

THE QUAGMIRE OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA'S EXCLUSIVE JURISDICTION OVER TORTIOUS LIABILITY EXAMINED

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Abstract

The National Industrial Court of Nigeria (NICN), under section 254C of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) has and exercises exclusive original civil jurisdiction over labor, employment, and ancillary matters pertaining to, arising from or relating to the employment. The Court of Appeal (CA) in Nigeria, whose determination on civil appeals from the NICN is final, has in one breath held that the NICN has jurisdiction over tortious liability arising, relating or pertaining to labour and employment and in another breath held that it does not. This has left that law on the issue in a state of flux. This paper, adopts desk-based method in interrogating whether or not the NICN has exclusive jurisdiction over tortious liability pursuant to section 254C (a) of the CFRN, 1999. While explicating the history of the NICN, this paper examines the impact of the subsisting contradictory judgments by the CA on the issue on Nigeria's labour jurisprudence. The paper argues that based on the clear and unambiguous provisions of the CFRN, 1999, the exclusiveness of the NICN jurisdiction over tortious liability is unmistakably clear thus, the contradictions by the CA, is unwarranted and capable of undermining the effectiveness and efficiency of the NICN. It calls on the NICN to side with the position of the CA that upholds its exclusive jurisdiction while discountenancing the discordant position in the interest of the predictability of adjudicatory outcomes.

Keywords: Court of Appeal, Defamation, Jurisdiction, National Industrial Court of Nigeria, Tortious liability

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1. Introduction

In employer-employee relations, there is bound to be conflict as the interests of the employer are not unlikely to conflict with those of the employees (Eyongndi and Oyagiri, 2019, Pp. 37-42). When such conflict occurs, it becomes inevitable to resolve them so that harmonious industrial relations can be fostered (Agomo, 2011, p. 318). The National Industrial Court of Nigeria (NICN) was created as a formalized avenue for the settlement of labor and employment disputes although, its evolutionary exodus, has been a tumultuous and cacophonous one (Nwagbogu, 2013, Pp. 21-34). Thus, section 254C (a) of the Constitution of the Federal Republic of Nigeria, 1999, in a wider scope than the provision of section 7 of the National Industrial Court Act, 2006 (NICA 2006), confers exclusive original civil jurisdiction on the NICN over labor and employment matters and ancillary matters arising from, relating to or pertaining to employment, labor or in related subjects. The implication of this is that any dispute that arises from a labor and employment relationship or contingent on it, irrespective of its nature, parties, or claim, the aforementioned section of the Constitution, requires that only the NICN, at first instance, can adjudicate over it (Akintayo and Eyongndi, 2018, p. 112).

However, with regards to tortious liability, particularly cases of defamation of character arising from and pertaining to employment, while the NICN has to a large extent, maintained that it has and exercises exclusive original civil jurisdiction, appeals on this to the CA, have had discordant outcomes. This is so as the CA, in one breath, has upheld the exclusive jurisdiction of the NICN while in others, discountenanced it. This state of affairs has made the position of the law on the matter to be in a state of flux. This undesirable situation is exacerbated by the fact that the CA is the final court on all civil appeals from the NICN (Oji and Amuceazi, 2015, pp. 254-255). This can place and has regrettably, placed the NICN in the undesirable position of picking and choosing which of the two conflicting positions to follow at the time. Thus, litigants and legal practitioners who approach the NICN to litigate do not know their fate nor can advise their clients; accordingly, since no one is sure of what position both the NICN and CA may tilt to at any given time. This situation seems to encourage adjudicatory gambling which is otiose to the cherished doctrine of judicial precedent that enhances predictability of adjudicatory processes.

The paper argues that based on the clear and unambiguous provisions of the CFRN, 1999, the exclusiveness of the NICN jurisdiction over tortious liability is unmistakably clear thus, the contradictions by the CA is unwarranted and capable of undermining the effectiveness and efficiency of the NICN. Thus, there is no justification for the simultaneous adoption of restrictive and expansive interpretation posture by the CA. It calls on the NICN to side with the position of the CA that upholds its exclusive jurisdiction while discountenancing the discordant position in the interest of predictability of adjudicatory outcomes.

