective agreement into an individual employee's contract, judges should look at the way its provisions were treated by the parties after the collective agreement was executed. Where evidence exists that management has acted on the agreement, taking benefits from it, judges should infer an intention on the part of management as considering the agreement binding."Sequel to the relationship between Nigeria and Britain, the

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[33] (2001) 1 NWLR (Pt.642) 598.
[34] (2001) 15 NWLR (Pt.735) 114.
[35] Recommendation 91 of 1951.
[36] Cap T8 LFN 2004.
[37]E. Chianu, *Employment Law* (Bemvico Pub (Nig) Ltd., 2004) p.89.

Nigerian Courts adopted the English Law position in this regard. In *ACB v Mbisike*[38], the Court of Appeal held that:

> a collective agreement concluded between one or more trade unions on the one hand, and one or more employers' associations on the other are as a general rule unenforceable. They are not intended to create legal relations. They are at best gentleman's agreement, an extra judicial document devoid of sanction. Thus, because they arise from trade union pressure are binding in honour only and their enforceability depends essentially on industrial or political pressure.

One of the reasons for the Nigerian Courts to deny automatic effect to collective agreements is the absence of privities of contract between an individual employee and the parties to a collective agreement. However, if the collective agreement is incorporated, into the terms and conditions of employment, the issue of privities becomes of no moment and inconsequential. This was expressed by the Court of Appeal in *New Nigerian Bank v Egun*[39]which held that:

> An individual employee not being a party to a collective agreement of the employer and employees Association, no privities of contract arise between an individual employee and his employer by virtue of that agreement. In the instant case the respondent was not a party to the main collective agreement between Nigerian Employers Association of Banks, Insurance and Allied Institutions and Association of Senior Staff of Banks, Insurance and Financial Institutions and therefore he cannot sue on it.

The workers are not individual parties to the agreement and so consequently, any attempts to enforce it will be caught by the principle of privities of contract. This was the decision of the Court of Appeal in *ACB v Nwodike*[40]per Ubaezonu JCA,whosaid "It is trite law that only the parties to a contract can sue on the contract. Strangers can neither sue nor be sued on the contract." However, where parties to the dispute reach an agreement through collective agreement, they are required to deposit three copies of the said agreement with the Minister of Labour who may make consequential order making the agreement binding on the parties. It is a discretionary power of the Minister, who may not make such order where the employer (the public sector) feels coerced or for some political or economic reasons. It is imperative to note that the above cases were heard and determined by the High Courts and Court of Appeals and were before the third alteration to the Constitution of the Federal Republic of Nigeria 1999 which conferred on the National Industrial Court the exclusive jurisdiction for the interpretation

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[38] (1995) 8 NWLR (Pt.416) 416.
[39] (2001) 7 NWLR (Pt.711) p.1.
[40] (1996)4 NWLR (Pt 443) 470 at 483.

and application of collective agreement. Consequently, the work is of the opinion that the Supreme Court will interpret and enforce collective agreement.

2.5 The Enforcement of Collective Agreements by the National Industrial Court under the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010.

Sequel to the controversies over the status and jurisdiction of the National Industrial Court created by the Trade Disputes Act and the National Industrial Court Act conferring status of superior court of record on the court, the National Assembly passed the bill for the constitutional amendment'[41] Section 254A was inserted which provides thus: "there shall be a National Industrial Court". Section 254B(1) provides for the appointment of President of National Industrial Court by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council (NJC) subject to confirmation of such appointment by the Senate. Section 254B(2) provides for the appointment of other judges of the court by the President on the recommendation of National Judicial Council (NJC). Section 254C(1) provides:

> 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 or matters.

It vested on NIC a broad, expansive and comprehensive jurisdiction covering all aspects of labour, employment and industrial relations disputes, including child abuse, child labour, human trafficking, sexual harassment at workplace. The NIC shall have jurisdiction and power to deal with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour employment and industrial relations therewith. The court shall have jurisdiction and power to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with matter of which NIC has jurisdiction to entertain. Section 254C(3) provides: "the court may establish an Alternative Disputes Resolution Centre within the court premises on the matter which jurisdiction is conferred on the court by the constitution or any Act or Law." The court shall have or exercise jurisdiction and power in criminal causes and matters arising from any cause and matters of which jurisdiction is conferred on the NIC and for this purpose. Also, Section 254F(1) provides

[41] The President of the Federal Republic of Nigeria, Dr. Jonathan Ebele Goodluck on 4th day of March 2011 assented to the 1999 Constitution (Third Alteration) Bill which amended the 1999 Constitution.

