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ONYIRIUKA V. A.G. ENUGU STATE: QUO VADIS THE EXCLUSIVENESS OF THE ORIGINAL CIVIL JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA?

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**ONYIRIUKA V. A.G. ENUGU STATE: QUO VADIS THE EXCLUSIVENESS OF
THE ORIGINAL CIVIL JURISDICTION OF THE NATIONAL INDUSTRIAL
COURT OF NIGERIA?**

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ABSTRACT

This paper interrogates the exclusiveness of the original civil jurisdiction of the National Industrial Court of Nigeria (NICN) over labour-associated fundamental human rights disputes vis-à-vis the jurisdiction of the Federal High Court (FHC) and State High Courts (SHCs) pursuant to sections 46(1), 251 and 272 of the 1999 Constitution of the Federal Republic of Nigeria (1999 CFRN). It examines the effect of the Court of Appeal decision in Mrs. Gloria Lewechi Onyiriuka on the development of Nigeria's labour jurisprudence and the mandate of the NICN. The paper argues that the decision is diametrically opposed to the section 254C(1)(d) of the 1999 Constitution (Third Alteration) Act, 2010 which made the jurisdiction of the NICN over all and sundry labour and employment disputes exclusive. It is contended that the decision was reached per incuriam hence, should be distinguished by the NICN and not follow it sheepishly. The Court of Appeal is also urged to overrule itself where the opportunity presents itself.

1.0 INTRODUCTION

When an employer-employee relationship is created, rights and obligations accrue between the parties and each one is out to protect their interests.¹ In their

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¹ CK Agomo, *Nigerian Employment and Labour Relations Law and Practice*, (Lagos, Concept Publications Press, 2011) 9.

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bid to protect their interests, just like it happens in every human relationship, there is bound to be conflict. The occurrence of a dispute should not be the end of relationship.² Thus, to resolve labour and employment disputes, the National industrial court of Nigeria (NICN) was established by the government of Nigeria.³ The historical development of the NICN has been a boisterous excursion as she has, at various times, been submerged in various jurisdictional and constitution debacles.⁴ From the onset when it was created, the NICN had been granted exclusive original civil jurisdiction over labour and employment matters.⁵

Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria⁶ bequeaths to Nigerian citizens various rights and section 46 thereof, gives any citizen whose right is being threatened or has been breached the access to court to seek protection from the threat or remedy for the breach. Thus, the issue is where an employee's fundamental right is threatened or breached, is it the NICN or the regular courts that has jurisdiction over such dispute? This issue came up in *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State*⁷ and the Court of Appeal held that a suit for the enforcement of the rights contained in Chapter IV arising from or connected to any labour or employment matter, same can be litigated at the Federal High Court or any other court of concurrent jurisdiction hence, the NICN does not have nor exercise exclusive original jurisdiction over such dispute. The court came to this conclusion despite the clear and unambiguous provisions of section 254C (1) (d) of the 1999 (Third Alteration) Act, 2010 which gives the NICN exclusive original civil jurisdiction

² F Agbaje, "The Legal and Constitutional Anatomy of the New Industrial Court Act 2006" (2007) 1(1) *Nigerian Journal of Labour and Industrial Relations*, 77.

³ AE Akeredolu, & DT Eyangndi, "Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" (2019) 10 (1) *The Gravitas Review of Business and Property Law, University of Lagos*, 1-16.

⁴ AB Chiafor, "Reflections on the Constitutionality of the Superior Court of Record Status" (2007) 1(3) *Nigerian Journal of Labour and Industrial Relations* 29.

⁵ *Skye Bank Plc. V. Victor Anaemem Iwu* [2017] 7 SC (Part 1) 1.

⁶ 1999 Constitution of the Federal Republic of Nigeria Cap, C23 Laws of the Federation of Nigeria 2004.

⁷ *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* [2020] 11 NWLR (Pt. 1735) 383.

over labour and employment related disputes pertaining to the provisions of Chapter IV of the 1999 CFRN. This article examines the propriety of this decision to determine whether it is in accord with the extant provision of the law. It highlights its impact on the mandate and exclusive jurisdiction of the NICN as well as the development of Nigeria's labour jurisprudence.

The article is divided into four sections. Section one is the introduction. Section two looks at the historical development and jurisdiction of the NICN as a superior court of record and its implication on labour and employment adjudication. Section three contains the facts of the case and interrogates matters arising from the decision. Section four contains the conclusion and recommendations.