The paper is divided into seven parts. Part one contains the introduction. Part two is a chronicle of the structure of Nigerian courts. Part three is a synopsis history of the development of the NICN, its jurisdiction, practice, and procedure. Part four focuses on

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examining contradictory decisions of the CA touching on the exclusivity of the jurisdiction of the NICN over tortious liability. Part five contains matters arising from the CA's impasse on the NICN jurisdiction over tortious liability while part six contains the recommendations and part seven contains the conclusion.

The article adopted a desk-based method relying on primary data such as the Constitution of the Federal Republic of Nigeria, 1999, National Industrial Court Act, 2006, case law, and secondary data like articles in learned journals, standard labor law textbooks, internet materials which are subjected to content and jurisprudential exegesis.

2. The Structure of the Nigerian Court System Synthesised

Nigeria operates a federal system of government in which the principle of separation of power is deeply entrenched and practiced as contained in sections 4, 5, and 6 of the CFRN, 1999. The judicial power of the Federal Republic of Nigeria is resident in the court under section 6, CFRN, 1999. Structurally, courts in Nigeria are classified into superior and inferior courts. Section 6(5) of the Constitution contains a comprehensive list of courts operational in Nigeria. These courts are hierarchically arranged in descending order as the Supreme Court, Court of Appeal, Federal High Court, State High Court, High Court of the Federal Capital Territory, Abuja, National Industrial Court of Nigeria, Customary Court of Appeal of the State, Customary Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal of the State, Sharia Court of Appeal of the Federal Capital Territory, Abuja. These courts are the Superior Court of Record (SCR). It must be noted that the Federal High Court, State High Court, High Court of the Federal Capital Territory, Abuja, and the National Industrial Court of Nigeria are courts of coordinated jurisdiction. Meaning that they rank the same on the hierarchy of courts (Taiwo, 2015, p. 16). These courts, except for the Federal High Court (FHC), have and exercise original and appellate jurisdictions. For instance, the State High Court exercises appellate jurisdiction over the decision of the Magistrate/District Courts.

The Magistrates' courts, Districts Courts; Sharia courts; Area Courts; Customary Courts are known as inferior courts and courts of summary jurisdiction. According to Sofekun and Njoku (2016, Pp. 4-6) these are courts at the grassroots level meant to dispense justice speedily.

By the foregoing, the Supreme Court is the highest and final court in Nigeria. Thus, its decision is binding on all other courts. It has and exercises original and appellate jurisdiction over the decisions of the Court of Appeal. The Court of Appeal is next to the Supreme Court with appellate jurisdiction over decisions the Federal High Court, State High Court, High Court of the Federal Capital Territory, Abuja, National Industrial Court of Nigeria, Customary Court of Appeal of the State, Customary Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal of the State, Sharia Court of Appeal of the Federal Capital Territory, Abuja. The FHC and NICN are specialised courts which means they have and exercise special jurisdiction that is exclusive to them only. Sections 251 and 254C of the CFRN, 1999 respectively provide

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matters which are under the exclusive original civil jurisdiction of both courts. For instance, with regards to the NICN, any dispute relating to, pertaining to or arising from labor or employment, can only be litigated at the NICN, Erugo (2007, Pp. 57-72). The hierarchy of the Nigerian courts is premised on the operationalization of the principle of judicial precedent which requires inferior courts to be bound by the decision (s) of the superior courts. In this context, it means in the judicial organogram, the court that is beneath is bound to follow the decision of the one above. Thus, the Court of Appeal and all other courts in Nigeria, are obligated to follow and abide by the decision of the Supreme Court in determining any issue being litigated before them. Also, all the courts beneath the Court of Appeal, are bound to follow its decisions on any question before them so long as the decision is in accordance with that of the Supreme Court if it exists. However, none of the High Courts (i.e. courts of coordinate jurisdiction), are bound by the decision of one another since they are equal in status and stature Okonkwo, (1980, p. 49).

