journals.unizik.edu.ng/index-php/jcpl
ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

The New Role of the National Industrial Court in Maintaining Industrial Harmony in Nigeria

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Abstract

The evolution of the National Industrial Court of Nigeria into a fully functioning and vital adjudicatory platform for settlement of labour disputes and/or maintenance of industrial harmony can neither be fathomed nor truly appreciated unless its unique historical developments are exhaustively considered. Through a deliberate juggle between historical and analytical approaches, this paper revealed the emergence of the Industrial Court from a court of sophomoric status to a constitutionally recognised court of records vested with, perhaps, the most extensive exclusive jurisdiction ever afforded any court in Nigeria. This paper posited that this extensive jurisdiction, which amongst others enjoins it to apply international labour standards where appropriate, has positioned the court to deliver labour justice without excuse. And it would appear, as this paper found, that the Court has embraced this new status with such verve that puts no one in doubt that the Court is ready to uphold its constitutional role of protecting labour rights and maintaining industrial harmony.

Keywords: *Trade Disputes, Labour Dispute, National Industrial Court, Industrial Harmony,*

Introduction:

A sustainable atmosphere of industrial harmony is no doubt the desired destination for any nation because of its enormous economic advantages for growth and industrial development. This is against the backdrop of the almost inevitable relationship of disputations arising from labours' predisposition to economic dependency and capitals' striving for economic hegemony. This conflictual orientation of labour and capital with corollaries of industrial actions, strikes, threats of strike, lockouts and unending disputes over wages and conditions of services that ruthlessly mangles the economy, is nowhere more evident than in the Nigerian industrial sector.[1] As observed, such developments, as it were, portends serious loss of productive man-hours and foreign investments which, amongst other damaging socio-economic effects, stifles government's desired growth and development in the economy.[2]

However, it is believed, as one theoretical persuasion would posit[3], that labour conflicts and trade disputes whether at the collective or individual level are by and large a predictable phenomenon

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[1] S.O. Koyondo,'Enforcement of Collective Agreements in Nigeria: Need for Legislative Intervention' [1999](3)(2) *Nigerian Law and Practice Journal*, 37

[2] *Ibid*

[3] H.A. Clegg 'Pluralism and Industrial Relations' [1975](13) British Journal of Industrial Relations, cited in O.V.C. Okene , *Labour Law and Industrial Relations in Nigeria* (Zubic Infinity Concept Press Ltd, 2019), 229-231

manageable and reconcilable through the institution of a functioning dispute resolution system founded on the principles of autonomy and voluntarism. On a broader perspective, though, it is known that effective industrial relations strategies for preventing disputes and securing industrial peace and harmony within the industrial establishment straddle between the realms of non-judicial mechanisms of conciliation, mediation and arbitration on one hand and the judicial mechanism of industrial courts on the other. Therefore, maintaining industrial harmony depends not only on the existence and strength of non-judicial methods but, to say the least, complementarily requires the existence of an impartial and effective adjudicatory system capable of protecting labour rights and dispensing labour justice in accordance with international labour standards and best practices in labour and industrial relations. It is in this sense that the attention of this paper is drawn only to the National Industrial Court of Nigeria (NIC) as an instrument of industrial harmony.

This paper therefore focuses on the NIC which though created 47years ago under an interventionist government policy, remained moribund and bugged down for years by statutory and constitutional infirmities, until its recent renaissance with fully realised powers and jurisdiction to take on the new role of maintaining industrial harmony. To have a broader perspective of the newness of this role, the paper shall embark on an investigative excursion into the history of the NIC and the attendant challenges and setbacks that kept it muted and hardly countenanced within the adjudicatory and justice delivery system all those year, in spite of its importance in the industrial establishment. On that score, the paper shall proceed to analyse the jurisdiction and powers of the NIC under the 1999 Constitution (As amended) in order to locate in concrete terms its role of promoting economic efficiency and industrial harmony in Nigeria.

A. Nativity and the Fallacy of Superior Court

With the promulgation of the Trade Dispute Decree, 1976 which followed and repealed the Trade Disputes (Emergency Provisions) Decree of 1968, it became obvious that Nigeria has abandoned its policy of voluntarism in trade dispute settlements; which it so proudly touted about for years,[4] for a policy which though later conceptualised as 'limited intervention and guided democracy'[5] was however an interventionist regime in all ramifications.[6] It was under this 1976 Decree, later Act,[7] that the NIC was first created with the statutory mandate to entertain, to the exclusion of any other court, actions or cases which subject matter is settlement of trade disputes or determination of questions as to the interpretation of collective agreements, binding awards by the court or an arbitral tribunal and, settlement of any trade dispute which terms of settlement have been recorded in a memorandum signed by the parties.[8] On this score, the Act, perhaps inadvertently, limited the

[4] International Labour Office, *Ministerial Conference* (Records of Proceedings, 38th session, Geneva, 1955), 53; Annual Report of the Department of Labour, para 20 (1954/1955) cited in E.E Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd., 2001), 388; Third National Development Plan 1975 -80, vol. 283, para 2(e) Organisation and Functions of the Federal Ministry of Labour (National Briefing Programme, Lagos, 1977)

[5] Federal Ministry of Employment, Labour and Productivity, *The New National Labour Policy* (Lagos, Dec. 4, 1975).