1.1 HISTORICAL DEVELOPMENT AND JURISDICTION OF THE NICN

It has been stated that the NICN is a specialised court. Prior to the advent of colonialism in Nigeria, agriculture was the main stay of the economy. Labour relations were arranged on family and communal arrangements wherein, the family/household of a man, constituted his labourers while the prominent members of the community, had the labour of their family including that of the community and remuneration was mainly in kind. However, colonialism brought with it, wage labour and the establishment of various business enterprises. According to Oji and Amucheazi,⁸ the advent of colonialism in Nigeria in the 19th century led to rapid industrialisation of the economy leading to the establishment of British owned businesses and this led to the recognition of the need to establish a framework for dealing with impending workers agitations.⁹ Thus, in 1941, the British colonial government promulgated the Trade Dispute (Arbitration and Inquiry) Ordinance which was meant to be the legal framework for the settlement of labour disputes within the colony of Lagos and its environ.

⁸ EA Oji, and OD Amucheazi, *Employment and Labour Law in Nigeria* (Mbeyi and Associates (Nig.) Ltd, 2015) 254 –255.

⁹ *ibid*

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Despite the purpose of the Ordinance, there was no provision for a permanent structure for the settlement of the anticipated labour disputes but only *ad hoc* bodies were being set-up as the need arose and dissolved thereafter.¹⁰ The good thing about this Ordinance was that it adopted the non-interventionism doctrine as applied by Britain in Nigeria to the effect that unless the disputants invites the government, it could not apprehend a trade dispute.¹¹ Amucheazi and Abba¹² discussing this have stated that:

*“At this point, industrial relations law and practice in Nigeria were modelled on the non-interventionist and voluntary model of the British system, which was predicated on the consent of the parties to resolve trade disputes through means acceptable to them, with limited intervention by the appropriate minister. The ordinance only empowered the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where a negotiation has broken down. In effect, the minister could not compel the parties to accept his/her intervention, but could only appoint a conciliator upon the application of the parties and could only set up an arbitral tribunal by the consent of both parties.”*¹³

Owing to the restrictiveness of this Ordinance, the colonial government thought it necessary to expand its applicability hence, in 1957, the Trade Disputes (Arbitration and Inquiry) Federal Application Ordinance was promulgated.¹⁴ After independence in 1960, Nigeria enacted the 1963 Republican Constitution and freed herself from the control of the British crown. In order to improve on the legal framework for the settlement of trade disputes in Nigeria, the Federal Military Government, promulgated two decrees i.e. the Trade Disputes

¹⁰ JOA Akintayo, and DT Eyongndi “The Supreme Court Decision in Skye Bank Ltd. V. Victor Iwu: Matters Arising” (2018) 9(3) *The Gravitas Review of Private and Business Law, University of Lagos* 98-119.

¹¹ DO Ojere, “The High Courts’ Jurisdiction to hear and Determine Inter or Intra Union Dispute is not completely Ousted by the Trade Disputes Act as Amended and the NIC Act” (2007) 1(2) *Nigerian Journal of Labour and Industrial Relations*, 56-72.

¹² Offornze D Amucheazi, and Paul U Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure* (Wildfire Publishing House, 2013) 45.

¹³ AB Adejumo, ‘The Role of the National Industrial Court in Dispute Resolution in Nigeria’ (Faculty of Law Public Lecture of University of Abuja organized by the Law Student Association of Nigeria, UNIABUJA Chapter, 15 September, 2008).

¹⁴ *ibid*

(Emergency Provisions) Decree,¹⁵ and the Trade Disputes (Emergency Provisions) Amendment Decree.¹⁶ The latter decree prohibited strikes and lock-out action and imposed the obligation on the parties to report to the Inspector General of Police, the occurrence of any trade disputes within 14 (fourteen days) from the date of its occurrence.¹⁷ The penalty of imprisonment and fine was imposed on defaulters. The Decree established a permanent tribunal known as the Industrial Appeal Tribunal meant for the adjudication of trade disputes in Nigeria. This decree also put an end to the non-interventionism doctrine that had hitherto been in place.