3. Evolutionary Journey and Jurisdiction of the NICN

Eyongndi, Onu, and Ebiye (2022, pp. 337-354) have opined that Jurisdiction is the power of the court to entertain a matter presented before it by litigants and decide that is binding and enforceable by the parties who had presented the matter. Jurisdiction is to the court what blood is to the heart; while by wisdom, kings' rule and decree justice, by jurisdiction judges/justices exercise judicial power to determine causes and matters presented by litigants (*Barclays Bank Ltd. v. Central Bank of Nigeria* (1976). The development of the NICN is out of necessity. Thus, Oji and Amucheazi (2015, 254-255) have opined that the advent of colonialism in Nigeria in the 19th century led to the rapid industrialization 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. To meet this need, the British colonial government's promulgation of the 1941 Trade Dispute (Arbitration and Inquiry) Ordinance meant to settle disputes within Lagos and its environs. According to (Eyongndi and Sipe-Dawodu, 2022, Pp. 183-197) this Ordinance was defective in that its application was restricted to Lagos and there was no permanent structure tribunal for the settlement of trade disputes save *ad hoc* bodies which were set up whenever a dispute occurred. Thus, (Amucheazi and Abba, 2013, P. 45) have opined that despite this shortcoming of the ordinance continued with the British non-interventionism posture wherein unless the disputants invite the government, it could not intervene by apprehending a trade dispute. Thus, in 1957, the colonial government promulgated another Ordinance known as Trade Disputes (Arbitration and Inquiry) Federal Application Ordinance. Thus, (Akeredolu and Eyongndi, 2019, Pp. 1-16) have stated that upon gaining political independence, Nigeria would soon be submerged in a civil war which after ending, the hitherto non-interventionism precolonial posture of industrial relations, became unfeasible. This is so as the Federal Military Government enacted two Decrees the

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Trade Disputes (Emergency Provisions) Decree and the Trade Disputes (Emergency Provisions) Amendment Decree. These decrees prohibited strikes and lockout, and required disputants to report the occurrence of a trade dispute to the Inspector General of Police within fourteen days of its occurrence. According to (Eyongndi and Ilesanmi, 2021, Pp. 162-177). The decrees also set up a permanent structure for settlement of trade disputes known as the Industrial Arbitration Panel (IAP).

Realizing the inadequacies in the IAP and the need to further strengthen the framework for trade dispute resolution, the FMG, thus, promulgated the Trade Disputes Decree No. 7 of 1976 which Decree (which subsequently became the Trade Disputes Act, (TDA), and 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 concerning the settlement of trade disputes, the interpretation of collective agreements and matter connected therewith.

Unfortunately, when the 1979 Constitution was enacted and courts were being listed, the NICN was omitted. Thus, its constitutionality and jurisdiction became a serious subject of controversy, especially, when the fact that section 20 of the TDA that creates it, confers exclusive original civil jurisdiction on it. The issue then was whether the said exclusive jurisdiction of the NICN is not an unconstitutional sequestration of the unlimited jurisdiction conferred on the State High Court under the Constitution. To remedy this defect, the Trade Disputes (Amendment) Decree No. 47 of 1992 was promulgated which elevated the NICN to the Status of a Superior Court of Record (SCR), with exclusive original civil jurisdiction over labor and employment disputes. Thus, the impasse was deemed settled until the ghost of the 1979 Constitution, resurfaced when the 1999 Constitution was enacted and the NICN was once again, omitted. Thus, matters ordinarily reserved for the NICN, found their way in the dockets of the SHC as in the instant of *Kalango & Ors. v. Dokubo & Ors.* (1987).

To address this quagmire, the National Assembly (NA) enacted the National Industrial Court Act, 2006. Sections 7 and 20 granted the NICN exclusive original civil jurisdiction over labor and employment matters. However, this attempt was rendered futile as it became apparent that it was impracticable to use an ordinary Act of the NA to amend the Constitution (Izang, 2014, Pp. 17-18).

Thus, eventually, in 2010, the NA sought a permanent solution to this quagmire. Thus, the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 was enacted. Section 254A (1) thereof, established the NICN as a SCR which is on the same judicial pedestal as the SHC and FHC. Section 254C gives the NICN exclusive original civil jurisdiction over expanded themes of issues on labor and employment law (Atilola, Adetunji & Dungeri, 2012, Pp. 5-9). Since the enactment of the Third Alteration Act, all the challenges that had trailed the NICN, are now settled. The Court has and exercises both original and appellate

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jurisdiction and civil appeals from the court lie to the Court of Appeal whose determination is final as was held in *Skye Bank Plc. v Victor Anaemem Iwu* [2017].