[6] T. Fashoyin , *Industrial Relations in Nigeria* (2nd edn. Longman Nigeria, 2005), 88-94; O.V.C. Okene, (n.3), 15-18; E.E Uvieghara (n.4), 390; B.B. Kanyip, 'The National Industrial Court: Yesterday, Today and Tomorrow' (<http://nicn.gov.ng/spdf.php?Id=16> Accessed 28 April, 2023

[7] The Trade Disputes Decree No.7 of 1976 was later designated as Trade Disputes Act, Cap 432 LFN, 1990. The Trade Disputes Act, Cap 432 was amended by the Trade Disputes (Amendment) Decree of 1992 which essentially incorporated all the provisions of Cap 432 but with slight alterations which affected the numbering of the sections. Subsequently, the Trade Disputes (Amendment) Decree of 1992 was designated as Trade Disputes Act, Cap T8, LFN 2004. All sections references in this paper is as indicated in Cap T8, LFN 2004.

[8] TDA 2004, ss.20(1) and 21

jurisdiction and powers of the NIC only to making of awards and decisions specific to the jurisdiction conferred on it by s.21 of the Act and no more.[9] However, in addition to these specified jurisdictions which could largely be activated as appellate jurisdiction by virtue of the compulsory mediation, conciliation and arbitration procedure under the Act,[10] or by ministerial preferences,[11] the NIC was also conferred with an appellate jurisdiction over awards of Industrial Arbitration Panel on intra-union or inter-union disputes.[12]

Furthermore, decisions of the NIC over the subjects which it was conferred with exclusive jurisdiction under the Act, not least its interpretative jurisdiction in respect of binding awards and terms of collective agreements, were final with the exception that where such decision borders on questions of fundamental rights under the Constitution, then appeal shall lie, as of right, to the Court of Appeal.[13]

But shortly after the NIC began sitting in 1978 pursuant to its creation under the Trade Dispute Act (TDA), it quickly became clear that the exclusive jurisdiction (and indeed the superior court of records status) unilaterally conferred upon it by the TDA on subjects of trade disputes was in strict constitutional theory fallacious and unrealistic. First, the Supreme Court decisions in Savannah Bank v *Pan Atlantic Shipping & Transport Agencies Ltd.*[14] and in *Western Steel Works* v *Iron & SteelWorkers Union*,[15] made it crystal clear that by virtue of s.236 of the 1979 Constitution which conferred the State High Courts with unlimited jurisdiction to hear all civil proceedings, no other court, including the NIC, could claim a special and exclusive jurisdiction on trade disputes related matters which by their very nature are literally civil.

The natural outcome of this opinion, perhaps even before it was affirmed by the Supreme Court in 1987[16], was that the High Courts of the States were not in a hurry to relinquish their unlimited jurisdiction over trade disputes and thus continued to entertain such disputes, despite having been expressly ousted by the TDA from hearing trade dispute matters.[17] By extension, this situation as Adejumo articulately explains, led to litigants' forum shopping between the regular courts, to wit, States High Court *etcetera* and the NIC. In his words:

> *The cumulative effect of the confusion created as to the scope of jurisdiction of the NIC was that several courts at the same time had concurrent jurisdiction on the subject matters on which NIC was supposed to have exclusive jurisdiction …*

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[9] This point that NIC under the TDA regime can only make awards and determine questions as to the interpretation of the three types of documents specified was made quite clear by the Supreme Court, per Ikongbeh JSC, in *Kalango* v *Dokubo* (2003)15 NWLR 32; (2004)1 NLLR (Pt.1), 180

[10] TDA 2004, ss.4, 5,6,7,8 and 9; As a consequence, the TDA made it an offence punishable on the pain of imprisonment or fine or both for any person to commence an action, the subject matter of a trade dispute or any inter or intra-union disputes in a court of law; s.2(1)(3) *Incorporated Trustees of Independent Petroleum Association* v *Alhj. Ali Abdulrahman Himma & 2 Orders* (Unreported Suit No.FHC/ABS/CS/313/2004) – Ruling delivered in 2004 by NICN

[11] TDA 2004, s.17; Also TDA 2004, ss.14, 15 and 16

[12] TDA 2004, s.25; *NUHPSW* v *NUFBTE* (2004)2 NLLR (Pt.2) 286 at 300; *Kalango* v *Dokubo* (n.9)

[13] TDA 2004, ss.15; 16; and.21(3)

