EXAMINING THE NATIONAL INDUSTRIAL COURT OF NIGERIA'S RECENT GRAVITATION ON THE POSITION OF NIGERIAN LABOUR LAW ON TERMINATION OF EMPLOYMENT WITHOUT REASON: A CRITICAL REVIEW

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Introduction

In recent times, players in the Nigerian employment/industrial relations space have been at a cross-road as to whether modern Nigerian Labour Law still allows an employer to terminate the employment of an employee for good, bad or no reason at all provided that the employer complies with the conditions for termination provided in the Contract of Employment.

With the advent of the Third Alteration Act to the Constitution of the Federal Republic of Nigeria 1999 (as amended) creating Section 254C of the Constitution which, amongst other things, vested the National Industrial Court of Nigeria ("NICN") with the jurisdiction to hear and determine matters bordering on the application and interpretation of International labour standards and international labour best practices, some Judges of the NICN in different divisions have been recently taking a rather activist approach to hold that, pursuant to international labour standards and best practices and contrary to the position of the law 'as we used to know it', an employer can no longer terminate the employment of an employee without giving a good reason.

This paper undertakes a critical examination of the propriety or otherwise of the recent position seemingly predominantly preferred by the NICN *vis-à-vis* the provisions of the Nigerian Constitution as well as Judicial Precedents, with a view to ascertaining whether or not the position of Nigerian Labour Law on the termination of employment without reason has indeed changed.

Jurisdiction versus Judicial Powers: Putting Section 254C(f) and (h) of the Nigerian Constitution(as amended) in Proper Perspective

Jurisdiction connotes the authority of a court to exercise its judicial powers to determine a dispute submitted to it by contending parties in any proceeding.[1] It is the legitimacy which a court must possess to be able to exercise its judicial powers over matters litigated before it or take cognizance of matters presented for its decision[2]. Jurisdiction is fundamental to the adjudication as where a court lacks jurisdiction to entertain a matter before it, all proceedings and decisions made thereon will be rendered a nullity.[3]

Conversely, judicial powers are the powers which a court may exercise over any matter within its jurisdiction. Jurisdiction refers to the kind of actions, parties and territories over which a particular court may exercise its judicial powers.[4] In other words, a court must in the first instance possess jurisdiction over a matter or dispute before it can proceed to exercise its judicial powers over that matter or dispute. Thus, although closely connected, jurisdiction is quite different from judicial powers as without jurisdiction.

Under Nigerian Law, Judicial powers are vested in the various Nigerian courts of record including the NICN by the provision of **Section 6 (1) of the Constitution** which reads thus, "*the judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the federation"*

On the other hand, **Section 254 C- (I) of the Nigerian Constitution** provides for the jurisdiction of the NICN as follows:

"254 C- (I) Notwithstanding the provisions of sections 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-

(a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety of labour, employee, worker and matters incidental thereto or connected therewith;

(b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

(c) relating to or connected with the grant of any order restraining 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 and matters Connected therewith or related thereto;

(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 relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;

(e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;

(f) ***relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters****;*

(g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

(h) ***relating to, connected with or pertaining to the application or interpretation of international labour standards****;*

(i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

(j) relating to the determination of any question as to the interpretation and application of any-

(i) collective agreement;

(ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;

(iii) award or judgment of the Court;

(iv) term of settlement of any trade dispute;

(v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;

(vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;

(vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;

(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;

(L) relating to-(i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith; (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and (iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
(m) relating to or connected with the registration of collective agreements"

The aspects of the NICN's jurisdiction relevant to this discourse are those captured in paragraphs **(f)** and **(h)** emboldened above which clothe the NICN with the jurisdiction to hear and determine matters relating to unfair labour practice or international best practices in labour, employment and industrial relation matters and/or pertaining to the application or interpretation of international labour standards. It is clear that these provisions only empower or authorize the NICN to exercise its judicial powers over matters bordering on unfair labour practice and international labour best practices as well as matters bordering on the interpretation and application of international labour standards. These provisions do not give the NICN the powers to willy-nilly apply international labour practices and standards to matters before it.

Put rather markedly, the provisions of the Constitution under reference only imbue the NICN with the jurisdiction to hear and determine matters relating to or seeking the interpretation and application of international labour standards/practices. In exercising this jurisdiction, the NICN will determine whether or not to apply these international labour standards/ practices taking into consideration the circumstances of each case as well as the laws on the application of international laws/treaties; the Constitution does not give the NICN the powers to automatically apply all and any international labour practices/standards.