Sequel to the constitutional enhancement and fortification of the jurisdiction of the NICN in 2010, it has delivered radical landmark judgments that are commendable paradigm shifts in Nigeria's labor jurisprudence. For instance, the common law position is that an employer in a master-servant employment relationship is at liberty to terminate the employment of an employee for any reason (good or bad) or for no reason at all as was held in *Benson v. Onitiri* (1960). However, the NICN in *Ebere Onyekachi Aloysius v. Diamond Bank Plc.* (2015) held that it is no longer fashionable, to follow international best practices as well as international labor standards to so do. This is under section 254C (1) (f) and (h) of the CFRN, 1999 which gave the NICN the power to apply international best practices and international labor standards in determining any suit before it. Also, where an employee established that his termination was wrongful, the common law provides that the amount of damages the employee is entitled is what would have been ordinarily given if the period of notice to be given for the termination had been adhered to. Thus, where the employment contract permits either party to terminate it by the issuance of three months' notice or salary in lieu, in the event of wrongful termination, the only damages awarded is the amount for the three months as was decided in *Obanye v. UBN Plc.* [2017]. However, the NICN has held that this position has become otiose and archaic, and as such, in deserving cases, an employee would be awarded damages over and above the period of notice contingent on the Supreme Court decision in *Isheno v Julius Berger Nig. Plc.* [2012]. This was the position of the court which was affirmed by the CA in *Sahara Energy Resources Ltd. v. Mrs. Olawunmi Oyebola* (2020) Thus, where an employer terminates an employee's employment in a way and manner that impacts his/her reputation causing damage beyond mere job loss, the employee would recover more damages than usual. According to (Akpabio, 2023, Pp.1221-1226), by its innovative and pacesetting adjudicatory voyage particularly from 2010 when the CFRN, 1999 (Third Alteration) Act solidified and amplified its constitutionality and jurisdiction, the NICN has left no one in doubt that, it is truly a specialised court which shuns technicalities in dispensing justice. Indeed, one can safely conclude that it is a new dawn in labour and employment adjudication in Nigeria.

It is apposite to state that the NICN has been engaged in evolving a somewhat employee protectionist jurisprudence, at deliberate attempt at balancing the tides between capital and labour. One way to ensure that this evolving jurisprudence of the court is sustained is to elevate judges of the NICN to the CA who aside from having special knowledge in this area, are the pathfinders in this adjudicatory evolution. It is curious to note that the composition of the Court of Appeal takes cognizance of customary and Islamic law which in comparison to labor and employment disputes, feature less as appeals to be decided by the CA. Given the volume of appeals from the NICN to the CA, it has become imperative for the composition of the CA to mandatorily include justices who are experts in labor and employment matters preferably, elevated from the NICN bench.

4. The CA Impasse on NICN Jurisdiction over Tortious Liability

The CA as already stated, is the court vested with final adjudicatory powers over civil appeals from the NICN according to section 243 of the CFRN, 1999 as well as the Supreme Court of Nigeria determination in *Skye Bank v. Iwu* (2017). This section of the paper, clinically appraises the decisions of the CA wherein contradictory positions have been taken in interpreting the extent of the exclusivity of the NICN jurisdiction over tortious liability arising from, pertaining to and relating to labor and employment (Otuturu, 2015, P. 35). This is done with a view to deciphering matters arising in order to foreground an equilibrium. It should be noted that as far as labor and employment disputes adjudication are concerned, the determination of the CA is profound with far-reaching effect as the CA, amongst other things, is a policy-making court hence, interrogation of its decision, is germane to set sail and on course, Nigeria's labor jurisprudence. The first decision to interrogate is *Medical and Health Workers Union of Nigeria v. Dr. Alfred Ehigiegba* (2017) in this case, the Respondent was the Chief Medical Director of the University of Benin Teaching Hospital while the Respondent is a registered trade union. In the course of a grievance, the appellant wrote a letter through their counsel to the Head of Civil Service of Federation in which they indicted the respondent grievously touching on his lack of independence from his successor who was dismissed from service, lack of employment transparency, competence, and financial impropriety. The respondent considered the publication of the appellants defamatory and filed a suit at the Edo State High Court claiming damages. The Appellant filed a preliminary objection to the suit challenging the jurisdiction of the trial court to entertain the action. Their objection was on the basis that there was no proper service of the originating processes and more importantly, only the NICN could entertain the action since it arose out of labour and employment relations same being a fall-out from trade union activities. The trial court dismissed the objection and proceeded to hear the matter.