[14](1987)1 NWLR 212

[15](1987)1 NNLR 284; (1987) SC 11

[16]*Ibid*

[17] TDA 2004, s.2; E.E Uvieghara (n.4), 429-430; *Udoh* v *Orthopaedic Hospital Management Board* (1993)7 NWLR (Pt. 304) 139

> *Consequently, the culture of forum shopping by litigants was unwittingly created. This totally stalled the ideals for which the NIC was created in the first instance.*[18]

Second, the toga of a 'superior court of records status' which the Act - as amended by the Trade Disputes (Amendment) Decree No.47 of 1992 – had clothed the NIC with, was equally dispelled by decisions of the appellate courts as lacking any constitutional imprimatur. The reasoning was that although recognised under the Act as superior court, it not being expressly inserted in the 1979 Constitution denies it of such status at law. And the implications were that first, the NIC cannot under such spurious superior court status grant declarative and injunctive reliefs.[19] The point was underscored quite lucidly by the Supreme Court, per Fabiyi, when it stated thus:

> *It is well settled by this court in the case of Western Steel Works Ltd. v Iron & SteelWorkers Union of Nigeria (Supra) that section 15 of the Trade Dispute Act 1976 conferring jurisdiction on the National Industrial Court in respect of certain species of cases did not include jurisdiction to make declaration and top order injunction as in this case.*[20]

Consequently, these decisions made clear the underlying legal frailty of the NIC under the TDA. And as demonstrated in the case of *SGS Inspection Services (Nigerian) Ltd* v *Petroleum and Natural Gas Senior Staff Association of Nigeria* (*PENGASSAN*),[21] litigants and legal practitioners wasted no time at exploiting this frailty to make applications to regular courts - supposedly of coordinate jurisdiction - for judicial review of several cases decided by the NIC.[22] And as Uvieghara argued pertinently, the position became 'that *certiorari* can issue from the High Court to it (NIC) for excess of jurisdiction or for error of law in the face of its award'.[23]

Looking at the past of the NIC as the foregoing reveals, it is clear that the NIC was bedevilled by numerous legal and institutional obstacles and thus far from being legally enabled to promote industrial harmony in Nigeria's industrial sector.

B. A Transition to the National Industrial Court Act

In 2006, a bill was passed into law namely, an Act of the National Assembly, to provide for the establishment of the National Industrial Court as a superior court of record and to confer jurisdiction on the court with respect to labour and industrial matters. Though this Court was already in existence at the time, and in a manner of loose speech was notionally a superior court of records, the purpose of the National Industrial Court Act (NICA) of 2006 is to give the NIC a new lease of life by strengthening its legal and institutional capacity to function more effectively, unfettered, within the jurisdictive system in delivering fair resolutions on disputes, promoting harmony and keeping the peace in the industrial sector in Nigeria. In other words, NICA arrived with the clear objectives of correcting the mistakes of the past, indicating in its provisions a renewed hope for the preparedness of NIC to promote justice and industrial harmony. To this end,

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[18] B.A Adejumo,'The National Industrial Court of Nigeria: Past, Present and Future', A paper delivered March 24, 2011 National Judicial Institute, Abuja < http://nicn.gov.ng/1php> Accessed 28 April, 2023

[19] *Western Steel Works* v *Iron & SteelWorkers* (n.14); *Attorney General of Oyo State* v *Nigerian Labour Congress & Ors* (2003)8 NWLR (Pt. 821), 1; *Kalango* v *Dokubo* (n.9)

[20] *National Union of Road Transport Workers* v *Road Transport Employers Association of Nigeria* (2012)29 NLLR (Pt.83), 161

[21] Unreported Suit No. NIC/3/2000 in O. Kehinde (ed) *Digest of Judgment of NIC* (1978-2000), 428-430

[22] B.A Adejumo (no.18)

[23] E.E Uvieghara (n.4), 435

NICA repealed part II of the extant Trade Dispute Act creating the NIC, while preserving what is left with the caveat that they are to be construed and applied in terms not inconsistent with the provisions of NICA.[24]

But no sooner had NICA arrived than the old legal infirmities, frailties and obstacle that plagued the NIC under the old legal regime resurged. And a brief examination of the provisions of NICA and case law presently reveals that.