The FGM continued with its efforts towards regulating trade disputes and its settlement in Nigeria by proposing, making and implementing various policies. In 1975, the General Yakubu Gowon led Federal Military Government (FMG), through the National Salaries and Wages Review Commission (NSWRC) released the Udoji Awards on wages and incomes, structure and hierarchy, compensation and remuneration, etc.¹⁸ This award was not radically different from that of Adebo's Commission Award of 1970.¹⁹ These awards attracted widespread national criticisms by the labour class and culminated into an unprecedented industrial action in Nigeria's history.²⁰ Owing to this inclement industrial atmosphere that engulfed the nation, the Williams and Williams Commission was set up with a view to review the Udoji's Commission Report.²¹ It attempted to restore sanity into the labour polity though to no avail. Due to the aftermath of these policy interventions, the government was constrained to reassess the subsisting legal framework and found it inadequate. Thus, it promulgated the

¹⁵ Trade Disputes (Emergency Provisions Decree) Act 1968, No 21.

¹⁶ Amendment No. 2 of Decree No. 53 of 1969.

¹⁷ CK Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Concept Publications, 2011) 314 – 315.

¹⁸ EO Abiala, *Trade Union Laws and Administration in Nigeria: Membership and Jurisdictional Scope*, (St Paul's Publishing House 2015) 93.

¹⁹ VA Odunaiya, *Law and Practice of Industrial Relations in Nigeria* (Passfield Publishers Ltd 2006) 130.

²⁰ *ibid.*

²¹ *ibid.*

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Trade Disputes Decree No. 7 of 1976.²² This Decree (which later became the Trade Disputes Act, (TDA), established the National Industrial Court. Section 20 of the TDA provided as follows:

“There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as ‘the court’) which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to settlement of trade disputes, the interpretation of collective agreements and matter connected there with.”

The establishment of the National Industrial Court for Nigeria heralded a new dawn in labour and employment adjudication however, the court was confronted with several drawbacks. For instance, Akeredolu and Eyongndi²³ have noted that litigants could not directly access the NICN except through referral by the Minister of Labour, Employment and Productivity (MLEP) who had somewhat supervisory powers over the court.²⁴ The only exception is in the case of interpreting an IAP award or collective bargaining award. Thus, the NICN declined jurisdiction over a dispute brought to it directly not pertaining to interpretation of an IAP award or a collective agreement in *Incorporated Trustees of Independent Petroleum Association v. Alhaji Ali Abdulrahman Himma & Ors.*²⁵ Section 20(3) of the TDA provided that no appeal shall lie to anybody or person from the determination of the NICN this was only subject to the jurisdiction conferred on the Supreme Court under section 20(4). The implication of this was that under the TDA, the NICN had original exclusive and final jurisdiction over

²² JOA Akintayo and DT Eyongndi, “The Supreme Court of Nigeria Decision in *Skye Bank Ltd. V. Victor Iwu: Matters Arising*” (2018) 9(3) *The Gravitas Review of Business and Property Law* 112.

²³ AE Akeredolu & DT Eyongndi “Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?” (2019) 10 (1) *The Gravitas Review of Business and Property Law*, 1-16.

²⁴ National Industrial Court Rules 1979, Rule 13.

²⁵ *Incorporated Trustees of Independent Petroleum Association v. Alhaji Ali Abdulrahman Himma & Ors.* Suit No. FHC/ABJ/CS/313/2004 ruling delivered on 23 January 2004 (NICN) upon transfer from the FHC pursuant to section 22 of Federal High Court Act, Cap. F12 LFN 2004. Though this is a 2004 decision, the position of the law had not changed up until the time the decision was made by the NICN and the case was being litigated at the FHC before it was subsequently transferred to the NICN pursuant to the Federal High Court’s power to transfer cases.

labour matters subject to the appellate jurisdictions of the Court of Appeal and Supreme Court jurisdiction on fundamental rights matters as well as that of the High Court pursuant to section 42 of the 1979 Constitution.²⁶