"subject to the provisions of any Act of the National Assembly, the President of NIC may make rules for regulating the practice and procedure of the NIC. Consequently, the President made the National Industrial Court Rules 2007 and most recently, the National Industrial Court (Civil Procedures) Rules 2017. Section 254F(2) provides that the provisions of the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code or Evidence Act shall apply.

(j) relating to the determination of any question as to the interpretation and application of any –

(i) collective agreement;

With the above provisions there is no doubt that the National Industrial Court has jurisdiction for the interpretation and application of collective agreement, which includes enforcement. Also, Section 254C(2) provides:

> Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have 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.

The above provision empowers the National Industrial Court to apply international best practices which includes the enforcement of collective agreement. Nigeria is a signatory to the International Labour Organization (ILO) Convention on Freedom of Right to Collective bargaining. This provision accords workers the right to organize and form trade union and engage in collective bargaining and conclude collective agreement.

It is perplexing to note that irrespective of the radical innovations brought about by the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010, the National Industrial Court, Lagos Division in a recent case of *NUHPSW v OUTSOURCING SERVICES LTD*[42]in the issue of "whether or not the Collective agreement entered into between the parties in June 2008 is justiciable and enforceable *ab initio*and whether it is still operative". Coram Obaseki-Osaghae J. held that collective agreement is not justiciable and enforceable. However, on appeal, the Court of Appeal per Ogbuinya, O. F. JCA held that from the standpoint of the provision of Section 254C(j) (i) of the Constitution of the Federal Republic of Nigeria 1999(Third Alteration) Act 2010, Collective

[42] (2023) LPELR 60683 CA.

Agreement is both justiceable and enforceable. With this landmark decision of the Court of Appeal, the National Industrial Court will have no reason not enforce collective agreements.

3. NATIONAL INDUSTRIAL COURT

National Industrial Court was established in 1976 to be the special adjudicatory authority for resolving labour and industrial relations disputes in Nigeria. It was established by virtue of Trade Disputes Act.[43]In 1992, the Trade Disputes Act was amended by the Trade Disputes (Amendment) Decree No. 47 of 1992 and it conferred on NIC with exclusive jurisdiction over labour and industrial relations causes and matters. This generated a lot of controversies because sections 251 confers exclusive jurisdiction on the Federal High Court on matters contained therein; section 272(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) empowers theHigh Court of a State to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

Sequel to the above-mentioned controversy, the National Assembly on the 14th June 2006 enacted the National Industrial Court Act which repealed PartII of the Trade Disputes Act Cap 432 and established NIC as a superior court of record and conferred on it, the exclusive jurisdiction with respect to labour and industrial relations causes and matters.By the provision of Section 16 of the Act[44], the President and Judges of the court were placed at the level of Chief Judge and Judges of the High Courts. It also empowered the court to issue injunctions, punish contempt[45], makean orderof *Mandamus, Prohibition*and *Certiorai*[46] Also Section 11 of the Act expressly ousted the jurisdiction of the Federal High Court, High Court of a State, High Court of the Federal Capital Territory Abuja and any other court on matters on which the NIC is conferred with exclusive jurisdiction. This provision of the Act was unconstitutional as it contravenes the provisions of Sections 251(1), 257(1) and 272(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)which confers jurisdiction on the Federal High Court and High Court of a State on labour matters respectively. Also, Section 315(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides *Subject to the*

[43] S.19 of the Trade Disputes Act LFN.
[44] NIC Act 2006.
[45] Ibid Section 10.
[46] Ibid Section 17.

*provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution.*By the provision of Section 7(1) of the Act, the court was conferred with exclusive jurisdiction in civil causes and matters relating to: (i) labour, including trade unions and industrial relations; and (ii) environment and conditions of work, health, safety and welfare of labour matters incidental thereto; and (b) relating to the grant of any order to restrain any person or body from taking part in any strike, lock-out or any individual actions or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action. (c) relating to the determination of any question as to the interpretation of (i) any collective agreement (ii) any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute (iii) the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement. (iv) any trade union constitution, and any award of judgment of the court. Also, Section 7 (4) of the Act empowers NIC to hear appeals from decisions of an arbitral tribunal, and such appeal must be in relation to labour, trade unions, environment or conditions of work, health, safety and welfare of labour matters incidental thereto.