Like the Trade Dispute Act, NICA clothed the reconstituted NIC with the status of a superior court of record. Additionally, it expressly vested NIC with all the powers of the High Court of a State.[25] This, *inter-alia*, implies the power to grant declarative and injunctive reliefs,[26] including the power to grant any order restraining any person or body from taking part or engaging in conducts done in furtherance of a strike, lock-out or any industrial action.[27] It would seem that the power to grant restraining orders against persons engaged or planning to embark on a strike or industrial action captured under s.7 of NICA expressly marked "jurisdiction" though enlarged the jurisdiction conferred on the NIC is also contemplated to give a normative framework to the continuous application of s.18 of the TDA 2004.[28]

Similarly, NICA reserved, almost as in the TDA, the exclusive jurisdiction of the NIC to determine questions bordering on the interpretation of awards by an arbitration tribunal or the court on labour or organisational disputes, collective agreements, trade union constitution, court judgements on labour matters, terms of settlement of labour disputes recorded in a memorandum of settlement; and the determination of all civil cause and incidental matters relating to labour.[29] It is observed that to avoid the pitfalls of the TDA and cure the mischief that emerged from a retinue of case law, NICA, advisedly, supplemented the phrase 'trade dispute' which has rather assumed a restrictive meaning in legal jurisprudence,[30] with the phrase 'labour dispute'. Whereas 'trade disputes' as employed under the TDA and roundly interpreted as pure 'group employment disputes' or 'collective trade disputes', meant the NIC only have jurisdiction over a dispute where a trade union is involved, the phrase 'labour dispute' on the other hand which as stated by Okene[31] include both individual trade disputes and collective trade disputes meant that the NIC could also entertain individual complain relating to labour matter.[32] In the same vein, NICA used a more generic and expansive term 'organisational dispute' in place of 'inter and intra union disputes' employed in the TDA. And equally brought the subject matter directly under its s.7 titled 'jurisdiction' to not only overcome the then juridical currency that intra and inter union disputes are not trade disputes

[24] NICA 2006, s.53
[25] NICA 2006, s.1(2); c/f TDA 2004, s.20(2)
[26] As well as orders of mandamus, prohibition and certiorari, and all such remedies whatsoever as it sees fit in the interest of justice; NICA 2006, ss. 14, 16, 17, 18, 19
[27] NICA 2006, s. 7(1)(b)
[28] Section 18 TDA, 2004 is titled 'Prohibition of lock-outs and strikes before issue of award of NIC
[29] NICA 2006, s.7(1)(a)(c)
[30] E.E Uvieghara (n.4), 430-431; *Nigerian Tobacco Company* v *National Union of Food Beverages & Tobacco Employee* (1982-83)NI CLR, 164
[31] O.V.C. Okene, (n.3); International Labour Office, 'Collective Dispute Resolution Through Conciliation, Mediation and Arbitration: European and ILO' (High-Level Tripartite Seminar on Settlement of Labour Disputes through Mediation, Conciliation, Arbitration and Labour Courts October, 2007)
[32] *Chemical and Non-Metalic Products Senior Association* v *BCC* (2005)2 NLLR (Pt.6), 446 at 474-475; *Godwin Tosanwumi* v *Gulf Agency and Shipping Nig. Ltd* Unreported Suit No. NIC/14/2006 – ruling 14/11/2007; B.A Adejumo (no.18)

unless they possesses all the characteristic of a trade dispute, but also to obviate the case law position that 'seemed to hold that jurisdiction can only be conferred on a court by sections expressly marked "jurisdiction" in the enabling statute'.[33]

As it were, s.9 of NICA also made the NIC the highest court in the land on all labour related matters for which it has jurisdiction by providing that the decisions of the Court shall be final and shall not admit of appeal to any other court, except in one instance, that is where it touches upon questions of fundamental rights of parties.[34] This provision is in agreement with the spirit of s.15 (and repealed s.21) of the TDA. Besides the general arguments in some quarters that the finality provision of the decision of the NIC is unconstitutional,[35] it could be argued, as one scholar did in respect of the TDA, that '… the above express provision will appear inapplicable since the NIC is not vested with jurisdiction in questions of fundamental rights. Indeed, the provision would appear unconstitutional since the constitution vests jurisdiction for fundamental rights infringement in a High Court in the State in which the contravention takes place'[36]

Eventually, it became doubtful if the innovative and corrective provisions of NICA evidently crafted to rescue the NIC from its old self was enough without a constitutional amendment. A fortiori, was the issue of whether NICA conferment of exclusive jurisdiction on the NIC grounded the exclusion of other courts from enjoying concurrent jurisdiction in the resolution of labour disputes in Nigeria? This doubt was cleared by the decision of the Supreme Court in *National Union of Electricity Employees & 1Or* v *Bureau of Public Enterprise*[37]which stated that the express conferment of a superior court status on NIC by NICA without a corresponding amendment of s.6(3)(5) of the 1999 Constitution is of no moment. Therefore that the NIC remains a subordinate court to the superior courts of record established by the constitution and specified accordingly in s.6(5). And also that NICA can by no means divest the concurrent jurisdiction of the constitutional created court over the subject matters which NIC claim to have exclusive jurisdiction. As a consequence, it meant, for instance, that certiorari can issue from the Federal High Court, High Court of States and High Court of the Federal Capital Territory to the NIC regarding its decisions.

The weight of this decision made the NIC relapsed in strict law to the exact position it was before the enactment of the NICA. That is, as a court ostensibly with all the features of a superior court but lacking the constitutional imprimatur to actually exercise or put them to use at the highest level unencumbered.