Being dissatisfied with the ruling of the trial court, the Appellants, appealed to the CA contending that the trial court erred in law when it held that it had jurisdiction to hear the suit as constituted. In determining the appeal, the CA appraised the provisions of section 254C (1) (a) of the CFRN, 1999 dealing with the exclusive original civil jurisdiction of the NICN. It has been noted that it is now a settled principle of statutory interpretation that the lawmaker does not use any word in vain and the repetitive use of the words "connected with" "related to" "arising from" "incidental thereto" or "connected therewith" used in section 254C (1) (a) of the CFRN, 1999 about the labor and employment matters which the NICN would have exclusive jurisdiction, is without prejudice to the nature of the claim before the court. The CA had reasoned that a careful examination of the factual situation culminating to the claim of the respondent against the appellant shows that the cause of action (libel), occurred in the workplace as envisaged by section 254C(1) (a) of the CFRN, 1999 hence, the logical and legal conclusion is that since the act complaint about arose from the workplace (labor and employment), and the NICN is constitutionally empowered to be seised of such dispute, the

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failure of the respondent in litigating same at the Edo State High, was fatal. According to the court, if the case is not conclusively, an alleged defamatory claim arising from purely a labor and employment dispute as envisaged by section 254C (1) (a) of the CFRN, 1999, then, it will be difficult for the court to say what else would.

The above liberal interpretative posture has been adopted in several other cases. In *Nwagbo & Ors. v. National Intelligence Agency* (2018) the appellant had applied for the death benefits of their deceased father who was an employee of the respondent. The NICN declined jurisdiction over the case on the basis that it was for the determination of the priority of rights of the deceased beneficiaries whereas, the NICN, only deals with the parties to an employment contract while alive. The appellants appealed against this decision to the CA contending that by section 254C (1) (a) of the CFRN, 1999, the NICN has exclusive original civil jurisdiction over the case as it arose from and is connected with employment. In determining whether or not the NICN has jurisdiction over the suit as constituted, the CA found that the words relating to or connected with, used to delineate the exclusive original jurisdiction of the NICN, are clear in both intent and meaning and therefore, ought to be ascribed their ordinary grammatical connotation when being interpreted. To this end, the court held that the jurisdiction state in the aforementioned constitutional provision is not restricted to purely labor and employment matters but disputes relating to, connected with or arising from labor and employment or ancillary to. The foregoing position was reached by the CA in *Omang v. Nsa* (2021). The purport and import of the above position taken by the CA is that, the exclusive jurisdiction of the NICN is not by any stretch of the imagination, limited to core labor and employment disputes, but disputes ancillary or arising from, connected with, relating to or pertaining to labor and employment. Once any of these conditions are present, the cause of action or claim is inconsequential as it does not remove the dispute from the exclusive jurisdiction of the NICN.

Conversely, the CA has adopted a rather narrow or restricted posture in some other cases in its interpretation of section 254C (a) (1) of the CFRN, 1999. In *Akpan v. University of Calabar & Ors* (2016) the appellant was an employee of the 1st respondent and a senior lecturer at the material time. The 1st respondent through the 2nd respondent, called for legible staff to apply for promotion wherein the appellant applied to be promoted to the rank of Associate Professor. For due diligence, the 1st and 2nd respondents, set up a verification committee to verify all the publications submitted by eligible staff of the 1st respondent for promotion. Certain including fake publications and irregularities were observed in the publications of the appellant by the 1st respondent's verification committee but he was not invited but the matter was escalated to the University Senate which approved it and directed the 1st respondent's management to implement the same. The appellant was consequently demoted from the position of Senior Lecturer to Lecturer 1. Being dissatisfied with the action of the respondents, the appellant filed a case at the NICN, Calabar division seeking a declaration that his demotion was unlawful and also claimed damages for defamation. On the claim concerning defamation, the NICN declined jurisdiction.

