

## NATIONAL INDUSTRIAL COURT ACT, 2006 - A SHORT APPRAISAL

### HISTORY AND EVOLUTION

The advent of colonial rule in Nigeria from the late 19<sup>th</sup> century brought about a rapid industrialization of the country and the establishment of big trading and business concerns like the earliest Royal Niger Trading Company, Leventis Group, Chanrai Group, John Holt Group, etc.

There were also corporations like the Nigeria Railway Corporation and the Nigeria Airways. What all these businesses, corporations and industries had in common was a large number of employees. These employees initially had no control or constitutions to their conditions of service. But with time, they started organizing themselves into strong pressure groups to challenge those conditions of service which they considered unfair.

This inevitably led to frictions between the workers and the colonial masters and in many instances, the employees suffered dire consequences for their “*intransigence*”. An example that quickly comes to mind is the massacre of coal miners in Enugu by the colonial authorities. However, these did not deter the labour force.

Recognizing the need to establish a framework for dealing with the agitation(s) of workers, the Colonial Government in 1941 promulgated the Trade Dispute (*Arbitration and Inquiry*) (Lagos) Ordinance of 1941 with a mandate to settle trade disputes within the Lagos area.

To a limited extent, it was able to deal with the need for an efficient legal framework for settlement of disputes. However, it had two fundamental drawbacks, namely:

- (1) There was no permanent structure for dealing with these disputes, rather ad-hoc bodies in the form of arbitration tribunals were set up to handle trade disputes as they came up. This Ordinance also left the role of Government to be merely discretionary and only at the instance and invitation of parties.
- (2) The second problem was that the Ordinance did not cover the whole country and was only applicable to Lagos.

In 1957, another ordinance known as the Trade Disputes (*Arbitration and Inquiry*) (*Federal Application*) Ordinance of 1957 was promulgated. This now spread the jurisdiction of the Ordinance to cover the whole country.

In the continued search for improvement in the settlement of trade disputes, two decrees were promulgated in 1968 and 1969 by the then Military Government. The decrees were the Trade Disputes (*Emergency Provisions*) Decree No. 21 of 1968 and Trade Disputes (*Emergency Provisions*) (*Amendment No. 2.*) Decree No. 53 of 1969.

The latter decree of 1969 banned strikes and lock-outs and imposed a penalty of imprisonment without option of fine for defaulters. It also provided that both the employers and employees must report strikes

and lock-outs within 14 days to the Inspector-General of Police.

The decrees however established a permanent tribunal known as the Industrial Arbitration Tribunal for the purpose of handling trade disputes.

In 1976, the Trade Dispute, Decree No. 7 of 1976 (*Now Trade Disputes Act, Chapter T8, Volume 15, Laws of the federation of Nigeria, 2004*) was promulgated to address some of the problems inherent in the above decrees. The Act for the first time established a Court known as the National Industrial Court to handle trade disputes.

This Act was amended by the Trade Dispute (Amendment) Decree No. 47 of 1992 which purportedly elevated the National Industrial Court to a Court of Superior Record.

The objective behind the establishment of the National Industrial Court is to create a specialized Court to handle special matters which are connected with economic growth, industrial relations development, peaceful co-existence between and among labour and employers of labour as well as labour policy formulator i.e. the government. It is obvious that from history, none of the developed economies of the world have been able to grow without a stable Industrial Mechanism for settlement of Industrial Disputes.

In the year 2006, in order to raise the status of the Court and to expand its jurisdiction to meet emerging challenges in labour/industrial relations, the National Assembly of the Federal Republic of Nigeria enacted the National Industrial Court Act, 2006, spelling out the powers, jurisdiction, composition, etc of the National Industrial Court.

We shall now attempt a short appraisal and analysis of the cardinal provisions of the National Industrial Court Act, 2006 with respect to their practicability vis-à-vis the provisions of the 1999 Constitution of the Federal Republic of Nigeria.

### ESTABLISHMENT AND STATUS

**Section 1 (1) of the National Industrial Act, 2006** (*hereinafter referred to as the “Act”*) established the National Industrial Court.

**Section 1(3) (a)** States thus:

*“The Court shall be a Superior Court of Record”.*

We pause here to juxtapose this provision of the Act with relevant provisions of the 1999 Constitution.

**Section 6 of the 1999 Constitution** deals with the Judicial powers of the Federation and **section 6(3)** states as follows:

*“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 ...”* (*emphasis mine*).

**Subsection (5) (a) to (i)** lists the Courts as follows:

- (a) the Supreme Court of Nigeria;
- (b) the Court of Appeal;
- (c) the Federal High Court;
- (d) the High Court of the Federal Capital Territory;
- (e) a High Court of a State;
- (f) the Sharia Court of Appeal of the Federal Capital Territory;
- (g) a Sharia Court of Appeal of a State;
- (h) the Customary Court of Appeal of the Federal Capital Territory; and
- (i) a Customary Court of Appeal of a State.