Unfortunately, under the 1979 Constitution, where the Superior Courts of Record were listed, the NICN was omitted. Akintayo and Eyoungndi²⁷ have argued and rightly so in our view that this led to the challenge of the constitutionality of the NICN hence, matters reserved for the exclusive adjudication of the court, were taken to the Federal High Court and State High Courts. Aside from this, the definition of trade disputes under section 47 of the Trade Disputes Act was rather restrictive and this made the challenge against the NICN jurisdiction more contentious to the extent that in *Western Steel Workers Ltd v Iron and Steel Workers Union of Nigeria (No. 2)*²⁸ the Supreme Court held that the NICN had no power to grant injunctions save to interpret collective agreements. To address the jurisdictional quagmire of the NICN, the FMG promulgated the Trade Disputes (Amendment) Decree No. 47 of 1992 which elevated the NICN to the status of a Superior Court of Record.²⁹ Despite this effort, when the 1999 Constitution was enacted, the omission under the 1979 Constitution was repeated and once again, the jurisdiction and constitutionality of the NICN resurrected. Section 6(5) (a)-(k) of the said 1999 Constitution listed the SCR and the NICN is conspicuously omitted. Thus, its exclusive jurisdiction was regarded as an affront to the jurisdiction conferred on the Federal High Court under section 251, High Court of the Federal Capital Territory, Abuja under section 257 and State High Court under section 272 of the 1999 CFRN.

²⁶ *ibid*

²⁷ Akintayo & Eyoungndi (note 22) 98-119.

²⁸ *Western Steel Workers Ltd V Iron and Steel Workers Union of Nigeria (No. 2)* [1987] 1 NWLR (Part 49) [284] – [303].

²⁹ E Akintunde, *Nigerian Labour Law* 4th Edn, (Ogbomoso, Emiola Publishers Ltd 2008) 481.

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Eyongndi and Dawodu-Sipe³⁰ have posited that to address the matter, the National Industrial Court Act 2006 (NIC Act, 2006) was enacted by the National Assembly and section 1 created the NICN as a SCR while 7 conferred exclusive original civil jurisdiction on the NICN over labour and employment matters. Section 11 thereof purportedly made the NICN a SCR. Despite this effort, the problem encountered under the 1979 Constitution resurfaced *National Union of Road Transport Workers v Ogbodo*³¹ thus, In *National Union of Electricity Enterprises v. Bureau of Public Enterprises*³² the Supreme Court dismissed the claim that the Trade Disputes (Amendment) Decree 47 of 1992 and by necessary implication, the National Industrial Court Act 2006 had elevated the NICN to the status of a superior court of record (equal in status to the High Courts) without any amendment of section 6(5) of the 1999 Constitution. The reason was that a mere Act of the National Assembly cannot effectively amend the Constitution unless it is a Constitution Alteration Act hence, the NIC Act, 2006 was subservient to the 1999 Constitution.

Thus, it became clear that unless and until the 1999 CFRN was amended, the jurisdictional tension that has trailed the NICN will persist. Thus, in 2010, the National Assembly enacted the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 with the sole purpose of addressing the jurisdictional and constitutional defects of the NICN. Section 1 of the Act altered section 6(5) of the 1999 Constitution by inserting a new paragraph cc- the National Industrial Court. Section 254C confers exclusive original civil jurisdiction on a wide range of labour and employment matters on the NICN to the exclusion of any other court. Civil appeals from the NICN terminate at the

³⁰ DT Eyongndi & OA Dawodu-Sipe, "The National Industrial Court Stemming of Unfair Labour Practice of Forced Resignation in Nigeria" (2022) 12(2) *Nigerian Bar Association Journal*, 183-197.

³¹ *National Union of Road Transport Workers v Ogbodo* [1998] 2 NWLR (Part 537) [189] - [191]. See also *New Nigeria Bank Plc. & Anor v AM Osoh & 4 Ors.* [2001] 13 NWLR (Part 729) 232.

³² *National Union of Electricity Enterprises V. Bureau of Public Enterprises* [2010] 3 SCM [165] - [167].

Court of Appeal whose decision is final and binding by virtue of section 243A. As at today, Eyongndi and Onu³³ the NICN stands on the same legal footing with the FHC and SHCs.

Jurisdiction of court is germane and non-negotiated.³⁴ The meaning of jurisdiction is uncontested. The Supreme Court of Nigeria in *Egharevba v Eribothe*³⁵ per Adekeye JSC held thus:

“Jurisdiction is a term of comprehensive import embracing every kind of judicial action. It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire into facts, apply the law, make decisions and declare judgments. It is the legal right by which Judges exercise their authority. Jurisdiction is equally to the court what a door is to a house. This is why the question of a court’s jurisdiction is called a threshold issues, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remain a nullity however well conducted and brilliantly decided they might have been. A defect in competence is not extrinsic but rather intrinsic to adjudication.”