C. The Industrial Court and Industrial Harmony Under a Constitutional Dispensation

The need to amend the 1999 Constitution to accommodate the NIC as a superior court of record and constitutionally embed it with the powers and jurisdictions already conferred on it by virtue of NICA and the applicable parts of the TDA was made possible under the Constitution (Third Alteration) Act 2010.

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[33] B.A Adejumo (no.18)
[34] NICA 2006, ss.9 and 14
[35] B.A Adejumo (no.18)
[36]E.E Uvieghara (n.4), 426; See CFRN, s.46(1)(3); Rules, 2009 Order I Rule 2, Order II Rule 1 Fundamental Rights (Enforcement Procedure)
[37](20101)7 NWLR (Pt.194), 538

The National Assembly with the benefit of hindsight of the setbacks suffered by NIC under those statutory dispensations went straight into making the necessary alterations on ss. 6, 84(4), 240, 243, 254, 287, 289, 292, 294, 295, 316 and318 of the 1999 Constitution. And this resulted in the resolution of the most teething challenge of lack of exclusive jurisdiction and the crystallisation of the jurisdictions of the NIC granted by NICA, once and for all. The effect of which meant a complete cessation of any jurisdiction previously exercised by the Federal High Court or High Court of States or High Court of the Federal Capital Territory, Abuja in respect of causes or matters which jurisdiction is conferred on the NIC by s.7 of NICA.[38] A fortiori, the constitutional alteration extended the jurisdiction of NIC which was formerly and essentially civil under s.7 of NICA to cover criminal matters arising from any cause of which jurisdiction is conferred on the NIC by NICA and the 1999 Constitution, as amended.[39] It is perhaps important to mention that NICA being the separate enabling statute creating NIC was never repealed and like all such statutes remains complementary to the provisions of the Constitution creating and conferring the NIC with jurisdiction unless where inconsistent.[40]

By and large the alteration and specific interpolation of s.254C into the 1999 Constitution copiously, and innovatively so, made provisions for an expanded NIC's jurisdiction to cover novel labour concepts and causes in labour and industrial matters, which now puts the NIC in a pivotal position of strength to employ the most expedient, flexible, reliable and expeditious methods of maintaining an enabling environment for the existence of harmonious industrial relations; having regards to international best practices and labour standards.

Thus, in addition to retaining and affirming NIC's jurisdiction to interpret certain specified dispute resolution documents with finality; and powers to grant orders on the illegality or otherwise of strikes and industrial actions, the NIC under s.254C of the Constitution now has a much broader civil and criminal jurisdiction over all causes relating to or arising from labour, employment, trade union, industrial relations and workplace matters.[41] Specifically, it now has exclusive jurisdiction over: all statutes governing labour, employment, industrial relations and the workplace previously vested in other courts, such as the Factories Act, Employees Compensation Act, Labour Act and the Trade Union Act[42]; the interpretation and application of the fundamental rights provisions in the 1999 Constitution relating to labour matters, international labour standards and labour, to wit, international conventions, treaties and protocol ratified by Nigeria[43]; issues of discrimination and sexual harassment in workplaces[44]; human trafficking and child labour[45]; national minimum wage[46]; unfair labour and international best practices[47]; payment and non-payment of salaries and other entitlements[48]; appeals from decisions of the Registrar of Trade Unions and recommendations of administrative bodies and commissions of inquiries on labour matters[49];

[38] CFRN 1999 (As amended), s.254C(1); s.254D(1)
[39] CFRN 1999 (As amended), s.254C(5); s.254F(2)
[40] CFRN 1999 (As amended), s.1(3)
[41] CFRN 1999 (As amended), s.254C(1)(a)
[42] CFRN 1999 (As amended), s.254C(1)(b)
[43] CFRN 1999 (As amended), s.254C(1)(d)(h)(2)
[44] CFRN 1999 (As amended), s.254C(1)(g)
[45] CFRN 1999 (As amended), s.254C(1)(i)
[46] CFRN 1999 (As amended), s.254C(1)(e)
[47] CFRN 1999 (As amended), s.254C(1)(f)
[48] CFRN 1999 (As amended), s.254C(1)(k)
[49] CFRN 1999 (As amended), s.254C(1)(l)

powers to establish an alternative dispute resolution centre[50]; power to enforce arbitral awards and decisions of administrative bodies on labour matters[51], *inter-alia*. With exclusive jurisdiction and powers on these wide range of subject-maters constitutionally placed in its portfolio, expectedly , the NIC is adequately equipped not just to audaciously resume its place as a labour court but to assume a new role in maintaining industrial harmony in Nigeria.

