

Revisiting the Controversies on the Jurisdiction of National Industrial Court of Nigeria over Labour-related Human Rights Matters

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Abstract

“If we would have new knowledge, we must get a whole world of new questions”

Susanne K. Langer

The advent of the Third Alteration Act ushered into the Nigerian corpus juris fundamental provisions which inter alia laid to rest the long jurisdictional debacle over the scope of the powers of the National Industrial Court (NIC) on labour-related human rights matters. By the said amendment, the National Industrial Court was empowered to entertain fundamental rights action arising from labour-related matters. However, despite this amendment certain limitations still persist which creates confusion for the courts and in some circumstances deprives genuine litigants the opportunity of having their genuine labour related fundamental rights cases ventilated before the NIC, which was meant to adjudicate on such subject matter. On the other hand, the applicability of the trail blazing Fundamental Rights (Enforcement Procedure) Rules (FREP Rules) in proceedings commenced before the NIC has been perpetually faced with legal logjam despite predating the Third Alteration Act. The research employs an in-depth analysis of existing legal framework and decided cases in fundamental rights cases and attempts a rethinking of the existing framework over labor related fundamental rights action. The research question widely held views and grey areas thereto, in furtherance of making a case for the expansive and unlimited jurisdiction of the NIC over labour-related fundamental rights actions. Reliance will be placed on some decided cases from the apex court on the need to adopt an expansive interpretation of the Constitution on fundamental rights suit to meet the course of justice. To this end, this paper critically appraises the jurisdictional scope of the National Industrial Court in labour related fundamental rights issues with a view to proffer recommendations for reform.

Keywords: National Industrial Court, Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, fundamental rights, interpretation, application and enforcement, jurisdiction, authority, Supreme Court, judicial powers.

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INTRODUCTION

The *Fundamental Rights (Enforcement Procedure) [1] Rules (FREP Rules)* was remarkable for the innovative reforms and uninhibited access to justice it introduced for aggrieved litigants before the State, Federal and FCT High Courts in matters pertaining to breach or threatened breach of the provisions of chapter 4 of the Constitution [2]. The new Rules was marked with a palpable increase in relation to unlimited access to courts by labour unions, leaders, members and workers in the

bid to protect and preserve their fundamental rights within the workforce [3].

Barely two years after, the Third Alteration Act introduced salient provisions amongst which were the provisions on the exclusivity of the National Industrial Court on all labour-related matters. The amendment divested the hitherto State, Federal and FCT High Courts of all adjudicatory powers over fundamental rights suit arising from labour matters which involve the interpretation and application of

any of the provisions of chapter 4 of the Constitution vesting same on the NIC.

However, the exclusive jurisdiction vested on the NIC is not without legal concerns such as the applicability of the FREP Rules before the NIC in view of the wording of the provision of Section 46 (1) [4] and the constitutional circumscription which stipulates that the human rights jurisdiction vested in the NIC only pertains to “any dispute over the interpretation and application of the provisions of Chapter IV” [5].

An attempt is made to examine in-depth the jurisdictional scope of the NIC on labour-related fundamental human rights. The work is divided into two distinct parts – the present state of the law and a rethinking of the law. A critique of the existing legal framework would be made, and solutions proffered for a departure.

DEFINITION OF TERMS

Jurisdiction

A starting point is the definition of certain key terms. Due to the paramountcy of the word “jurisdiction” to this work, it will be ideal to define it. Generally, jurisdiction is the power denoted by a statute to a court of law to enable it exercise judicial authority over a subject matter. It is the lifeline of any judicial adjudication without which the entire suit is a nullity no matter how well conducted [6].

In **ESABUNOR & ANOR v. FAWEYA & ORS** [7], the Supreme Court per **OLABODE RHODES-VIVOUR J.S.C.** held thus: “In the recent case of Jurisdiction is a threshold matter. It is fundamental to adjudication and it is usually conferred on the Court by the Constitution or Statute. It is the foundation on which the Court exercise judicial powers” [8].

Fundamental Rights

The Constitution did not define the term “fundamental rights”. However, the FREP Rules, defined ‘Fundamental right’ to mean “any of the rights provided for in Chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples Rights (Ratification and

Enforcement) Act”[9]. In the locus classicus case of **RANSOME-KUTI V. ATTORNEY GENERAL OF THE FEDERATION** [10], Eso JSC (of blessed memory) stated that a fundamental right “**is a right which stands above the ordinary laws of the land and which are in fact antecedent to the political society itself**” and “**it is a primary condition to civilized existence**”[11]. The FREP Rules expanded the interpretation of fundamental Rights to include any of the rights stipulated in the African Charter [12].

Interpretation, Application and Enforcement

The word to **interpret** according to **BLACK'S LAW DICTIONARY** [13] means “To construe; to seek out the meaning of language; to translate orally from one tongue to another”. ‘**Interpretation**’ [14] means “The art or process of discovering and expounding the intended signification of the language used in a statute, will, contract”. To ‘**apply**’ [15] means “To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some ...”. ‘**Application**’ [16] is defined in the following words “A putting to, placing before, preferring a request or petition to or before a person. The act of making a request for something”.

On the other hand, to **enforce** [17] means “to put into execution; to cause to take effect; to make effective; as, to enforce a writ, a judgment, or the collection of a debt or fine” and **enforcement** is defined as “making sure a rule or standard or court order or policy is properly followed”.