Jurisdiction of court is not a matter of rocket science. The Supreme Court of Nigeria (SCN) in the foremost decision of *Madukolu v Nkemdilim*³⁶ categorically

³³ DT Eyongndi & KON Onu, “Legal Diagnosis of the National Industrial Court of Nigeria Rules, 2017 as a Catalyst of Egalitarian Labour Adjudication” (2021) 13(1) *Jimma University Journal of Law*, 47-65.

³⁴ RN Ukeje, *Nigerian Judicial Lexicon*, (Ecowatch Publications Ltd, Lagos 2006) [249] – [250]. He opines that the expression ‘jurisdiction of the court’ may be used in two different senses—a strict/narrow sense and a wider sense. In its narrow and strict sense, the jurisdiction of a validly constituted court connotes the limits which are imposed upon its power to hear and determine issues between persons who seek to avail themselves of its process by reference to the subject matter of the issue; or to the persons between whom the issue is joined; or to the kind of reliefs sought or any combination of these factors. In its wider sense, the jurisdiction of a validly constituted court embraces the settled practice of the court as to the way it will exercise its power to hear and determine issues which fall within its jurisdiction (in the strict sense) to grant, including its settled practice to refuse to exercise such powers or to grant such relief in particular circumstances

³⁵ [2010] All FWLR (Part 530) [1213] – [1228].

³⁶ [1962] 2 SCNLR 341.

and comprehensively stated when a Court of law is said to have jurisdiction over a matter and the constituents of jurisdiction. It held thus:

“A court is competent when it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction and the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.”

The court further held that any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided; the defect is extrinsic to the adjudication. From the foregoing, where either a condition precedent, the subject matter of a dispute, the party or the claim is not within the adjudicatory competence of a court, the court is said to be lacking in jurisdiction.³⁷

As far as the NICN is concerned, section 254C of the 1999 CFRN (Third Alteration) Act, 2010 has in an unambiguous manner, vested exclusive civil jurisdiction on it over labour, employment and ancillary disputes. The implication of this is that irrespective of who is involved, once the dispute deals with or arises from labour and employment, the NICN is the only court that can adjudicate over it. Thus, where a court lacks jurisdiction, any proceedings by the court, irrespective of how well they were conducted, only amounts to an exercise in futility.³⁸ Corollary to the foregoing, is the axiomatic postulation that since jurisdiction is a matter of law, neither parties nor the court can vest in itself jurisdiction which has not been statutorily conferred on it no matter the expedience or desirability of the prevailing situation. Whatever jurisdiction that

³⁷ *AG Ogun State v Coker* [2002] 17 NWLR (Part 796) 304.

³⁸ *National Electoral Commission & Anor v Izuogu* [1993] 2 NWLR (Part 275) [270]

is not expressly vested in a court is deemed to have by necessary implication, been taken from that court. The provisions of section 251, 254C and 272 of the 1999 CFRN amplifies this assertion. The mentioned sections, vest exclusive original civil jurisdiction on the Federal High Court, NICN and the various State High Courts in Nigeria.

It is apposite to state that the NICN has and exercises criminal jurisdiction over matters such as stated in its civil jurisdiction. However, while its civil jurisdiction is exclusive, its criminal jurisdiction is not exclusive. Thus, criminal matters arising from or pertaining to matters in its civil jurisdiction can be litigated at the other concurrent courts although, it is desirable that such matters be litigated before the NICN. Section 243 (5) (2) and (3) of the 1999 CFRN (Third Alteration) Act, 2010 would seem to give the impression that only decisions of the NICN pertaining to or arising from questions on fundamental human rights contained under Chapter IV of the constitution can be appealed as of right to the Court of Appeal and all other matters, would be by leave as prescribed by an Act or a Law.

The Supreme Court of Nigeria has adjudicated over this quagmire and held that all civil decisions of the NICN can be appealed against to the Court of Appeal either as of right or with leave of either the NICN or the Court of Appeal. This was the position taken by the Supreme Court in *Skye Bank Plc v Victor Anaemem Iwu*.³⁹ This decision settled the confusion that arose from the conflicting decision of the Court of Appeal in the cases of *Lagos State Sheraton Hotel v. Hotel and Personal Service Staff Association*,⁴⁰ *Coca-Cola Nigeria Ltd v Akinsaya*⁴¹ on the one hand and *Local Government Service Commission, Ekiti State v Mr M A Jegede*;

³⁹ *Skye Bank Plc. V Victor Anaemem Iwu* [2017] 7 SC (Part 1) 1.