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Being dissatisfied, the appellant appealed to the CA. In determining the appeal, the CA held that a careful examination of section 254C (1) (a) of the CFRN, 1999, shows that the jurisdiction of the NICN does not extend to entertaining a claim in tort at all. A claim in tort cannot be considered as being ancillary to a claim for wrongful dismissal when brought before a court with limited jurisdiction. The CA therefore concluded that the learned trial judge was right in declining jurisdiction.

In the same vein, the CA in *United Bank of Africa & Ors. v. Oladejo* (2021) in which the court was urged to determine whether or not a claim for malicious prosecution was within the exclusive original jurisdiction of the NICN. The Respondent had instituted a claim for malicious prosecution at the State High Court (SHC) and got a judgment against the respondents who were dissatisfied with the decision of the trial court. They appealed the decision to the CA contending that by virtue of section 254C (1) (1) of the CFRN, 1999, the NICN as opposed to the SHC, had jurisdiction over the claim since it arose in the course of employment. The CA without hesitation, rejected this argument and held as follows:

A painstaking perusal of the provisions of section 254C (1) (a) of the 1999 Constitution of the Federal Republic of Nigeria, seems to me that the provisions confer on the National Industrial Court jurisdiction over trade union, and labour matters, employment law rules. It does not pertain to criminal matters or tort.... Section 254C (1) (a) of the Constitution does not pertain to malicious prosecution, assault, detainee or any liability in tort. The infringement of the right of a person in his workplace is not enough to confer jurisdiction on the National Industrial Court except where there is employment issue. The case of the respondent's being one of malicious prosecution, has nothing to do with respondent's condition of employment or contract of employment. The High Court of a State is the appropriate forum seised with the jurisdiction to entertain the action.

The CA's position above is the same as that in *Olushola & Anor. v. Andrew* (2021) where the court held that the NICN jurisdiction under section 254C (1) (a) of the CFRN 1999, does not cover malicious prosecution or any time for that matter. We take the liberty to state that the aspect of the court finds that the NICN jurisdiction does not pertain to criminal matters. This is not correct, as the NICN has and exercises concurrent criminal jurisdiction with the Federal High Court, State High Court and the High Court of the Federal Capital Territory over all the matters under its civil jurisdiction. A clinical combing of section 254C (5) of the CFRN, 1999 makes this point bare. In fact, it is advisable that any criminal matter arising from the civil jurisdiction of the NICN, be adjudicated over by the NICN given its peculiarities and the fact that it could be less cumbersome as being a specialised court, its criminal docket is likely to be less congested compare to other courts.

This restrictive posture of CA is *in tandem* with a few earlier decisions of the NICN itself. For instance, in *Dr. E. G. Ayo Akinyemi v. Crawford University* (2011) the claimant had an allegation of sexual harassment levelled against him by a female student of the defendant.

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The Vice Chancellor of the defendant directed a panel of investigation to investigate the allegation. The claimant was invited to appear before the panel but got the notice late hence, he sought a reschedule which he further asked for an extension of time to enable him to gather evidence to defend himself. The Investigation panel refused his plea, concluded their work, and submitted its report in which he was indicted. As a result of the report, the claimant's employment was terminated, and he was aggrieved. Aggrieved by the defendant's action, he filed a suit at the NICN seeking damages for defamation and wrongful termination of his employment. The defendant entered an appearance under protest by filing an objection to the competence of the NICN to be seised of the matter as the subject matter of the suit was outside the jurisdiction of the trial court.

In its ruling over the preliminary objection, the NICN per Kanyip J, held that the NICN has no jurisdiction over matters relating to liberty although it arose from the course of employment. According to the court "the NICN has no jurisdiction over matters relating to libel. Nowhere in section 7 of the NIC Act will anything be found relating to or associated with libel, slander or defamation." The same conclusion was reached by the NICN in *Okeke v. Union Bank of Nigeria Plc.* (2011) and *MTS Ltd. v. Akinwunmi* (2011). While the reason for the rather restrictive approach adopted by the NICN in this case can be easily justified, the reason being that the jurisdiction of the NICN under section 7 of the NIC Act, 2006 is restricted when compared to what it is under 254C (5) of the CFRN, 1999.