What is made clear from the foregoing is that the provisions of the Constitution, as amended, which defines the status, power and jurisdiction of the NIC; together with the NICA and of course the remainder of TDA 2004, not repealed, are central to the new role of the NIC in maintaining industrial harmony in the industrial/labour sector of Nigeria. It is reasoned therefore that this role, by definition, is the endeavour of the NIC, mandated by those constitutional and statutory provisions, to provide equitable labour justice in regulating the conflictual relationships of rights and interest disputes between employers and employees - both at the collective and individual levels; between employers' organisations and trade unions; or within and between trade unions.

Practically, the NIC has sufficiently demonstrated this important role, in accordance with its new mandate. In a number of cases, it has provided its platform – referral and appellate, for the settlement of both collective and individual labour dispute in a range of diverse and novel issues or subject-matters touching on payment and non-payment of wages, entitlements and benefits, terms of employment, minimum wage, unfair determination of employment, application of international labour standards amongst other; all geared toward maintaining peace and equilibrium in the industry and economy. And has as far as practicable also applied equitable principles over legalistic approach and/or common law principles,[52] and as one scholar graphically describes it, in a manner that make the NIC appear completely oblivious of common law principles.[53] In *Moses & Ors* v *Bishop James Yisa Memorial School Ltd*,[54]the defendant/employer challenged the jurisdiction of the NIC on the grounds that the suit instituted by its former employees claiming non-payment of gratuities, entitlements, and payment in lieu of notice is not a trade dispute that can be heard by NIC. In its ruling, the NIC held that contrary to what obtained in the TDA era when only trade disputes taken up by a recognised trade union can be heard, under the NICA, individual can now approach the NIC with their grievances for adjudication. Similarly, in Akinsanya v *Coca-Cola Nigeria Ltd & Ors*,[55] the NIC was called to the question on whether the jurisdiction of the Court pursuant to s.254C(1) of the Constitution 1999, as amended, covered all cases of private individual contractual employment matters or is limited only to employment matters connected with trade disputes, collective agreements, labour and industrial relations. The Court in holding that it has jurisdiction to hear and determine the claimant's case being one of summary dismissal said that the wordings of 254C(1) of the Constitution, as amended, in form and substance, should leave no one in doubt that the National Assembly's intendment is to confer jurisdiction of all employment matters on the court exclusively.

[50] CFRN 1999 (As amended), s.254C(3)
[51] CFRN 1999 (As amended), s.254C(4)
[52] B.A Adejumo,'The Role of the Judiciary in Industrial Harmony', A paper delivered at the All Nigeria Judge' Conference, Nov. , 2007 National Judicial Institute, Abuja < http://nicn.gov.ng/1php> Accessed 3 May, 2023; According to Adejumo, *Ibid*, common law principles are ill suited for the challenges of modern economics that can no longer adequately deal with labour related issues that are typically economic issues.
[53]E.E Uvieghara (n.4), 427
[54] (2013)31 NLLR (Pt. 88) 59
[55] Unreported, Suit No. NICN/LA/40/2012

In its role of maintaining harmony amongst labour players, the NIC, itself an adjudicatory platform for dispute settlement, has never denied or discountenanced the relevance of the quasi-judicial procedures provided under part I of the TDA; and endorsed by s.7(3) of NICA, particular in inter and intra union disputes. As Adejumo[56] noted: 'the position of the NIC has always been that the processes enumerated under section 1-18 of the TDA as amended must be followed religiously before the jurisdiction of the court can be activated'. Therefore in certain pre-NICA cases the NIC declined to hear inter and intra union disputes as a court of first instance, insisting that the processes stipulated under part 1 of the TDA be followed[57]. In *NUHPSW* v *NUFBTE*,[58]the NIC simply declined jurisdiction on grounds that such a case as constituted (inter union dispute) ought to pass through the alternative dispute resolution procedures in part I of the TDA before the appellate jurisdiction of NIC can be activating. In the post-NICA era, it was clear that by virtue of the legal proposition of s.7(3) of NICA, the alternative dispute resolution procedures under the TDA remained an imperative mechanism to be activated and applied in cases where it is required for the determination of labour disputes in Nigeria.[59] This is to encourage the utilisation of the subsisting quasi-judicial processes stipulated in the TDA before activating the appellate jurisdiction of the NIC.[60] Under s.20 thereof, the NIC is expected to encourage parties that are before it to reconcile and find amicable settlement. This position has been further strengthened under s.254(3) of the 1999 Constitution, as amended, which empowers the NIC to set up an Alternative Dispute Resolution (ADR) Centre within the Court premises on matters which jurisdiction is conferred on the Court. To this end, available evidence reveals that the NIC has established an ADR Centre with the sole purpose of engendering industrial peace and harmony through ADR techniques, to wit, mediation and/or conciliation that seeks to mutually reconcile parties in disputes and preserve relationships.[61]