The above definitions would be put into consideration whilst discussing the nitty-gritty of the subject matter. The research shall now examine the legislative framework over the jurisdiction of the NIC on labour-related human rights matters.

LEGAL FRAMEWORK

The legal framework for the jurisdiction of the NIC over labour-related matters can be found in the Constitution [18] Section 254C (1) d) [19] essentially denoted to the National

Industrial Court (NIC) the statutory powers to entertain actions bordering on the interpretation and application [20] of the provisions of Chapter IV of the Constitution with regards to employment, labour and industrial relations.

Section 254C (1)d) of the Constitution provides as follows:

“Notwithstanding the provisions of Section 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-(d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relation, trade unionism, employer’s association or any other which the court has jurisdiction to hear and determine.”

The effect of the word ‘notwithstanding’ in the above section presupposes exclusivity. Indeed, the constitutional endowment of the power bestowed lavishly upon NIC, for good reasons, makes it *ex abundanti cautela* that notwithstanding the provisions of Sections 251, 257 and 272 of the Constitution, the NIC shall exercise the powers enumerated in Section 254C(1)d.

The apex court in **N.D.I.C. v. OKEM ENTERPRISE LTD & ANOTHER** [21] held *inter alia* that:- "When the term "notwithstanding" is used in a section of a statute, it is meant to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself."

Commenting further on the above section, His Lordship, **JIMI OLUKAYODE BADA JCA** in the case of **IDO LOCAL GOVERNMENT v. HONOURABLE EMIOLA MUSIBAU & ORS** [22] stated thus: “It follows that, as used in Section 254(C)(1) of the 1999 Constitution, no Provision of that Constitution shall be capable

of undermining the said section. Put in other words "Notwithstanding" used in Section 254C(1) of the 1999 Constitution means that no provision in the Constitution itself or any statute or legislation shall be allowed to prevail over the Provisions of Section 254C(1). Notwithstanding is a term of exclusion. The effect of Section 254C(1)(k) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is to oust the jurisdiction of any other Court to adjudicate on matters listed in the Section.”

A similar provision as contained in Section 254(C) (1) above was provided for in 7(1) of the National Industrial Court Act, 2006, to wit:

7(1) 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. relating to 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 organisational dispute.
 - iii. the terms of settlement of any labour dispute or organisational dispute as may be recorded in any memorandum of settlement.
- iv. any trade union constitution; and
- v. any award or judgment of the Court.

PRESENT STATE OF THE LAW **Jurisdiction of the NIC on Labour-Related Fundamental Rights Actions**

There is a remarkable difference between the jurisdiction conferred on the NIC and High Court on labour-related human rights action. From the provision of Section 254C(1)d, NIC

has limited jurisdiction on labour disputes relating to the provisions of Chapter IV of the Constitution.

The law is now trite that the jurisdiction of the NIC is only in respect of disputes over the interpretation and application of the aforementioned labour-related issues as opposed to the enforcement of fundamental rights provisions contained in chapter IV of the Constitution [23]. Whilst NIC is vested with jurisdiction on labour-related action for purposes of interpretation and application of the provision, the High court of States of the Federation, Federal High Court and Federal Capital Territory High court, exercise jurisdiction when the labour-related action is squarely for enforcement of provisions of chapter IV of the Constitution.

It is now trite that the tripartite grounds for invoking the exclusive jurisdiction of NIC on fundamental rights suit are:

1. The dispute must have arisen in civil causes and matters
2. The dispute must only be for the interpretation and application of provisions of Chapter IV of the Constitution
3. The said interpretation and application above, would only be limited to employment, labour, industrial relation, trade unionism, employer's association related matter.

It follows that the NIC would lack the jurisdiction to entertain a civil action which is a fundamental right in nature but unconnected with labour-related matters. To put more succinctly, the NIC is only given powers under Section 254C (1)d) Constitution to ascertain the meaning of fundamental rights principles and apply them on matters relating to employment and workplace issues.

Can NIC Adjudicate Over Labour-Related Fundamental Rights Actions Commenced Under the FREP 2009 Rules?

The FREP Rules excluded NIC as a 'court' [24] for the purposes of the enforcement of fundamental rights. It is pertinent to state here that this provision of the FREP Rules was in

existence prior to the Third Alteration Act. However, the inception of the Third Alteration Act witnessed radical changes to the hitherto constitutional history of the NIC. The Third Alteration brought with it sweeping provisions whilst inter alia elevating the status of the NIC to a superior court of record [25].

The Third Alteration Act did not lay to rest this limitation placed on the NIC by the FREP Rules [26]. Thus, despite having all the powers of a High Court, the NIC is not specifically mentioned as a court for the purposes of enforcement of "any right to which the person who makes the application may be entitled under the Chapter IV" [27]. It follows that actions commenced under the FREP Rules strict usensuare only for the enforcement of fundamental rights. In actual fact, the long title of the Rules as 'Fundamental Rights (Enforcement and Procedure) Rules' makes this glaring when it deliberately eliminated the phrase - 'interpretation and application'.