It is imperative to note that Section 6(3) of the Constitution of the Federal Republic of Nigeria 1999provides: *The courts to which this section relates, established by this Constitution for the Federation and for the States, specified in subsection (5) (a) to (i) of this section, shall be the **only** superior courts of record in Nigeria and save as otherwise prescribed by the National Assembly or by the House or Assembly of a State each court shall have all the powers of a superior court of record.* The NIC was not listed as one of the superior courts of record. The controversy was based on the fact that the National Assembly cannot arrogate to itself the power to confer such status. It is axiomatic that the Constitution is the grundnorm and any provision of the Act or Law that is inconsistent with the provisions of the constitution is *null and void*. Consequently, since the NIC was not listed in the constitution[47] as a superior court of record, that conferment was challenged, and High Court, the Court of Appeal and the Supreme Court in plethora of cases[48] held that NIC was not a superior court of record.

[47] Section 6 (5) of the Federal Republic of Nigeria Constitution 1999 (as amended).
[48]Kalago v Dokubo (2004) 1 NLLR (Pt.1) p.180Western; National Union of Electricity Employees v Bureau of Public Enterprises (2010) 7 NWLR (Pt194)538. Steels Works Ltd v Iron & Steel Workers Union of Nigeria (1989) 1 NWLR (Pt.49)p.284;

The National Assembly on the 4th day of March 2011, amended the Constitution of the Federal Republic of Nigeria 1999and included the (Third Alteration) Act 2010 which established the National Industrial Court of Nigeria which consequently put to rest the controversy surrounding the status and jurisdiction of the NIC. By virtue of section 254A of the constitution, the NIC was established thus: "There shall be a National Industrial Court of Nigeria". The Court shall consist of (a) The President of the NIC; (b) such number of Judges of the NIC as may be prescribed by an Act of the National Assembly. Also, section 254C provides for the jurisdiction of the Court thus: "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". It is worthy of note that the jurisdiction of the Court was expanded to include: (i) 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 or 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; (j) relating to the determination of any question as to the interpretation and application of (i) collective agreement; (ii) award or order made by an arbitral tribunal in respect of trade dispute or a trade union dispute;

It is submitted that some of the above expanded exclusive jurisdictions have created additional luggage and another controversy for instance there is the "Child Rights Act 2003" and the Child Right Laws of a State. These statutes confer jurisdiction on Federal High Court and the High Court of a State (Magistrate Court and Family Court). There is also, theTrafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. Section 33 of the Trafficking (Prohibition) Law Enforcement and Administration Act 2003, provides that the High Court of the Federal Capital Territory or the High Court of a State is vested with jurisdiction in matters connected with or related to human trafficking. There is the need for the National Assembly and House of Assembly of a State to amend the Act and the Law to be in tandem with the provisions of the Constitution.The National Industrial Court has Judicial Divisions in twenty-three states and the Federal Capital Territory Abuja out of the thirty-six states. With the expanded exclusive jurisdiction of the Court to include discrimination, Child abuse, Child labour, human trafficking, sexual harassment at the workplace, the court docket will be increased. Also, the Judicial Divisions are far apart each other.

4. CONCILIATION

Conciliation is defined by *Black's Law Dictionary* as "the process of adjusting and settling disputes in a friendly and un-antagonistic manner, typically with the help of a neutral third party."[49]It is a voluntary and consensual legal mechanism for resolving trade disputes, a way to bring two opposing sides together to reach a mutually acceptable agreement.[50] It is a process where a neutral third party assists or facilitates settlement of trade disputes. He is called a Conciliator. The conciliator's role is to actively conciliate the parties, outlining and formulating settlement steps, but not making decisions on behalf of the parties. By using conciliation, parties can resolve disputes efficiently and effectively, maintaining relationships avoiding the cost and delays associated with litigation.