These are the only Courts recognized by the 1999 Constitution as

Courts of Superior Record in Nigeria.

The Latin maxim *expressio unius exclusi alterius* suffices in this situation. The maxim is defined by the **Black's Law Dictionary, 6<sup>th</sup> Edition at pg. 581** thus: *Expression of one thing is the exclusion of another. When certain persons or things are specified in a law, contract or will, an intention to exclude all others from its operation may be inferred*".

It can be and has indeed been reasonably argued that by virtue of **section 316 of the 1999 Constitution**, which states as follows:

*"316. (1) Any office, Court of law or authority which immediately before the date when this section comes into force was established and charged with any function by virtue of any other Constitution or law shall be deemed to have been duly established and shall continue to be charged with such function until other provisions are made, as if the office, Court of law or authority was established and charged with the function by virtue of this Constitution or in accordance with the provisions of a law made thereunder"*.

the National Industrial Court which was in existence by virtue of **Decree No. 47 of 1992** before the coming into force of the said section and was also supposed to function as a Court of Superior Record by the provisions of the Trade Dispute (Amendment) Decree No. 47 of 1992 is deemed to be duly established and shall continue with this function.

However this position is immediately debunked by the immediately preceding section of the Constitution which deals with laws in existence prior to the coming into force of the 1999 Constitution.

**Section 315 of the Constitution** states that:

*"315. (1)-Subject to the 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..."*

In other words, if there is any inconsistency between the provisions of any law in existence before the commencement of the 1999 Constitution (*like the Trade Dispute (Amendment) Decree No. 47 of 1992*) and the provisions of the Constitution itself, then the provisions of the said law must be modified to bring it into conformity with the provisions of the Constitution.

Also section 1 (3) of the 1999 Constitution provides thus:

*"1 (3)-If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void"*.

There is also a Latin Maxim which states that where there is a statutory provision dealing specifically with an issue such a provision shall take precedence over any other provision that only deals generally with the said issue.

**Section 6 (3) & (5) (a) (i) of the 1999 Constitution** specifically deal with and mention the only constitutionally recognized Courts of Superior Record while section 316 deals generally with offices, Courts and authority in existence before the coming into force of the 1999 Constitution.

Finally, the National Industrial Act was enacted by the National Assembly in 2006 during the pendency of the 1999 Constitution. Consequently, **section 316 of the Constitution** cannot even avail it in

anyway and since its provision on issue of status of the Court as a Court of Superior Record is inconsistent with the provisions of **section 6 (3) & (5) (a) (i) of the 1999 Constitution**, such provision to the extent of its inconsistency is void.

Moreover, the National Industrial Court being a creation of Parliament cannot be a Court of Superior Record because **sub-section 4 of section 6 of the Constitution** provides that the National Assembly and any State House of Assembly can only establish Courts with subordinate jurisdiction to that of a High Court.

#### **APPOINTMENT OF PRESIDENT AND JUDGES**

**Section 2 (1) of the Act** provides that the President and Judges of the Court shall be appointed by the President on the recommendation of the National Judicial Council and subject to confirmation by the Senate in respect of the President of the Court.

#### **QUALIFICATION**

A person shall be eligible to hold the office of the President of the Court, if he is qualified to practice as a Legal Practitioner in Nigeria and has been so qualified for a period of not less 10 years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. See **section 2(3) of National Industrial Court Act**.

**Section 2(4) (a) & (b) of the National Industrial Court Act** also provide that a person shall be qualified to hold the office of a Judge of the Court if he is a qualified Legal Practitioner in Nigeria and has been so qualified for a period of not less than 10 years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria or if the person is a graduate of a recognized university of not less than 10 years standing and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.

#### **JURISDICTION**

**Section 7 of the Act** deals with the jurisdiction of the National Industrial Court. **Section 7(1)** provides as follows:

*"The Court shall have and exercise exclusive jurisdiction in civil causes and matters*

*(a) relating to:*

- i. labour, including trade unions and industrial relations; and*
- ii. environment and conditions of work, health, safety and welfare of labour and matters incidental thereto; and*

*(b) The grant of any order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or 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 disputes as may be recorded in any Memorandum of Settlement,*
- iv. any trade union Constitution, and*
- v. any award or judgement of the Court"*.

This exclusive jurisdiction granted the National Industrial Court by the Act is inconsistent with provisions of **section 272 (1) of the 1999 Constitution** which gives the High Court of a State jurisdiction 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.

Consequently, in line with the provisions of **section 1(3) of the Constitution**, the provision of **section 7 of the Act** to the extent of its inconsistency with the provisions of the Constitution is void.