Under Nigerian law, it remains an unchanged rule of interpretation of statutory and constitutional provisions that where their wordings are clear and unambiguous, they must be given their plain and ordinary meaning by the Courts. The guiding principle in the interpretation of constitutional or statutory provisions is that they should be construed according to the intention clearly expressed in the wordings of the statute themselves. Where the words used are unambiguous, no more is needed to expound the words in their natural and ordinary sense because the words of the Constitution or Statute alone best declare the intention of the lawmaker. See **Cocacola Nig. Ltd. v. Akinsanya[5], A.G. Abia State v. A.G. Federation[6], Corporate Ideal Insurance Ltd. v. Ajaokuta Steel Co. Ltd.[7].**

Markedly, many legal practitioners, writers, jurists and indeed learned Judges of the NICN appear to have misconceived the provisions of Section 254 C(I) (f) and (h) to presuppose that these provisions enable or require the NICN to apply all and any International Labour Treaty or Convention in all cases. This is clearly not the purport of those provisions. Those provisions are simply jurisdiction-conferring provisions, which grant the NICN the exclusive jurisdiction to hear and determine any matter involving the issue(s) of the applicability or otherwise of an International Labour Treaty or Convention. By those provisions, the NICN is merely exclusively authorized to hear and determine matters contending the applicability or otherwise of an International Labour Convention/Treaty or Labour practice, those provisions do not mandate or require the NICN to apply International Labour Treaties or Conventions as a matter of course.

Application of International Treaties and Conventions in Nigeria – Appraising the Decisions of the NICN applying the ILO Termination of Employment Convention, 1982(No. 158)

The need for international relation, trade and co-existence amongst States has no doubt necessitated the presence of laws, treaties, protocols, conventions *et cetera* that will guide the communal affairs of countries in the international sphere.

However, these treaties do not become automatically binding and applicable by the member States. It is in recognition of this that the Treaty of Treaties[8] states that where a signature is subject to ratification, acceptance or approval, the signature does not establish the consent to be bound. At most, the signature is an indication of the willingness of the signatory State to continue the treaty-making process to wit; ratification, acceptance and approval (i.e. domestication). This is the precise position of Nigeria Law in the implementation and application of international treaties.

It becomes apposite at this point to reproduce the provision of the Nigerian Constitution on the conditions precedent for the applicability of an International Convention/Treaty in Nigeria as follows –

> *"12 (1) - No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted by the National Assembly.*
> *(2) – the National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the exclusive Legislative list for the purpose of implementing a treaty.*
> *(3) – A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation**[9]**"*

A combined reading of the above provision reveals that no treaty shall have the force of law save it has been enacted by the Nigerian National Assembly. In other words, the legislative process must be completed from ratification to domestic enactment.

Thus, assuming without conceding that Section 254C(I) (f) and (h) of the Nigerian Constitution requires the NICN to apply all and any International Labour Treaty or Convention in all cases, that provision must be read together with Section 12 of the Nigerian Constitution which mandatorily provides that no international treaty or convention shall be applied or given the force of Law in Nigeria unless same is ratified and domesticated by an enactment of the National Assembly. It follows that the NICN can neither, under the guise of Section 254 C(I) (f) and (h) of the Nigerian Constitution, apply an International Labour Convention or Treaty that has not been ratified by Nigeria and domesticated via an enactment of the National Assembly, nor apply any International Labour practice that stems from such non-ratified and undomesticated International Labour Convention or Treaty.

The sacred need to ensure that International Conventions or Treaties are ratified and domesticated before they are applicable in Nigeria has been reiterated by Nigerian Appellate Courts in a plethora of cases. In ***Tolani v. Kwara State Judicial Service Commission & Ors***[10] the Court of Appeal held as follows:

> *"The controversy whether an international treaty [by whatever name it is called] has the force of law in Nigeria before its enactment into law by the National Assembly has long been laid to rest. The cases are many, so many indeed, that it would serve no useful purpose rehearsing them here. Thus, it may just suffice to cite the illustrative decision of the Supreme Court in Abacha and Ors v Fawehinmi (2001) 51 WRN 29 and one decision of this Court on the matter, M. H. W. U. N v. H. M L. P. (2005) 28 WRN 127. The rationale of these decisions is that treaties which have not been domesticated cannot form part of Nigerian Law, afortiori they cannot be invoked to afford remedies to litigants."* ***[11]***

Recently, some divisions of the NICN have, in apparently misinterpreting Section 254 C(I) (f) and (h) of the Nigerian Constitution, relied on Article 4 of International Labour Organization's Termination of Employment Convention ("the ILO Termination of Employment Convention")[12] to hold that in Nigeria an employer cannot terminate the employment of an employee without good reason. **Article 4 of the ILO Termination of Employment Convention** states that: "*the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service"* ***[13]***.