The point being driven herein is to the effect that notwithstanding that the NIC has all the inherent powers of the High Court as provided in Section 254(d) of the Constitution, such powers do not cloth the NIC with jurisdiction over actions commenced under the FREP Rules, having not been imbued with the powers of 'enforcement' of human rights by the Constitution. In fact, it has been held that jurisdiction is not to be equated with power [28]. The NIC has held that section 254C(1)(d) of the Constitution cannot be used as the basis of filing claims under the Fundamental Rights (Enforcement Procedure) Rules [29].

The NIC is not empowered to enforce human rights even if it relates to labour and employment issues. Accordingly, in so far as it involves 'enforcement', the NIC would be bereft of jurisdiction to entertain same.

The Court in *Senior Staff Association of Universities' Teaching Hospitals Research Institutes and Associated Institutions (S.S.A.U.T.H.R.I.A.I)* [30] case held that an action for fundamental rights cannot be commenced in the NIC vide the FREP Rules.

In the words of the Learned Law Lords of the Appellate Court:

It is clear, therefore, that the National Industrial Court...has limited jurisdiction on disputes relating to the provisions of Chapter IV of the said Constitution. This is because of the clear and unambiguous provisions of section 254C(1)(d) of the amended Constitution.

In a limited sense, therefore, the jurisdiction of the National Industrial Court is only in respect of disputes over the interpretation and application of the provisions of Chapter IV of the Constitution and not the enforcement of the rights specified under the Chapter.

The National Industrial Court has no jurisdiction to hear and determine the appellant's originating application for the enforcement of their specified fundamental rights as enshrined in Chapter IV of the Constitution [31].

CRITIQUE OF THE LAW

With due respect to the Learned Law Lords of the Appellate Court in the above case of **S.S.A.U.T.H.R.I.A.I.**, it is submitted that the position that an action cannot be commenced by FREP Rules in NIC for enforcement of labour-related fundamental rights, does not represent the true position of the law.

Firstly, it is pertinent to state here that the mere fact the FREP Rules excluded the NIC as a court for the purposes of enforcement of fundamental rights cannot be the basis for the exclusion of NIC from the enforcement of fundamental rights contained under chapter 4 of the Constitution. The non-inclusion or contemplation of the NIC as a High Court in the FREP Rules does not ipso facto limit or circumscribe the powers of the NIC, which is a creation of the Constitution [32]. It is submitted that in hierarchy of laws, all legislations and Rules of court derive their potency and validity from the Constitution [33] and not vice versa. Jurisdiction of NIC is neither implied nor inferred, it is conferred by Statute as in this circumstance, the Constitution [34].

Secondly, the exclusion of powers of the NIC with regards to the enforcement fundamental rights would [35] only be justified within the precincts of the Constitution and not otherwise. It is of no moment that the FREP Rules excluded a particular court from exercising certain jurisdiction when for instance the same court has been constitutionally imbued with the same power purportedly excluded from it by the FREP Rules [36]. Thirdly, it is certainly not the law as we shall later see that NIC was not contemplated as a High Court in Section 46 and as such cannot entertain actions commenced under FREP Rules [37].

Fourthly, it is submitted that in so far as the provision of the Constitution did not (as shall be demonstrated) limit the NIC in labour-related fundamental rights, it would be sheer resort to technicality or at best academic exercise to purport to strip the NIC of its constitutionally imbued jurisdiction over labour-related fundamental rights suits irrespective of whether it is for 'interpretation and application' or for 'enforcement' of the provisions of chapter 4.

The FREP Rules, most assuredly, can legally be utilized by a litigant at the NIC for the purposes of ventilating his grievances in interpretation, application and enforcement of any provision of chapter 4 of the Constitution. All that is required is for the main claim commenced vide FREP Rules at the NIC to be labour-related, founded upon the provisions of the chapter 4 in addition to the tripartite consideration discussed earlier.

Again drawing strength from the above, an action can be validly instituted at the NIC vide the FREP Rules in a labour-related matter for the purposes of interpretation and application of provision (s) of chapter 4 irrespective of the fact that the provision of Order 2 of FREP Rules did not literally include NIC as a High court and this would in no way offend Section 46 of the Constitution [38]. More so, there is no express prohibition of the FREP Rules applicability in the NIC whether for enforcement or for interpretation and application as erroneously believed.

The research shall now closely determine whether NIC is a High court before unraveling whether there is any difference in ‘interpretation and application’ and ‘enforcement’ as used in Section 254C (1).

IS THE NIC A HIGH COURT AND SUPERIOR COURT?

A proper understanding of the status of the NIC on whether it is a High Court and a superior court of record is essential for a successful discourse hereunder.

Though the constitution did not define a High Court, it however made provisions [39] for the creation of Federal High Court, Federal Capital Territory High Court and the High Court of States respectively. It would appear ex facie that Section 46 of the Constitution did not include the NIC as a ‘High’ Court. Section 46(1) provides that: Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

In the case of **ABUNKU v. BENUE STATE GOVT. & ORS.**, [40] the NIC held that:

Just like originating motion is not contemplated as one of the modes in commencing action in this court, the National Industrial Court (NIC) was not contemplated as a High Court under the fundamental right enforcement procedure rules. Moreover when the Chief Justice of Nigeria (CJN) made the 2009 Rules in accordance with Section 46(3) of the 1999 Constitution the National Industrial Court (NIC) Act, 2006 was in existence and no mention was made of it to accommodate the jurisdiction of National Industrial Court (NIC) over fundamental right procedure [41].