**Section 17 of the Act** gives the Court the power to make an order of Mandamus, Prohibition or Certiorari.

**Section 17(2)** provides that the power conferred on the Court by this section to make an order of Mandamus, Prohibition or Certiorari may be exercised notwithstanding that the order is made against an officer or authority of the Federal, State or Local Government.

This, in our view, is directly contrary to the exclusive jurisdiction granted the Federal High Court by virtue of **Section 251(1) (r) of the Constitution**, to the effect that the Federal High Court shall have jurisdiction to the exclusion of any other Court in civil causes and matters relating to

*“(1) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal government or any of its agencies.”*

Consequently, the provisions of Section 17(1) and (2) of the Act are void to the extent of their inconsistency with the provisions of the Constitution.

#### **CONSTITUTION OF COURT**

Section 21(4) of the National Industrial Court Act provides that the Court shall be constituted of not less than 3 Judges provided that the Presiding Judge shall be a Judge appointed under subsection (3) or (4)(a) of Section 2 of the Act, i.e. the Presiding Judge must be qualified to practice as a Legal Practitioner in Nigeria for a period not less than 10 years.

Section 21(5), however, provides that notwithstanding the provisions of subsection (4), the President may assign a single Judge of the Court to sit and hear interlocutory applications or a preliminary matter in any proceedings brought before or pending in the Court provided such a Judge is one appointed under subsection (3) or (4)(a) of section 2 of the National Industrial Court Act.

#### **PRECEDENCE**

Another area of conflict in our view is the provision of section 4(2) of the Act to the effect that the President of the Court shall rank equal with the Chief Judge of the Federal High Court or the Chief Judge of the High Court of the Federal Capital Territory, Abuja in precedence while the Judges of the Court shall in like manner, rank with the Judges of the Federal High Court or High Court of the Federal Capital Territory.

This, in our humble view, is another attempt to equate the status of the National Industrial Court with that of the Federal High Court or High Court of the Federal Capital Territory, Abuja which have been clearly stated in Sections 6(3) and (5) of the 1999 Constitution of the Federal Republic of Nigeria as Courts of Superior Record.

This cannot be, because the provisions of the Constitution are very clear on which Courts qualify as Courts of Superior Record in Nigeria. It also clearly defines the status of Courts that can be established by Parliament. See **section 6(4) of the 1999 Constitution** which provides that the National Assembly can establish a Court but such a Court must be subordinate to the High Court and thus cannot be of coordinate jurisdiction or status with the High Court as the provisions of sections 4 and 7 of the National Industrial Court Act have tried to do.

**Section 9(1) & (2) of the Act** provide as follows:

*“(1)- subject to the provisions of the Constitution of the Federal Republic of Nigeria and Subsection (2) of this section, no appeal shall lie from the decisions of the Court to the Court of Appeal or any other Court except as may be prescribed by this Act or any other Act of the National Assembly.*

*(2) An appeal from the decision of the Court shall lie only as of right to the Court of Appeal only on questions of fundamental rights as contained in chapter IV of the Constitution of the Federal Republic of Nigeria, 1999”*

This section gives the impression that the decisions of the Court are final and an appeal can only lie as of right to the Court of Appeal on questions of fundamental rights.

Again, this is certainly not possible. Assuming that the Court is placed on the same pedestal as the Federal High Court and FCT High Court as the Act will want us to do, then it follows that an appeal shall lie as of right from any of its decisions to the Court of Appeal and not just on questions of Fundamental Human Rights. See **section 240 of the Constitution**. But since the Constitution has made it clear in **section 6(4)** that the National Assembly can only establish Courts with subordinate jurisdiction to that of a High Court and the National Industrial Court was established by an Act of the National Assembly, then constitutionally, the National Industrial Court has subordinate jurisdiction to that of High Courts.

Consequently, all appeals from the National Industrial Court should lie to the High Court.

#### **CONCLUSION**

In this short write up, we have tried to trace the history of the National Industrial Court from the first enactment in Nigeria on trade dispute resolution in 1941 to the present Act of 2006. We equally tried to beam our searchlight on some of the provisions of the Act which in our humble opinion are inconsistent with the provisions of the Constitution and which we consequently believe are void to the extent of the inconsistency.

It must be unhesitatingly pointed out here that we are in no way suggesting that the National Industrial Court should not have been established. On the contrary, we strongly believe that it is a necessary component for the economic development and growth of our dear country.

It is obvious that no reasonable foreign investor would like to invest in an economy where the relationship between the employer and employee is not cordial and peaceful. It is also worthy of note that any time there is industrial crisis, it is the economy and the nation as a whole that suffer.

It is a universally accepted principle that the labour and industrial relations law must be certain or ascertainable, definite, reliable, dependable and consistent in order to guarantee a complete peaceful co-existence within the labour industry.