From the above, it is trite that the CA's approbating and reprobating attitude on the correct interpretation of 254C (5) of the CFRN, 1999 with regard to the extent of the exclusivity of the jurisdiction of the NICN, has left the law in Nigeria in a state of flux. What is the impact of this on labor adjudication in Nigeria? Is the contradictory quagmire foisted on litigants and legal practitioners justifiable? What is the way forward? What is the impact of this divergence on the doctrine of *stare decisis*? These issues are dealt with in the subsequent portion of this paper.

5. Matters Arising

While the contradictory position by the CA's determination may cause anxiety of "which way now" as to whether the NICN being inferior to the CA, can cherry pick which of these positions to follow. The danger in this anxiety is: can litigants and their legal practitioners foretell, based on the facts and the law, the probable outcome of a dispute anchored on 254C (5) of the CFRN, 1999 bearing in mind the subsisting contradictory position by the CA? While this concern may seem legitimate and probable, the truth is that it is a settled one as was held in *Okoniji v Mudiaga Odge* (1985). The law is trite that where there are contradictory decisions from a court, the later in time is what inferior courts are bound to follow and not the earlier decision as was decided in *Oji v. Ndukwe* [2019]. The reason is that by the doctrine of necessary implication, the later decision is a review or repeal of the earlier decision since it is deemed that the later decision when made, the earlier one was contemplated as was decided in *Osakue v*

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Federal College of Education (Technical) Asaba [2008]. Based on the foregoing, we can safely conclude, although undesirably, that the position of the law is that the NICN neither has nor exercises original civil jurisdiction over section 254C (5) of the CFRN, 1999.

The above notwithstanding, it is undesirable to have divergent pronouncements from a policy court on a seemingly straightforward issue. *Stare decisis* which requires that decisions of superior courts (subject to have been reached *per incuriam* or distinguishable) are binding on inferior court so that cases having similar facts have predictable outcomes based on precedents is a cornerstone of Nigeria's adversarial adjudicatory system. Anything that is capable of obstructing or impugning this cherished justice administration heritage must be prevented. The state of affairs foisted on Nigeria's labor and employment jurisprudence by the hardly reconcilable contradictory position of the CA is not only needless (as will be subsequently demonstrated), but unjustifiable. Akpabio and Bada (2023, p. 76) have cautioned that the effect of the decisions of courts transcends the parties before the court to the general unborn hence, courts should be circumspect. A superior court, especially a policy-making one like the Court of Appeal should not deliberately or by inadvertence, place a court like the NICN in a tempting position to choose and pick which decision to follow especially on a germane subject like jurisdiction. The need to avoid this becomes apparent when the fact that the subject matters upon which the NICN has adjudicatory power over, is extremely important and volatile.

Section 254C (1) (a) of the CFRN, 1999 by any stretch of the imagination, is straightforward and simple. The golden rule of interpretation requires that the provision of statute or a contract that are simple and straightforward should be given their ordinary grammatical meaning unless doing so will lead to absurdity as was held in *Dickson v. Sylva* (2016). The said section provides that the exclusive original civil jurisdiction of the NICN shall extend to labor and employment matters or disputes pertaining to, arising from, relating to or connected with any labor or employment dispute. The only reasonable conclusion to be drawn from the foregoing provision is that any cause of action (tortious, contractual, or fundamental right enforcement, etc.) arising from, pertaining to, relating to or connected with employment or labor, falls within the original exclusive jurisdiction of the NICN. Thus, there is no justification for the CA to have laid down a contradictory position regarding the import and purport of Section 254C (1) (a) of the CFRN, 1999 regarding the jurisdiction of the NICN. Besides, one may wish to ask, what is special or unique about tortious liability adjudication that a judge of the NICN cannot or lacks the competence to adjudicate upon?