⁴⁰ *Lagos State Sheraton Hotel V. Hotel and Personal Service Staff Association* [2014] 14 NWLR (Part 1426) 45.

⁴¹ *Coca-Cola Nigeria Ltd v Akinsaya* [2013] 8 NWLR (Part 1386) 255.

⁴²*Local Government Service Commission, Ekiti State v Mr G O Asubiojo*.⁴³ In the first two cases, the Court of Appeal had maintained that only fundamental human rights cases litigated at the NICN could be appealed to the Court of Appeal by virtue of section 243 (5) (2) of the 1999 CFRN (Third Alteration) Act, 2010 and in the two subsequent cases, it held that all decisions of the NICN are appealable to the Court of Appeal either as of right or with the leave of the court. Thus, in the *Iwu's Case*,⁴⁴ the Supreme Court of Nigeria upheld the position in the later cases. The implication of this is that the NICN is not a court whose determination, with the exception of fundamental human rights disputes, is final. To have held otherwise, would have amounted to legitimizing judicial tyranny. The fate of a man should not be determined by a court of first instance without an opportunity to appeal.

2.0 ONYIRIUKA V. A.G. ENUGU STATE EXAMINED

The brief facts of the case are that the appellant was employed in the service of Enugu State Government as a nurse and she rose through the ranks to become Chief Nursing Officer. However, her employment was abruptly terminated on the ground that she is not from Enugu State. Being aggrieved by her termination, she filed a suit at the Federal High Court for the enforcement of her fundamental right to freedom from discrimination as enshrined in section 42 of the 1999 CFRN which entitles her to work in any part of Nigeria and not be discriminated against based on her sex, origin or ethnicity. The Respondent filed a six-paragraph counter-affidavit in opposition to the application. The objection was predicated on the grounds that the applicant's complaint bordered on disengagement and an action on disengagement from service, cannot be brought through the instrumentality of enforcement of Fundamental Human Rights

⁴² *Local Government Service Commission, Ekiti State v Mr M A Jegede* [2013] LPELR- 21131 (CA).

⁴³ *Local Government Service Commission, Ekiti State v Mr G O Asubiojo* [2013] LPELR- 20403 (CA).

⁴⁴ *Skye Bank Plc. V Victor Anaemem Iwu* [2017] 7 SC (Part 1) 1.

(Enforcement Procedure) Rules, 2009 as purportedly done. Also, that the complaint on non-payment of entitlement has removed the dispute from the jurisdiction of the trial court to that of the National Industrial Court of Nigeria (NICN). At the conclusion of the hearing, the trial court held that the applicant ought to have filed her case at the NICN consequently, declined jurisdiction. The Applicant being aggrieved by the decision of the trial court, appealed to the Court of Appeal urging the court to determine whether or not the trial court was correct that it lacked jurisdiction over the claim.

2.1 Arguments at the Court of Appeal

Counsel on behalf of the appellant argued that the appellant is a Nigerian citizen and as such, is entitled to work anywhere within Nigeria without discrimination or fear of being discriminated against. This is in line with section 42 of the 1999 CFRN. It is therefore wrong and unconstitutional for the Respondent to have terminated her employment on the basis that she was not from Enugu State. Since the termination was perpetuated on a discriminatory basis, she was entitled to apply to the trial court, pursuant to the Fundamental Rights (Enforcement Procedure) Rules, 2009 for the enforcement of her right to freedom from discrimination. She argued that the jurisdiction of the court is to be determined based on her claim before the court as was held in *Tukur v. Government of Gongola State*.⁴⁵ Hence, her principal relief before the trial court was the enforcement of her right to freedom from discrimination and not non-payment of her entitlements as contended by the Respondent. She argued that where a set of facts discloses multiple causes of action, including infringement of a fundamental right, the aggrieved party is allowed to commence two actions, by writ of summons and the other by motion under the Fundamental Rights (Enforcement Procedure) Rules 2009 as was held in *Sokoto Local Government v.*

⁴⁵ *Tukur v. Government of Gongola State*. [1989] 4 NWLR (Pt. 117) 517.