It is pertinent to note that under the Trade Dispute Act, where the Minister apprehends a trade dispute between parties or where parties could not resolve their dispute by themselves through negotiation, or by mediation, the Minister may exercise his discretion to appoint a Conciliator to inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement.[51]Section 8 of the Trade Disputes Actprovides that the qualification for the appointment of a Conciliator is that he must be a "fit person". If a settlement of the dispute is reached within seven days of his appointment, the person appointed as conciliator shall report the fact to the Minister and shall forward to him a memorandum of the terms of the settlement signed by the representative of the parties, and as from the date on which the memorandum is signed (or such earlier or later date as may be specified therein), the terms recorded therein shall be binding on the employers and workers to whom those terms relate.[52]If any person does any act in breach of the terms of a settlement contained in the memorandum signed pursuant to subsection (3) of this section, he shall be guilty of an offence and liable on conviction -

(a) in the case of a worker or a trade union, to a fine of N200; and

(b) in the case of an employer or an organization representing employers, to a fine of N2,000.[53]

[49] Bryan A. Garner (n. 4) p.2.
[50] ILO (n.31) p.13.
[51] S.8 (2).
[52] S. 8(3).
[53] S.8(4).

If asettlement of the dispute is not reached within seven days of his appointment, or if after attempting negotiation with the parties, he is satisfied that he will not be able to bring about a settlement by means thereof, the person appointed as conciliator shall forthwith report the fact to the Minister.[54] The conciliator may be unsuccessful in his negotiation with the parties in two ways: he is unable to reach a settlement within the time specified for him to do so or after attempting negotiation with the parties, he is satisfied that he will not be able to bring about settlement. If either of them is the case, the conciliator shall report the fact to the Minister who is required by law to take the next necessary step for the purpose of reaching a settlement between the parties.

5.. MEDIATION

Mediation is a voluntary and consensual process of resolving disputes without prejudice. It is a process where a neutral third party who is called a Mediator assists or facilitates settlement of disputes between parties. The Mediator must be a person mutually agreed upon and appointed by the parties to the dispute. The process is flexible, as parties or a party can opt out or walk away unlike in Arbitration where parties are bound by the Arbitration clause or submission arbitration or litigation where parties are compelled to appear before a Judge. It can hold virtual internationally, while in litigation, parties must be physically present in court with the Judge presiding.It is pertinent to note that Section 4(2) of the Trade Dispute Act provides:

> If the attempt to settle the dispute as provided in subsection (1) of this section fails, or if no such agreed means of settlement as are mentioned in that subsection exists, the parties shall within seven days of the failure (or, if no such means exists, within seven days of the date on which the dispute arises or is first apprehended) meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to the amicable settlement of the dispute.

By the provision of Section 6, the parties to the dispute have seven days within which to resolve their dispute through Mediation and must report to the Minister in writing, indicating points of disagreement and steps taken to resolve the dispute. It is worthy of note that mediation has the characteristics of voluntariness, friendliness and time saving, as it assists parties in resolving their disputes and retain their cordial relationship.

6. INDUSTRIAL ARBITRATION PANEL (IAP)

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[54] S.8(5).

Industrial Arbitration Panel (IAP) is one of the legal mechanismsfor resolving Trade and Industrial Disputes. It is a mechanism with statutory flavourin that the processes are statutorily provided for in the Trade Disputes Act.[55] Section 9 of the Trade Disputes Act, provides for the reference of a dispute to Industrial Arbitration Panel by the Minister of Labour upon his apprehension of a labour dispute or upon fourteen days of receipt of the failure to resolve the dispute by mediation or conciliation.[56] The Industrial Arbitration Panel is consist of a Chairman, Vice-Chairman and not less than ten other members all of whom shall be appointed by the Minister so however that of the ten other member – (a) two shall be persons nominated by organizations appearing to the Minister as representing the interests of employers; and (b) two shall be persons nominated by organizations appearing to the Minister as representing the interests of workers.[57]

There are three types of arbitration tribunal;(a) A sole arbitrator (selected by the Chairman of the IAP (b) A single arbitrator – A single arbitrator is assisted by assessors (c) One or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workers concerned.[58]The Act provides for a four year term for the Chairman and members of the panel and such term may be renewable only for one more term of four years. The Chairman or member of the panel shall vacate office upon attaining the age of 65 years[59]. The President may permit such a person to continue in office for such period as he may deem fit after the person has attained 65 years to enable him make award, deliver a decision on any other matter in relation to the proceedings that were commenced before he attained the 65 years. The type of tribunal to be set up depends on the nature of the dispute and it is at the discretion of the Chairman. The jurisdiction of the IAP is restricted to trade disputes i.e. any dispute between employers and workers or between workers and workers which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person[60]. It does not entertain individual or rights disputes but where such becomes matter of collective dispute, then it assumes jurisdiction under the Part I of the Act. Although some individual disputes end up as trade disputes- for instance, termination or dismissal of a worker for participating in trade unions activity or redundancy.