With due respect, it is submitted that it would be incorrect to posit that the NIC is not a High Court merely because the court was not mentioned in Section 46(1) of the Constitution [42] as a combined reading of the provisions of Sections 6(1),(2), 254A(1) and 254D(I) of the constitution would leave no one in doubt that the draftsmen clearly intended the NIC as a High court[43].

Section 254D(I) of the Constitution provides that for the “purpose or exercising **any jurisdiction conferred upon it by this Constitution** or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court” [44] (emphasis mine).

It simply means that where the NIC is exercising any of its jurisdiction whether in the expansive jurisdiction on labour disputes or on the narrow compass of interpreting and application of labour-related fundamental rights, it is imbued with all the powers of a High Court.

What then is the actual purport of Section 46(1)? The provision of Section 46(1) contemplates an action seeking remedy over **breach or threatened breach of fundamental rights**. This has erroneously been viewed as accommodating only remedies for **enforcement** and not remedies for **interpretation and application** of labour-related human rights breaches or threatened breaches. Going by the wordings of Section 46(1) of the Constitution, it is absolutely possible to have a breach or threatened breach upon which a suit may be commenced at the NIC for purposes of interpretation and application of an employee’s fundamental right.

For instance in a situation where a clearly biased director of a government department, who has consistently accused an employee of being unable to perform her official duties on the ground that she is a **woman and lazy native of a particular Nigerian tribe**, thereafter the said director proceeds to constitute a Panel by himself and another, to be headed by himself alone for the employee to appear before the said Panel on allegations bothering on non-performance of her duties. Such an employee may either take preemptive action in view of the threatened breach or may wait to contest the bias constitution of the Panel (after its tainted verdict) vide an action for the **interpretation and application** of the constitutional provisions on dignity of human person and right against discrimination (on ground of tribe or race). In such

circumstances, it would be standing the law upside down to argue that the employee cannot seek **redress** in NIC on the premise that NIC is not contemplated under Section 46 or that the NIC is stripped of jurisdiction because Section 46(1) did not supposedly mention the NIC in the said provision.

It is pertinent to state that the clear wordings of Section 46(1) did not restrict its applicability only to the circumstances where a court is exercising the jurisdiction on **enforcement** neither did the provision limit applicability of the provision to circumstances of **interpretation and application** [45].

It must also be pointed out that Section 254C(1) which is the jurisdictional provision, was not made subject to Section 46 of the Constitution. In fact, by the tenor of Section 254C(1) and the word - 'notwithstanding', the provision of Section 46 is made subject to Section 254C and the latter has overriding effect on every other provision in the Constitution that appears to circumscribe its expansive reach on the items enumerated thereunder. The Constitutional provision of Section 254C which denoted jurisdiction to the NIC cannot be qualified by a subsequent subservient provision to it. Where the draftsmen intended the provision of Section 254C to have been confined and conditioned by Section 46, they would have clearly stated so. It would be unsafe to read into Section 46(1) what the draftsmen have neither provided nor intended.

On the other hand, the status of a court goes to the scope of the jurisdiction and powers it can exercise. Speaking on the effect of an inferior court [46] at common law, Aturu opined as follows:

Firstly, an inferior court is subject to the supervisory jurisdiction of the superior courts. In other words, its processes can be controlled by judicial review. Thus, a High Court, which is a court of superior record may prohibit the NIC from sitting on a matter if it is of the opinion that the NIC is likely to exceed its jurisdiction. Its proceedings may also be quashed by an order of certiorari. Second,

inferior courts at common law do not have the power to punish for contempt as such [47]

The Constitution did not define a superior court but designated superior courts of record in Section 6 (3) and (5)(a) – (i) of the Constitution. A combined reading of the provisions of Sections 6(1), (3), (4) and (5)cc of the constitution would clearly reveal that the NIC was bestowed from its creation with the status of a superior court of record [48].

Furthermore, the Appellate court in S.S.A.U.T.H.R.I.A.I case [49] would appear to have made heavy weather on the phrase 'interpreting and applying' as used in Section 254C(1)d of the Constitution.

The research shall now closely consider the phrase 'Interpretation and Application' in juxtaposition to the word 'enforcement' bearing in mind our earlier definitions of the duo in the preceding paragraph.

Interrogating the Status Quo: Interpretation and Application Under Section 254C (1)D of the Constitution

A community reading of the provisions of Section 6(1) – (5)cc, 46(1) and 254C(1)d of the Constitution, would reveal that the draftsmen vested special exclusive jurisdiction in human rights cases relating to labour and employment matters in the NIC.

In practical sense, the distinction between the phrase 'interpretation and application' on one part and 'enforcement' on the other part, is a needless distinction. The truth remains that the distinction is cosmetic because generally, what a court of competent jurisdiction is faced with whenever its adjudicatory powers is invoked in relation to any action on fundamental rights, encompasses the art of 'interpretation, application and enforcement'. The inquiry and consideration of legal principles, case laws and marriage of same with the facts by the Judex, unfortunately dovetails to an enforcement of the said interpreted and applied provisions. Irrespective of the ingenuity employed in the denial of such reality, the unimpeachable truth is that whenever a court is constituted for the purposes of fundamental rights suit (labour or

non labour related), it embarks on an interpretation, application and enforcement of the provision of chapter 4.