Consequently, it is vital and of great importance to ensure that our laws relating to trade disputes and industrial relations are practicable and enforceable.

#### **SUGGESTED SOLUTIONS**

A sigh of relief can now be heard as the National Assembly has commenced the process of amending the 1999 Constitution.

We humbly suggest that the issue of the National Industrial Court

should be in the front burner of issues to be looked into. We believe that an amendment of Section 6(5) of the 1999 Constitution to include the National Industrial Court as one of the Courts recognized by the Constitution as Courts of Superior Record will go a long way in clearing up a lot of issues bordering on its status and jurisdiction. This is important considering the very sensitive role this Court will play in the country's quest for rapid economic development.

If we also consider the fact that the required qualification for judges of the National Industrial Court as stipulated in **section 2(3) & (4) (a)** of the Act is basically the same as that for Judges of the Federal High Court, FCT High Court and State High Courts (*all of them being Courts of Superior Record*), then we might begin to appreciate the need to ensure that the National Industrial Court is brought to the same level and status as its "*peers*".

The Act itself will also need some tinkering to bring it into conformity with the provisions of the Constitution and also clear some inherent lacuna.

These in our humble opinion should bring a lasting solution to some of the present confusion as to the real status and jurisdiction of the National Industrial Court and how practicable some of the provisions of the Act are.

## **BAR NEWS**

1. **Nigerian Bar Association (NBA) NEC Meeting**  
Dates: Thursday, 24<sup>th</sup> - Friday, 25<sup>th</sup> July, 2008  
Venue: Onitsha, Anambra State
2. **Nigerian Bar Association (NBA) Annual General Conference**  
Dates: Saturday, 23<sup>rd</sup> - Friday, 29<sup>th</sup> August, 2008  
Venue: Abuja
3. **International Bar Association (IBA) Conference**  
Dates: 12<sup>th</sup> - 17<sup>th</sup> October, 2008  
Venue: Buenos Aires, Argentina
4. **Commonwealth Lawyers Association (CLA) 25<sup>th</sup> Anniversary Conference**  
Dates: Sunday, 16<sup>th</sup> - Friday, 19<sup>th</sup> October, 2008  
Venue: Jamaica

## **News** *from the* **Firm**

1. The Firm wishes to announce that two (2) new Lawyers joined its Abuja office. The two Lawyers are Ms. C. O. Egbase and Mr. D. H. Bwala.

Ms. Egbase worked in one of the major oil companies in the country before joining the Firm. She specializes in Commercial Law Practice and Oil & Gas Law.

Mr. Bwala is a fresh graduate of the Nigerian Law School with a strong flair for litigation. He represented Nigeria in the Louis Brown International Client Counseling/Advising Skills Competition for Law Students held at Cardiff University, Wales in 2006 and subsequently attended the same competition, this time as an observer in England from Monday, July 07, 2008 to Friday, July 11, 2008. Both have very promising careers ahead of them. We welcome them to our Firm and wish them the very best of times.

2. We wish to congratulate our Principal Partner, Chief Joe-Kyari Gadzama, MFR, SAN, FCI Arb who was recently inducted as a

Fellow of the Chartered Institute of Arbitrators (UK). We wish him more grease to his elbows.

In the same vein, we also congratulate Mr. Uche Chikelue of our Lagos Office who recently passed the examination for induction as an Associate Member of the Chartered Institute of Arbitrators (UK).

3. We equally want to say a big congratulation to Mr. Oludayo Philips Famakin-Johnson of our Lagos Office who wedded on the 14<sup>th</sup> of June, 2008 in Lagos. We wish him the best of married life, God's blessings and protection.



The Head of Chambers (Alhaji R.O. Yusuf) in a group photograph with Law Students on Chambers Attachment Programme from April – June, 2008



R – L : The Rep. of the Chairman of the Invest. & Securities Tribunal, Aruodo Uche. The Hon. Comm. of Justice & AG – Lagos State (Mr. Supo Sashore, SAN), our Principal Partner who is the current Chairman of the NBA Section On Public Interest And Development Law (SPIDEL), the Rep. of the Hon. Attorney General of the Federation (HAGF), C. Ibekwe (Mrs.) and the Guest Speaker (Prof. Tunde Ogeowolu) at the SPIDEL 2nd Forum held on the 6th of June, 2008 at Ocean View Restaurants, V.I, Lagos .

### **PARTNERS IN THE FIRM:**

1. **Chief Joe-Kyari Gadzama MFR, SAN, FCI Arb.**
2. **Professor Bolaji Owasanoye**
3. **Alhaji R.O. Yusuf, ACI Arb.**
4. **Lawan Abana Esq., ACI Arb.**
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