[55] See S.9 of the TDA.
[56] Ibid.
[57] S.9(2) two members of the IAP shall represent the interests of employers and two members shall represent the interest of workers.
[58] S.9(4) (5).
[59] S.11.
[60] See s.48 TDA.

It is pertinent to note that parties to disputes do not have direct access to IAP. It is the prerogative of the Minister to decide when to refer matter to IAP.[61] Also Section 13 (1) of the TDA provides for the arbitration tribunal to make its award within 21 days of its constitution or such longer period as the Minister may in any particular case allow; and on making its award shall forthwith send a copy thereof to the Minister, and shall not communicate the award to the parties affected. It is the responsibility of the Minister to inform the parties of the award and give them the opportunity to accept or object to the award. The Minister may in accordance with the provisions of Section 13 (3) of the TDA send the award back to the tribunal for reconsideration.Where the award is finally accepted, it is published by the Minister in the Federal Government Gazette. This publication of the ward gives it legal backing and makes it binding on the parties concerned. Where notice of objection to the award of an arbitration tribunal is given to the Minister within the time and manner specified in the notice under Section 13(2)of the TDA, the Minister shall forthwith refer the dispute to the National Industrial Court and the award of the National Industrial Court shall be binding on the employers and workers to whom it relates.These twenty-one days or such longer period as the Minister may allow the tribunal to make its award and the discretion of the Minister to send back the ward for reconsideration constitute delay in the resolution process and may erode the confidence of disputants in the bodies. There should be specific time within which matters before IAP must be concluded, failure the dispute should proceed to the next stage which is the National Industrial Court. The essence of these statutory mechanisms is for a fair, just, equitable and expeditious resolution of disputes.

The IAP as it is presently structured and operated, does not possess the independence expected of an adjudicatory body due to undue influence of the Minister - the executive arm of government, whereas it is expected to be a neutral and impartial authority. This has been the perennial bottleneck in resolving disputes where Federal government is a party to the dispute like the ASUU/FG dispute that lingered for sixteen (16) years almost two decades. It has become imperative to have a second look or review of the import, jurisdiction and powers of IAP taking cognizance of the fact that the National Industrial Court has been constitutionally empowered to "establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution or any Act or Law".[62]

[61] Agomo p.315.
[62] See S.254C(3) of Federal Republic of Nigeria Constitution 1999((Third Alteration) Act 2010.

It is worthy of note that the provisions of the Arbitrations and Conciliation Act Cap A18 2004, Laws of the Federation of Nigeria does not apply to any proceedings of an arbitration tribunal appointed under the Trade Disputes Act or any award made by it.[63]Also this Arbitration and Conciliation Act has been repealed and replaced with Arbitration and Mediation Act 2023.

7. BOARD OF INQUIRY

The Board of Inquiry is one of the legal mechanisms for resolving trade and industrial disputes in Nigeria. It is established by Section 33 of the Trade Disputes Act[64]which provides thus:

> (1) Where any trade disputes exists or is apprehended, the Minister may cause inquiry to be made into the causes and circumstances of the disputes and, if he thinks fit, may refer any matter appearing to him to be connected with or relevant to the dispute to the board of inquiry appointed for the purpose by the Minister, and the board shall inquire into the matter referred to it and report thereon to the Minister.
>
> (2) The Minister may refer any other matter connected with industrial conditions in Nigeria to a board of inquiry appointed for the purpose by the Minister; and the board shall inquire into the matter referred to it and report thereon to the Minister.
>
> (3) The board of inquiry appointed under this section shall consist of a chairman and such other persons as the Minister thinks fit to appoint or may, if the Minister thinks fit consist of one person only.