The above phrase and word are knitted or interwoven. They are inseparable and in fact, akin to the famous 'six of one, half a dozen of the other'. Perhaps, if there is any distinction, it may be to the extent that one precedes the other i.e 'interpretation and application' of the provision of chapter 4 precedes eventual 'enforcement' of same.

The following posers would be used to underscore the points submitted above, to wit:

- a. Is it practicable to have a civil cause and labour-related matter which seeks solely 'enforcement' of provisions of Chapter IV of the Constitution without the Judex embarking on an 'interpretation and application' of the said provisions?
- b. In other words, can there actually be an enforcement of the fundamental rights without an interpretation and application of the requisite constitutional provisions and the principles thereto to the issues submitted before the court?
- c. Would NIC in the course of interpreting and applying the provision of chapter 4 with regards to labour matters not make requisite orders which would bring to affect the constitutional provisions so interpreted and applied to the given circumstances?
- d. Would such orders made in the circumstances of sub (c) above not qualify in all ramifications as an enforcement of the already interpreted and applied rights?
- e. To put differently, would the NIC after interpreting and applying the provisions of chapter 4 on labour-related matters, decline to make orders only to refer the parties to a State High Court or Federal High Court within jurisdiction or FCT High Court for the purposes of supposed enforcement of the rights so interpreted and applied by the NIC?
- f. In all ramifications, is the art of interpretation and application by NIC not tantamount to an enforcement of the fundamental rights of the Applicant?
- g. What the regular court does in the course of enforcing a fundamental right does it not involve firstly interpreting the applicable provision of chapter 4 and the

principles contained therein and applying same to the dispute presented to the court and consequently making orders or declarations in furtherance of preserving and enforcement of such rights?

- h. Would it then not be hypocritical to say that High Courts (i.e, distinct from NIC) do not interpret and apply provisions of chapter 4 when an action for enforcement is brought before them?

The answers to the above posers are to the effect that a court of law exercises the judicial functions of enforcement of constitutional provision in chapter 4 on labour-related human rights the moment it embarks on interpreting the said provision and applying same to the facts of the case so presented.

RECOMMENDATION

Having considered the jurisdictional controversy, the NIC was embroiled with, the following are herewith recommended:

1. Judicial pronouncements by the apex court sanctioning the commencement of an action vide FREP Rules in the NIC with regards to interpretation, application and enforcement of any of the provisions of chapter 4 of the constitution would lay to rest the debate and prepare fertile ground for consequent commencement of amendment by the law makers. .
2. An alteration of the provision of Section 254C (1)d) of the Constitution to read as 'interpretation, application and enforcement' to further eliminate any confusion thereto. Where the phrase 'interpretation, application and enforcement' are affected vide an amendment, such would take absolute precedence over any contrary provisions contained in the FREP Rules, case laws or any other law, Statute and subsidiary legislation.
3. Flowing from the preceding paragraph, an amendment of Section 7(1) of the National Industrial Act 2006 to reflect the new worded phrase: 'interpretation, application and enforcement'. The NIC Rules in Order 3 Rule 2 (1) [50] to also reflect this phrase and additionally include originating motion on notice, motion on notice or any means permissible under the FREP Rules 2009 and its subsequent amendment, as

- valid means of commencing an action for ‘interpretation, application and enforcement’ of labour-related fundamental rights actions before the NIC.
4. The FREP Rules should also be reviewed [51] by the Hon Chief Justice of Nigeria to clearly include NIC in Order 2 of the FREP Rules as a High court for the purposes of ‘interpretation, application and enforcement’ of fundamental rights on labour-related matters. In fact, a starting point would be amendment of the title of the existing FREP Rules to read ‘Fundamental Rights (Interpretation, Application and Enforcement Procedure) Rules’, ‘FRIAEP’ Rules as acronym.
 5. There is room for judicial activism. Whilst awaiting a decision of the apex court and/or a reflection of the above proposals in our corpus juris, it is suggested that when the NIC is faced with a consideration of whether an action was properly commenced at the NIC for enforcement of human rights suit vide FREP Rules or otherwise, the court should endeavor to determine IF the action was a civil matter, primarily labour-related and principally to ventilate breach of any provision of Chapter 4, these without more should suffice to invoke the jurisdictional competence of the NIC over the subject matter.

The court must always bear in mind that the moment an action is commenced for the purposes of the rights enshrined in chapter 4 of the constitution, the special jurisdiction of the court is automatically invoked in such sui generis proceedings which seeks adjudication over the said preserved rights. The Judex is expected not only to be flexible but firmin order to give effect and impetus to the said provisions rather than been swept into the dungeon of technicality over the perceived difference in ‘interpretation and application’ and ‘enforcement’.

Once the principal reliefs sought in the action can essentially and properly be brought under the provisions of chapter IV and the infractions clearly emanated from employment and labour-related matters, it follows that the NIC would be imbued with

the requisite jurisdiction to entertain the action, as the condition precedent for the exercise of jurisdiction by the Honourable have been fulfilled.