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*Amale*⁴⁶ she therefore contended that the trial court was wrong to have declined jurisdiction on the basis that the suit was under the exclusive jurisdiction of the NICN.

The Respondent contended that the trial court was correct in declining jurisdiction as the Appellant's claim squarely falls under the exclusive original civil jurisdiction of the NICN pursuant to section 12(1) (a) and (d) of the National Industrial Court Act, 2006 and section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 which conferred exclusive jurisdiction on the NICN on matters relating to or connected with any dispute over the interpretation and application of Chapter IV of the 1999 CFRN in relation to any employment, labour or industrial relation. Since the Appellant's claim arose from employment relation and has to do with non-payment of entitlement, it ought to have been litigated at the NICN. It also argued that the main claim of the Appellant was not enforcement of fundamental right but payment of entitlement, the trial court lacked the competence to entertain same as was held in *Borno Radio and Television Corporation v. Basil Egbuonu*.⁴⁷ The Court of Appeal was therefore urged to dismiss the appeal and affirm the decision of the trial court.

After a careful review of the arguments of the [parties, the Court of Appeal noted that from the records of appeal, the case of the appellant before the trial court was enforcement of her fundamental right to freedom from discrimination which she alleged was breached by the Respondent which terminated her appointment on the basis that she was not from Enugu state and not claim for payment of her salaries, gratuities and other benefits as was argued by the Respondent.⁴⁸ Thus, the principal or main claim of the Appellant is enforcement of her fundamental rights and not pecuniary entitlements. Thus, the court held that:

⁴⁶ *Sokoto Local Government v. Amale* [2001] 8 NWLR (Pt. 714) 224.

⁴⁷ *Borno Radio and Television Corporation V. Basil Egbuonu*. [1991] 2 NWLR (Pt. 171) 81, 90.

⁴⁸ *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* [2020] 11 NWLR (Pt. 1735) 383 at 401, Paras. F-H.

*“from the reliefs claimed by the appellant and the facts deposed to in the affidavit in support of the application. I am of the considered and firm opinion that the applicant’s main claim is the alleged breach of her fundamental and constitutional right to freedom from discrimination on the basis of her place of birth and ethnicity.”*⁴⁹

It concluded thus *“I am afraid and with due respect to his Lordship, his findings are clearly not borne out of the reliefs sought for by the appellant.”*⁵⁰ The court held that based on section 46(1) and (2) a High Court, such as the trial Court albeit, the Federal High Court, has an original jurisdiction to hear and determine any application made to it pursuant to the provisions of section 42(1) and (2) of the same Constitution, premised on Chapter thereof, that an applicant’s fundamental right has been or is being or likely to be contravened by any person.⁵¹

By this, the Court of Appeal held that the NICN does not have nor exercise exclusive original civil jurisdiction over fundamental human rights disputes arising from or relating employment. This is so despite the clear and unambiguous provisions of section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 as well as section 12 (1) (2) of the National Industrial Court Act, 2006 which have bestowed exclusive original civil jurisdiction over Chapter IV of the Constitution on the NICN. At this juncture, it is considered apposite to reproduce verbatim, the provision of section 254C (1) (d) of the Constitution. It provides that “notwithstanding the provisions of sections 251, 357, 272 and anything contained in the Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this

⁴⁹ *ibid* at 402, Para. B.

⁵⁰ *ibid* at 403, Para. F.

⁵¹ *Mrs. Gloria Lewechi Onyiriuka v. Attorney General of Enugu State* [2020] 11 NWLR (Pt. 1735) 383 at 404, Paras. G-H.

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Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court has jurisdiction to hear and determine.”

The opening portion of the section has subjected the jurisdiction of the Federal High Court, High Court of the Federal Capital Territory, Abuja and the various State High Courts to that of the NICN, for all intents and purposes that the jurisdiction donated to the NICN shall be exercised notwithstanding that conferred on these other courts. As far as labour related fundamental rights disputes are concerned, the jurisdiction hitherto enjoyed over such by the FHC, HCFCTA and SHC has been sequestered by the clear provision of the section. Thus, from 2010, it is the NICN that has exclusive jurisdiction over such disputes as this is the reasonable inference to be made from the provision. It is hardly, if not impossible, to justify the rationale for the court's decision.