With the Constitution (Third Alteration) Act 2010 in place, the NIC is now, more than ever, well suited for the role of interpreting and applying international labour standards, to wit, treaties, conventions or protocols that has been ratified by Nigeria when dealing with labour, employment, workplace and industrial relations matters. This novel role is pursuant to s.254C(1)(h) and (2) of the 1999 Constitution, as amended. Equally, by virtue of s.254C(1)(f) the NIC is constitutionally enjoined to apply international best practices on labour and employment.[62] And these are mostly ascertainable from the plethora of ILO conventions, recommendations, including decisions of ILO governing/supervisory bodies[63] and declarations, embodying the core fundamental principles and right to work, which all member-states are enjoined to observe on account of membership.[64] In

[56] B.A Adejumo (52)
[57] *Ibid*
[58] (2004)1 NLLR (Pt.2), 286
[59] *Ibid*
[60] *Ibid*
[61] <nicnadr.gov.ng/adr/ab out.php> Accessed 4 May, 2023
[62] A similar provision is to be found under s.7(6) of NICA, 2006
[63] These Freedom of Association Committee and the Committee of Experts on the Application of Conventions and Recommendations (CEACR); ILO Digest of Decisions and Principles of the Freedom of Association Committee of the Governing body of the ILO, fifth revised ed., Geneva: International Labour Office, 2006
[64] K. Agomo cited in O.V.C. Okene and G.G. Otuturu,'The Enforcement of Collective Agreements in Nigeria Under the Constitution (Third Alteration) Act 2010' [2018](7)(2) *Port Harcourt Law Journal*, 11; ILO, Declaration on Fundamental Principles and Right to Work (Geneva International Labour Office, 1988) <www.ilo.org/dyn/declaris//DeclarationWeb.indexPage>Accessed 4 May, 2023; O.V.C. Okene,'The

recognition of its role to apply, or to put it starkly, domesticate international labour standards ratified by Nigeria and indeed international best practices to matters before it, the NIC in *Aero Contractors (Nig.) Ltd.* v *National Association of Aircraft Pilot and Engineers & Ors*[65]*per* Kanyip J. affirmed ex cathedra:

> *... I indicated earlier that by virtue of s.254C(1)(f)(h) and (2) of the 1999 Constitution, as amended, this Court is mandated to apply international best practice[s], treaties, conventions and protocols ratified by Nigeria. See also section 7 of the NIC Act 2006. What this means is that in adjudicating labour/employment disputes, this Court is mandated to apply international best practice[s] and treaties, conventions and protocols ratified by Nigeria.*

Earlier, the NIC when dealing with the subject matter of unfair labour practice in Olaleye v *Afribank Plc &Ors*[66]said that 'section 254C(1) of the 1999 Constitution gives this court jurisdiction over matters relating to or connected with unfair labour practice…since the court has jurisdiction over unfair labour practice, then it has jurisdiction to hear out the complaint of the Claimant as to whether the refusal or failure of the defendants to confirm him is exploitative, inequitable and unlawful'. This view is declarative of the NIC's predisposition to weigh the need to promote international best practices, job security, equity and ultimately industrial harmony over the tyrannical principles of common law, where the probationary employee has no right of fair hearing in the determination of such employment.

Strictly, the new role to interpret and apply international labour standards also directly extends to or is connected with the jurisdiction of the NIC pursuant to s.254C(1)(g)(i) over civil/criminal causes pertaining to discrimination or sexual harassment at workplace and child labour/ human trafficking; being subjects sufficiently covered by the core international labour standards.[67] For instance, the basic principles of equality in the workplace are contained in the ILO Discrimination (Employment and Occupation) Convention, 1958. In Okene's[68] opinion, these core international labour standards constituting the 'fundamental principles and right to work' must have influenced these new constitutional provisions that have vested the NIC with the new role of, amongst other things, promoting equality in employment and occupation and importantly protecting the weak and vulnerable elements in the workforce. The NIC in *Maiya* v *Incorporated Trustees of Clinton Health Access Initiative Nigeria & Ors*,[69] found in favour of the Applicant that the termination of her employment by her employer based on her becoming pregnant was discriminatory and subjected her to disability on account of her sex.

There is ample evidence that most strikes and disruptive industrial actions responsible for the never-ending industrial disharmony experienced in Nigeria stems from failures or outright refusals to honour and implement collective agreements.[70] Unfortunate, this reality in which

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[65] (2014)42 NLLR (Pt. 133), 664

[66] (2012)27 NLLR (Pt.77), 277 at 305

[67] ILO, Core Labour Standards Handbook (Manila: Asian Development Bank, 2006) 21-54