However, where the main claim is founded on a labour-related subject matter such as a wrongful dismissal and the ancillary issues of fundamental rights breaches or threatened breach form part of facts leading to the wrongful dismissal, the Applicant is permitted by law to commence his action before the NIC. This is premised on the ground that the NIC is the court with the fuller jurisdiction to hear the main claim and it is immaterial that the ancillary issue of breach of fundamental right was intricately connected and led to the main suit of wrongful termination.

The court in **DAPAAH & ANOR v. ODEY** [52] was faced with the same issue. In that case, the Respondent was engaged by the 2nd Appellant as Project manager, Entrepreneurship and Gender Equality with the 2nd Appellant. She was given a fixed-term employment contract and conditions of service which included oversea staff handbook containing prevention of workplace harassment policy, all were tendered in evidence. In the course of her employment the 1st Appellant made sexual advances, passes and explicit sexual overtures towards the Respondent but all were rebuffed on every occasion. The advances continued and they had an open confrontation. The situation got worse when the Respondent delivered to the 1st Appellant an invitation to her wedding, the 1st Appellant got angry and 4 days after she handed the 1st Appellant her wedding invitation card, the 1st Appellant asked the Respondent to resign but the Respondent refused and 14 days later she was served a termination letter and her employment was eventually terminated. The Respondent commenced an action seeking declarations to the effect that the termination was contrary to the terms stipulated in the 2nd Appellant’s condition of service and also that the victimization, sexual harassment and subsequent termination was malicious, unlawful and unconstitutional. Damages were also sought by the Respondent.

The trial court found in favour of the Respondent and granted the reliefs sought by the Respondent. Aggrieved by the decision of the lower court, the Appellant appealed to the Court of Appeal. The Appellate Court upheld the decision of the Learned Trial Court. His Lordship, YARGATA BYENCHIT NIMPAR, J.C.A. in resolving this issue captured the position of the law succinctly in the following words:

- The trial Court therefore can within a claim arising from employment or a claim related to where those rights are intricately connected and to which workplace related
- Issues arise have jurisdiction [53].

It is submitted that in such circumstances, it would be ideal for the Applicant to utilize the form of complaint [54] in litigating his action as opposed to using motion on notice or originating motion on notice under the FREP Rules in order not to shortchange self in adducing evidence in the contentious issues of wrongful termination.

The researcher entirely agree with the decision of the Learned Law Lords in DAPAAH'S case, however, in the context of our discussion, the case readily presents the difficulty or futility in attempting a distinction of when an action is for 'interpretation and application' and when it is for 'enforcement'. Would it then be said that what the Learned Law Lords did was only an interpretation and application of the provisions of chapter 4? of course NOT. The interpretation and application of the provisions of right to dignity and freedom from discrimination in chapter 4 were consummated with the enforcement of those sacrosanct provisions of the constitution in favour of the Respondent. The Learned Law Lords properly interpreted, applied and enforced the extant provisions of chapter 4 in favour of the Respondent.

Similarly, in **ESIRI v. GUINNESS NIG. PLC** [55], the Claimant sued the Defendant for breach of rights to privacy and dignity respectively and the claim for refund of medical expenses during Claimant's employ. The Defendant vide its Preliminary objection (PO) sought the court to decline jurisdiction on the ground that the suit sought to **enforce** the

fundamental rights at the NIC. The court refused the PO on the ground that the suit sought was an action for the interpretation and application of the said rights. Subsequently, judgment was partly given in favour of the Claimant. Though the researcher prosecuted the suit for the Claimant, it is pertinent to state here with due respect to the erudite Law Lord that the matter was not only for the **interpretation and application** of the said rights. It is submitted that what was presented before the court was a suit for the **interpretation, application and enforcement** of the said provisions of chapter 4 and by assuming jurisdiction in that case, the court was exercising its judicial functions of interpreting, application and enforcing the provisions of chapter 4 of the Constitution as required by law.

Alternatively, rather than striking out a labour-related action commenced under the FREP Rules for enforcement of fundamental rights in the NIC, the court may deem such an action as properly commenced under its Rules and inherent powers. The NIC by its Rules reserves the right over the exercise of its discretion on the applicability of its own Rules, which would not sacrifice genuine claims of labour-related fundamental rights on the altars of technicality [56].

Also, the court may invoke any applicable ratified international convention, treaty or protocol under Section 254C (2) of the Constitution to sustain the action rather than striking the same out. Commenting on Sections 254C (1), (f), (g), (h), (i) and 254C (2) of the Constitution, Agomo stated as follows:

These provisions raise the hope and expectation that technical and literal modes of interpretation will not be used to defeat the spirit and intendment of international conventions, treaties and protocols which Nigeria has ratified, by insisting that each of those instruments must be domesticated under section 12 of the Constitution [57].

The view to eschew technicality is well represented in case laws, perhaps most notably in the expression of the apex court in **SPDC & ORS v. AGBARA & ORS** [58] per MUHAMMAD J.S.C., that: "It is settled law

that a court of law will not allow the provisions of an enactment to be read in such a way to deny access to court by citizens. Thus, it is not the intention of the law to deny any litigant access to justice. A rule of courts stands to guide the court in the conduct of its business, and I must not hold as a "mistress" but as a hand maid." I commend the provision of Order 1 Rule 9(3) [59] with its express abhorrence of technicality in the following words: "The Court may disregard any technical irregularity which is likely to result in a miscarriage of justice" [60].