Section 46(1) cannot be used as the basis for its decision that the FHC had the requisite jurisdiction to entertain the dispute. In the interpretation of statutes, especially the Constitution, the law is that clear and unambiguous words should be ascribed their ordinary grammatical meaning unless doing so would lead to absurdity.⁵² This is the literal rule of interpretation which requires that there should be no attraction, subtraction or extension of such a clear statutory provision.⁵³ We submit that the provisions of section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 are clear and unambiguous and the Court of Appeal ought to have given them their ordinary grammatical meaning. Moreover, doing so is incapable of leading to any absurdity. It would seem that the intention of the draftsmen from the comprehensive manner in which the aforementioned section of the Constitution was couched, was that all labour and employment

⁵² *Calabar Central Co-operative Thrift & Credit Society Ltd. & Ors. v. Bassey Ebong Ekpo* [2008] 1-2 SC 229 at 252; *Balonwu v. Governor of Anambra State* [2010] All FWLR (Pt. 503) 1206 at 1240, Paras. A-C.

⁵³ *Mbilitem v. Unity Kapital Assurance Plc.* [2013] 32 N.L.L.R. (Pt. 92)196.

disputes, irrespective of their nature, be litigated at the NICN and not another court.⁵⁴

The duty of the court is to declare the law as laid down by the legislature and not to rewrite it under the guise of interpretation. Just as blood is vital to the human body, so is jurisdiction to the process of adjudication hence, it must be guarded jealously. The jurisdiction of a court is fundamental because it is intrinsic to adjudication, it can be raised at any point of the proceedings even at the Supreme Court on appeal for the first time. Thus, once the same is raised, irrespective of the manner it was raised, courts are enjoined to keep at abeyance further proceedings and determine it one way or the other.⁵⁵ The rationale for this is that, any proceedings, no matter how well conducted, once it is in want of jurisdiction, is a nullity.⁵⁶

3.0 CONCLUSION AND RECOMMENDATIONS

Prior to the enactment of the 1999 CFRN (Third Alteration) Act, 2010, the NICN had been emerged and submerged in jurisdictional and constitutional debacle as its status and stature as a SCR remained contentious. However, the Third Alteration Act, settled the issue. The Court of Appeal decision in the *Onyiriuka's Case* is diametrically opposed to the clear provisions of section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 which confer exclusive original civil jurisdiction to the NICN over disputes pertaining to or arising from the provisions of Chapter IV of the Constitution. The phraseology of section 254C (1) is so vociferous that notwithstanding anything to the contrary in the Constitution, the exclusivity of the original civil jurisdiction conferred on the NICN is sacrosanct,

⁵⁴ B Atilola, M Adetunji & M Dungeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010: A Case for its Retention" (2012) 6(3) *Nigerian Journal of Labour and Industrial Relations*, 5-9.

⁵⁵ *Aremu v. Adekanye* [2004] 13 NWLR (Pt. 891) 972.

⁵⁶ *Oloba v. Akereja* [1988] 3 NWLR (Pt. 84) 508.

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absolute and untrammelled. Thus, the decision was reach *per incuriam* and does not constitute a binding precedent and it can and should be distinguished.

The decision is a violent usurpation and somewhat sequestration of the NICN's exclusive original civil jurisdiction which has ripple effects on its mandate and adjudication of labour and employment disputes in Nigeria. The decision is not compliant with the principle of law that where there are two conflicting provisions in a legislation, the latter provision supersedes since it was made with the awareness of the earlier one. The NICN is a specialized court which deals with sensitive and seemingly volatile matters which are capable of affecting the society if exposed to the technicalities in the regular court hence, its jurisdiction should be jealously guided and guarded by the court and the appellate court.

Gleaning from the findings above, it is recommended that the NICN should adopt the principle of distinguishing where a similar situation like the one in the case arises since the decision in the instant case was reached *per incuriam* hence, it is not bound to follow it. Following the decision slavishly is capable of leading to unintended consequences thus, it has to resist the urge.

There is a dire need for the Court of Appeal, as a policy making court on civil appeals from the NICN whose decision on such appeals are final, to set aside its decision in the case examined as it does not represent the correct position of the law and it is capable of disrupting the jurisdiction of the NICN with unintended adverse consequences.

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