It is pertinent to note that the report of the board of inquiry, including interim or minority report goes to the Minister who has the discretion of whether or not to publish it. The board of inquiry naturally or usually operates on *ad hoc*basis. It has always been constituted to investigate and determine the causes of the disputes and to make appropriate recommendations to the Minister. It would be recall that ex-President Olusegun Obasanjo, convinced that the humongous amount being spent on turn-around maintenance of the nation's refineries was not worth it, hence decided to privatize the refineries. This generated controversies and agitation among the oil industry workers and the Nigeria Labour Congress consequently on assumption of office by late President Yar Adua he set up a board of inquiry to investigate the privatization.[65]

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[63] S.12 (1) (a).
[64] SeeS.33(1).
[65] The Board of Inquiry submitted its report which ultimately led the government to reserve or nullify the sale of the refineries.

The problem associated with board of inquiry mechanismhas been that the Minister who is an employee of the government will not wantto publish report that will not be in the interest of the government, his employer. Invariably, the government often times will not be disposed to make public or implement the recommendations of the board that it is not in the interest of the government's policy, consequently, such reports are kept-in-view (KIV) on the government's shelves in the archives. This becomes a clog in the wheels of expeditious settlement of labour and industrial relations disputes in Nigeria through Board of Inquiry. The board of inquiry assumes the status of advisory body whose recommendations is at the discretion of thegovernmentand not in the public interest.

8. CHALLENGES TO THE SETTLEMENT OF DISPUTES IN NIGERIA

There is no contestation that the State's statutory mandatory intervention by means of Mediation, Conciliation, Industrial Arbitration Panel and Board of Inquiry was well intended to resolving all forms of labour and industrial relations dispute. However, the referral of disputes by the Minister to any of the above mechanisms which is chaired by a Civil Servant appointed by the Minister who has no expertise in labour and industrial relations has been a challenge to parties in disputes. It is the prerogative of the Minister to refer parties to any of the above mechanisms. The Minister has the latitude or discretion as to when to make the reference. This is a clog in the wheel of efficient, effective and expeditious resolution of labour and industrial relations disputes and over-bearing influence on parties' autonomy.

It appears appropriate to allow Management and the Trade Unionto resolve their difference the best way they chose and when they want a third party. They should have the latitude to so do. There is no doubt that when they mutually and conscientiously reach settlement, there will be no bitterness or rancour. It is pertinent to state that with the passing of the National Industrial Act 2004 and the Third Alteration of the Constitution of the Federal Republic of Nigeria 1999, the challenges of interpretation and application (enforcement) of collective agreement have been put to rest.

9. CONCLUSION

The bottlenecks and controversies generated by the provisions of the Trade Disputes Acts and the National Industrial Court Act 2006 on the status and jurisdiction of the National Industrial Court has been put to rest by the enactment of the Constitution of the Federal Republic of Nigeria 1999

(Third Alteration) Act 2010. The court now has constitutional power of interpretation and application (enforcement) of collective agreement. Also, to apply international conventions, treaties or other agreements to which Nigeria is a party in the determination of labour and industrial relations disputes notwithstanding the provisions relating to the domestication of treaties by Section 12 of the constitution.

Having appraised the foregoing legal mechanism for resolving labour and industrial relations disputes, highlighting their short-comings, it is hereby recommended as follows:

1. The Trade Dispute Act and the National Industrial Court Act should be harmonized to remove the over-bearing influence of the Minister in resolving labour and industrial disputes in Nigeria.

2. The Federal and States High Courts should leverage on the use of their respective Multi-Door Court-Houses in resolving labour and industrial disputes expeditiously.

3. The Alternative Disputes Resolution Centre of the National Industrial Court should be manned by persons or Judges who are knowledgeable and experienced in labour and industrial relations.

4. To enhance party autonomy, parties to disputes should have direct access to the National Industrial Court for the interpretation and application (enforcement) of collective agreement without reference to the Minister.

5. There should be a review the provisions that confer on the Minister the discretion of implementation or reference of reports of Industrial Arbitration Panel and Board of Inquiry to the National Industrial Court.

6. There is the urgent need to build more National Industrial Court Judicial Divisions in order to make the Courts more accessible to litigants, Lawyers and Judicial Officers who have to travel to other states to prosecute their matters.