[68] O.V.C. Okene, (n.3), 306-307

[69] (2012)27 NLLR (Pt.76). 110

[70] S.O. Koyondo,'Enforcement of Collective Agreements in Nigeria: Need for Legislative Intervention' [1999](3)(2) *Nigerian Law and Practice Journal*, 37; Editorial, 'Counting the Cost of ASUU Strike' *The Guardian* (28th October, 2022); O.V.C. Okene, (n.3), 254-255

employees and their unions frequently resort to strikes as the only option of compelling employers to honour and implement agreements reached collectively is traceable to the orthodox common law jurisprudence that collective agreements in and of themselves are mere gentlemen codes unenforceable in a court.[71] However, s.254C(J)(i) of the 1999 Constitution, as amended, has entrusted the NIC with the judicial role of not only interpreting collective agreements but to apply them in the resolution of labour disputes. Indubitably, this role has also been embraced by the NIC as expressed in a number of cases.[72] Thus, in *Enugu State Government* v *Odo & Anor*,[73] the NIC stated: 'Collective agreements are now sacrosanct in Nigeria by virtue of s.254C(1)(J)(i) and (iv) of the Constitution (as altered) and the ILO C98'. In other words, 'collective agreements are no longer gentlemen agreements, as in the past but now enforceable agreement …'[74] There is absolutely no question that this assumed constitutional role of the NIC to interpret and apply collective agreement will encourage effective collective bargaining as a veritable means of settling labour disputes at the workplace while at the same time, discourage and reduce to the minimum a resort to strikes as an instrument of enforcing collective bargaining.

D. **Conclusion**

This paper showed in sufficient details the chequered historical development of the Industrial Court in Nigeria from obscurity to prominence; consisting in the statutory and constitutional efforts made to position it as an adjudicatory platform for effective, efficient and timely resolution of collective and individual labour disputes.

Ultimately, the paper examined from a doctrinal perspective the prominent constitutional role(s) now entrusted on the Industrial Court, to the exclusion of all other courts, to promote and maintain industrial peace/harmony consistent with international labour standards and best practices. This paper found from a surfeit of cases and pronouncements that the Industrial Court has embraced this role with such verve that puts no one in doubt that the Court is ready to uphold the fundamental rights enshrined in the Constitution and protect all labour rights thereof. It also found that the Court has not been timorous in interpreting and applying or, better still, domesticating international labour standards and best practices as occasion demands[75] in the phase of what was a daunting position of common law. For instance, collective agreement which was neither justiciable nor enforceable in common law except by strike action, has now gained legal enforceability under the developing jurisprudence of the National Industrial Court; and accordingly confers legal rights on workers to press for their implementations. Of which, the overall implication is that the existence of the industrial Court, as presently empowered, provides assurances for the prompt settlement of labour disputes in respect of the matters covered under s.254C of the Constitution, as amended. And this ultimately contributes to industrial peace and harmony.

In the light of the above, Nigeria seem to have moved lights years ahead from where it was in 1976 when the Industrial Court was first created by the Trade Dispute Act promulgated then; or even from 17 years after the Court was re-established under the National Industrial Court Act

[71] *Union Bank of Nigeria Ltd*. v *Edet* (1993) 4 NWLR, (Pt. 287) 288 at 298
[72] *Gbadegesin* v *Wema Bank Plc*(2012) 28 NLLR (Pt. 80) 274; (Pt.186) 17;*Enugu State Government* v *Odo & Anor* <https://icnadr.gov.ng/judement/details.php?id=6846> accessed January 1, 2023
[73] *Ibid*
[74] *Ibid*
[75] Subject to it been pleaded and proved in accordance to the rules of the Court.

2006, to the current constitutionally created Industrial Court that is worth its name in jurisdiction and power. But it would appear that this progress is largely still theoretical, since the propensity for unbridled labour/industrial disputes which go to disrupt the national economy has remained unabated. Therefore, it is suggest that more is required to be done to continuously engage industry stakeholders in education, enlightenment and confidence-building on the jurisdiction and reach of the Court, and the vital and strategic position it now occupies for the maintenance of labour, employment and industrial harmony. Also, there is the continuous need for increase and strengthening of the personnel (judicial and non-judicial officers), facilities and administration to cover all the States in Nigeria in view of its single jurisdiction throughout the federation.

Finally, the NIC being a specialised court of exclusive jurisdiction on labour, employment and industrial relations matters,[76] and which decision does not as of right admit of civil appeals, except on questions of fundamental rights and in criminal cases, should not be constituted by a single judge in the hearing and determination of matters.[77] Instead, the provision of ss.21(4) and 25 of NICA providing for a panel of not less than three judges to duly constitute the Court at all times should be preferred. Notwithstanding the recent Supreme Court decision in *Sky Bank v Iwu*,[78] it is suggested that s.254E(1) of the Constitution 1999 be further amended in line with ss.21(4) and 25. of NICA.

[76] E.A. Oji and O.D. Amucheazi, *Employment and Labour Law in Nigeria* (Mbeyi and Associates Nig. Ltd 2015), 285

[77] CFRN 1999 (As amended), s.254E(1)

[78] [2017]16 NWLR (Pt. 1590) 24; By the Supreme Court's decision, the Court of Appeal has jurisdiction to hear appeals from all decisions of the NIC.