It is further submitted that the form by which a fundamental rights action is commenced or manner it is couched paves into insignificance when it is juxtaposed with the nature of the hallowed rights sought to be protected and preserved by the suit. The basic consideration remains to ascertain whether a genuine action fully centered on a breach of fundamental rights arising from labour relations has been presented on the altar of justice.

The object of fundamental rights practice and procedure is to provide a simple and effective process for the ventilation of human rights without the regular cumbersome procedure and technicalities under the rules of the common law or other statutory provisions. When the gatekeepers are seen restricting the access of common and even the uncommon man to the Temple, then the gloomy days of technicality become inevitable.

The Supreme Court speaking with regards to the FREP Rules stated in the case of **FRN & ANOR V. IFEGWU** [61] per **UWAIFO, J.S.C.** that: "The manner in which the court is approached for the enforcement of a fundamental right is hardly objectionable once it is clear that the originating court process seeks redress for the infringement of the right so guaranteed under the Constitution. The court process could come by the Fundamental Rights (Enforcement Procedure) Rules or by originating summons or indeed by writ of summons: see *Saude v. Abdullahi* (1989) 4 NWLR (Pt.116) 387. That seems to underline the concerns in regard to redressing a contravention of a fundamental right by liberalizing the type of originating process without the person affected being inhibited by

the form of action he adopts. It is enough if his complaint is understood and deserves to be entertained."

More so, the drafters of the present NIC Rules were not oblivious of the existence of the FREP Rules and yet made specific provisions in the NIC Rules which do not conflict but compliment the FREP Rules for the purposes of advancing and never for restricting access to justice in the institution of actions bordering on human rights arising from labour relations.

CONCLUSION

In this paper, the researcher has questioned the existing legislative framework and approach of the NIC in declining jurisdiction over cases instituted at the NIC for the enforcement of labour related fundamental rights action on the basis that the court is not imbued with the powers to 'enforce' fundamental rights actions.

It is submitted that where an action before the NIC is labour-related (i.e arising from employment, labour, industrial relation, trade unionism, employer's association) and the principal claim ventilated involves a breach or threatened breach of the provisions of chapter 4 of the constitution, the NIC can be properly constituted to exercise jurisdiction whether for the purposes of interpretation, application and enforcement of the provisions of chapter 4 of the Constitution.

The researcher has proposed an amendment to the existing laws to finally lay to rest this jurisdictional debacle and has called for an expansive interpretation of the phrase 'interpretation, application and enforcement' by the NIC anytime as opposed to a restrictive interpretation, particularly in view of the sui generis nature of fundamental rights actions.

REFERENCES

1. Fundamental Rights (Enforcement Procedure) Rules, 2009.
2. Section 46(1) of the Constitution of the Federal Republic of Nigeria (as amended).
3. The pivotal role of workers in an economy cannot be underestimated. See Egerton E. Uvieghara, *Labour Law in Nigeria*, (Malthouse Press Limited, Lagos: 2001), p1.
4. Section 46(1) of the Constitution provides that "Any person who alleges that any of

- the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress”.
5. Ibid Section 254 (C)
 6. Owners of the M. V. Arabella V. N.A.I.C (2008) 11 NWLR (PART 1097) 182. See also Madukolu V. Nkemdilim (1962) 2 SCNLR 341
 7. (2019) LPELR-46961(SC).
 8. Ibid at Pp 15-16, paras G-H
 9. Supra note 1, Order 1 Rule 2
 10. (1985) LPELR-2940(SC)
 11. Ibid at 33-34, B-C. See also similar views by the following authors, Femi Falana, Fundamental Human Rights Enforcement in Nigeria, 2nd Ed, (Legal Text Publishing Company Limited, Lagos: 2010), 6; Chukwunono Daniel Ogbe, Enforcement of Fundamental Rights in Nigerian Courts, 2nd Ed, (Chudanog Publishers Limited, Enugu:2017) p1; Frank Agbedo, Human Rights Litigation in Nigeria: Law, Practice and Procedure, Unilag Press Ltd, Lagos: 2016), 4,6; Fred F. Odibei, Cases and Materials on Human Rights Law, (Pearl Publishers, Port Harcourt, 2011), 5,6,7 and Yinka Olomajobi, Human Rights and Liberties in Nigeria Discussions, Analyses and Explanations, (Princeton & Associates Publishing Co. Ltd, Lagos:2016) 1,2.
 12. Order 1(1) (b)
 13. Black's Law Dictionary Free Online Legal Dictionary 2nd Ed, <https://thelawdictionary.org>, last assessed 29/8/2019
 14. Ibid
 15. Ibid
 16. Ibid
 17. Ibid
 18. Sections 6(6)a) and (b) of the Constitution.
 19. Ibid Constitution
 20. In this work, I shall be addressing the question whether a limitation was intended by the wordings of Section 254C by the drafters of the Constitution
 21. (2004) 10 NWLR PART 880 PAGE 107
 22. (2019) LPELR-46941(CA) p11, para B-D
 23. Senior Staff Association of Universities' Teaching Hospitals Research Institutes and Associated Institutions v. OLOTU (no 2.) (2016)14 NWLR (Pt 1531) 8 at 18, paras G-H. See also Ayabam v. Benue State Government &Ors (2016) 64NLLR 438 at pages 469 – 471.
 24. Ibid (n 2), Order 1 Rule 2 defined ‘court’ to mean “the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja”.
 25. Ibid (n 1) Section 6(1)(2)(3) and (5) cc; Section 254C (1)d
 26. Ibid (n 2)
 27. Ibid (n 1) Section 46(2)
 28. See Ajomale v. Yaduat& Anor [1991] LPELR-305(SC) para G-B, pp 8-9 per Karibi-Whyte, JSC
 29. See Comrade (Evang.) OlowoPreye Grace v. PENGASSAN & 3 ors unreported Suit No. NIC/EN/10/2011 delivered on July 5, 2011 per Justice B.B kanyip and Alhaji Lateef Akinsola v. NURTW &ors [2013] 33 NLLR (Pt. 96) 399.
 30. Ibid (n 18)
 31. Op cit at page 18
 32. Ibid (n 14)
 33. Ibid (n 1), Section 1(3). The provisions of Section 6(1), (2)(3), (5) cc and 254C (1)d of the Constitution is not subject to Order 2 of the FREP Rules.
 34. Ibid Section 6(1), (2)(3), (5)cc and 254C(1)d
 35. That is IF the exclusion was to be justified by law but in this circumstance, there is no basis in law and logic for such needless exclusion as shall be seen later in this discourse.
 36. The present author argues that though it appears literally that the word enforcement was absent in S. 254C(1)d of the constitution that it does not represent the position of the law to assert that by such, the NIC cannot entertain an action for enforcement of labour-related fundamental rights.
 37. Going by this generally held view, the position would not have changed IF the form of complaint under the NIC was used to commence an action for enforcement of the fundamental rights at the NIC, as the red flag is centered on the term enforcement. The point is that even if the action was commenced vide FREP Rules for enforcement of the rights, it would still have been faulted under the NIC.
 38. It will neither run contrary to the long title nor objective of the FREP Rules.
 39. See Sections 251, 255 and 270 of the Constitution.
 40. (2016) 65 NILR (Pt. 232) 613.
 41. Ibid at 649, paras E-F