Ordinarily, one would have expected the CA to rather seek to interpret or give strictures for determining when a cause of action could be said to have arisen from, pertains to, relating to, or connected with labor and employment dispute than handing down contradictory judgment with their far-reaching negative impact. One can safely argue that the only interpretation to be given to these words, what the draftsmen intended is that any subject matter or cause of action that arises in the course of employment, or is an offshoot of a labour dispute, irrespective of its nature or claims/reliefs being sought, the NICN is the court that has adjudicatory power over

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such. This conclusion is irresistible when the opening phraseology of section 254C (1) (a) is examined. It is therefore submitted, with respect that the controversy engendered by the bipolar interpretation by the CA is not only needless but unjustifiable and therefore legally unsustainable.

The point must be made that the subsisting contradictory position foisted on the populace by the Court of Appeal is undesirable and somewhat undue interference with the right to access to court which is recognized and protected under the CFRN, 1999 and under international and regional human rights instruments. Section 36 of the CFRN, 1999 guarantees access to the court of all Nigerians to have their causes determined. Article 7 of the African Charter on Human and Peoples Rights, 1981 also guarantees this right. Contributively, Article 14 of the International Covenant on Civil and Political Rights (ICCPR), 1961 bequeaths these rights to all persons. These legal instruments contemplate a situation where having a cause determined, should be without hassles such as the one created by contradictory decision of an appellate court like the one being discussed. Where a litigant is placed in a dilemma of where to litigate by the subsistence of a contradictory decision of a superior court, it runs afoul of his right of access to court. The laying down of contradictory positions on the import and purport of section 254C (1) (a) of the CFRN, 1999, by the CA, to say the least, is most undesirable and chaotic.

6. Recommendations

Based on the findings above, it is recommended that the CA as the final arbiter over civil appeals from the NICN and a policy-making court as such should harmonize its subsisting contradictory judgment on the right interpretation of the provisions of section 254C (a) (1) of the CFRN, 1999 about the nature of the jurisdiction of the NICN. To ensure that the settled jurisdiction of the NICN is not unsettled, particularly considering the *sui generis* nature and mandate of the NICN, the harmonization should be to the effect that, any cause of action, irrespective of the nature of the claim, once it arises, pertains or relates to labor and employment, falls within the exclusive original civil jurisdiction of the NICN.

Furthermore, considering the evolving jurisprudence of the NICN as a specialized court and the importance of the disputes it deals with, coupled with the ever-increasing quantum of appeals cascading to the Court of Appeal, the constitutional composition of the Court of Appeal provided for under the Constitution as well as the Court of Appeal Act, should be amended to the effect that at least, in each division of the CA, there shall be a judge who is an expert in labor and employment law. Also, there is a need for more judges of the NICN, to be elevated to the CA bench as at the time of writing this article, since 2010 after the enhancement of the jurisdiction and stature of the NICNM, only two judges of the court, have been elevated to the CA.

7. Conclusion

Extrapolating from the above analysis, it is trite that the NICN is a specialized court that has and exercises exclusive original civil jurisdiction over labor and employment disputes. The history and development of the NICN were shrouded in controversies as the court was submerged in protracted jurisdictional and constitutional challenges however, several remedial statutory steps were taken culminating with the enactment of the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 which made the NICN a SCR, elevated it to the same status with the SHC and FHC. Section 254C laid down the exclusive original civil jurisdiction of the NICN. The CA, interpreting this exclusive jurisdiction, particularly regarding causes of action that are not purely labor and employment but arising from, connected with, or relating to labor and employment, have delivered contradictory judgments which have left the law on the issue in a state of flux despite its undesirability. While this quagmire can be resolved by the principle of law that where there are contradictory decisions of the court, the latter supersedes the former, this state of affair is undesirable and unjustifiable despite the fact that the provisions of the law are clear and precise warranting their simple grammatical meaning to be ascribed to them.

This subsisting state of the law on the import of section 254C (1) (a) of the CFRN, 1999 regarding the exclusivity of the NICN jurisdiction runs afoul of the express intendment of both the CFRN, 1999, the ICCPR per Article 14 and Article 7 of the African Charter on Human and Peoples Rights that requires securing the right of access to court by removing any form of obstruction to accessing the court for the determination of rights and obligations by all and sundry. This situation must be urgently addressed by the Court of Appeal so that the NICN is properly guided and not left in a state of flux with its concomitant negative impact on citizens whose rights might be breached requiring redress.

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