42. Similarly, it would be turning logic on its head to argue that Federal Capital Territory High Court was equally excluded from the provision of Section 46 because the provision only referred to “a High Court in that State” as opposed to Federal Capital Territory High Court. Also, it would be illogical to state that the word ‘Federal’ was clearly missing in the said provision and cannot now be read to mean “a High Court in that State”, Federal High Court been a court for the federation with merely different divisions and not a state court.
43. Reliance cannot be placed on the definition of a ‘court’ as offered by Order 2 of FREP Rules to resolve this debacle as the FREP Rules cannot be used to limit powers denoted by the Constitution.
44. See also Section 6(3) of the Constitution.
45. Section 46(2) of the Constitution was made subject to the Constitution, inclusive of Section 254C (1).
46. Inferior courts are courts under Section 6(5) not designated by the Constitution as superior courts.
47. Aturu, Nigerian Labour Laws, Principles, Cases, Commentaries and Materials (Lagos: Friedrich Ebert Stiftung, 2005) p. 237
48. The High Court of the various States of the Federation, Federal High Court and the Federal Capital Territory High Court are divested the jurisdiction to adjudicate on labour-related fundamental rights action which seek only interpretation and application as opposed to fundamental rights action which seek enforcement remedies. How this fine distinction plays out is to date marred in controversies as would be examined at the tail of this work.
49. Ibid (n18)
50. National Industrial Court of Nigeria (Civil Procedure) Rules 2017. It must be pointed out that the manner Or 3 R 2(2)b of the NIC Rules is couched, it is doubtful if genuine cases of fundamental rights requiring the said interpretation and application can be granted the desired urgency being that a complaint would entail filing of written statement on oath which would be adopted at the hearing in the witness box as opposed to affidavit evidence that usually fits extreme emergency in human rights suit commenced vide motion on notice or originating motion on notice.
51. The last review was made in 2009
52. (2018) LPELR-46151(CA).
53. Ibid page 23, para F
54. This entitles the Applicant to lead oral evidence on his claims
55. Suit No: NICN/LA/72/17 – ESIRI v. Guinness Nig. Plc (unreported) delivered on 22/11/18 per His Lordship E. An Oji
56. Order 1 Rule 9(2) which provides that “These Rules are to be applied by the Court as it considers fit...”
57. Prof Chioma Kanu Agomo, Nigerian Employment and Labour Relations Law and Practice, (Concept Publications Limited, Lagos: 2011), p341
58. (2015) LPELR-25987(SC) at P. 63, Paras. C-E
59. NIC Rules
60. Compare the view of His Lordship B.B. Kanyip J in suit no: NICN/ LA/ 173/2017 - Manasse V. Sterling Bank Plc (unreported), delivered 16th February 2018 at Lagos division where the court stated “that one cannot file under the said Rules does not mean one has no remedy. The remedy can be accessed through other processes such as the writ of summons or complaint”. With due respect, it is opined that the nature of fundamental rights being sui generis in nature and most times requiring to be treated with urgency, the perceived error in the form used in the commencement should never be allowed to becloud the substance of the suit, which is for the preservation of the rights.
61. (2003) LPELR-3173 (SC)
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