One popular example of the NICN relying on Article 4 of the ILO Termination of Employment Convention to hold that a person's employment can only be terminated for good reason is the decision of the NICN in ***Mr. Ebere Onyekachi Aloysius v. Diamond Bank Plc***[14], wherein the Court held thus:

> "*The court can now move away from the harsh and common law posture of allowing an employer to terminate its employee for bad or no reason…it is now contrary to international labour standard and international best practice, and, therefore unfair for an employer to terminate the employment of an employee without any reason or justifiable reason that is connected with the performance of the employee's work…I further hold that the reason given by the defendant for determining the claimant's employment in the instant case, which is that his 'service was no longer required' is not a valid one connected with the capacity or conduct of the claimant's duties in the defendant bank. In addition, I hold that it is no longer conventional in this twenty 1st century labour law practice and industrial relations for an employer to terminate the employment of its employee without any reason even in private employment."*

This was the same position taken by the Abuja Division of the NICN in ***Bello Ibrahim v Ecobank Plc*** ***[15]*** wherein the Court held as follows:

> *"The Termination of Employment Convention of 1982, No. 158 and Recommendation 166 of ILO, have set standard to guide employer on termination and dismissal of employees from service. Therefore, to terminate or dismiss employee without giving justifiable reason will tantamount to unfair termination, more particularly when as in this case the employee was not found wanting in carrying out his duties. The requirement of valid justifiable reason for termination is a procedural safeguard to guard against mischief."*

It is worthy to mention that Nigeria is yet to ratify the ILO Termination of Employment Convention.[16] Consequently, Nigeria has also not domesticated the ILO Termination of Employment Convention. The ultimate implication, therefore, is that the ILO Termination of Employment Convention, as well as any labour practice codified therein, is completely inapplicable and unenforceable in Nigeria. It, therefore, defeats reason that in ***Mr. Ebere Onyekachi Aloysius v. Diamond Bank Plc*** (*supra*) and ***Bello Ibrahim v Ecobank Plc***, the NICN applied the labour practice codified in Article 4 of the ILO Termination of Employment Convention requiring the employer to advance good reason to validly terminate an employment when the said Convention has no force of law or applicability in Nigeria. It was completely remiss of the NICN to neglect the mandatory provisions of Section 12 of the Nigerian Constitution and proceed to apply the provisions of a Convention that has no binding force of law in Nigeria by reason of its non-ratification and non-domestication.

It is settled Nigerian law that the provisions of the Constitution are supreme and binding over all persons and authorities in Nigeria.[17] No person or authority has the powers or *vires* to do any act or take a decision that is inconsistent with the provisions of the Nigerian Constitution or else same will amount to a nullity to the extent of the inconsistency.[18]

Thus, to apply a non-ratified and undomesticated International Labour Convention/Treaty, such as the ILO Convention on Termination of Employment, is patently inconsistent with the mandatory provisions of **Section 12 of the Nigerian Constitution**. The ultimate implication, therefore, is that since the decisions of the NICN in ***Mr. Ebere Onyekachi Aloysius v. Diamond Bank Plc*****(***supra*) and other cases wherein the NICN applied (or more appropriately, misapplied) the provisions of Article 4 of the ILO Termination of Employment Convention requiring the employer to advance good reason to validly terminate an employment, is inconsistent with **Section 12 of the Nigerian Constitution**, those decisions are susceptible to be declared null and void to the extent of their inconsistency.

The above will still remain the correct position even when **Section 7(1)(6) of the National Industrial Court Act, 2006("the NICN Act")** is considered**. Section 7(1)(6) of the NICN Act** provides thus:

> *"The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practices in labour or industrial relations and what amounts to good or international best practices in labour or industrial relations shall be a question of fact."*

Clearly, the above provision merely directs the NICN to consider good or international best labour practices when exercising its jurisdiction over any matter before it. That provision cannot be brandished as an authority enabling the NICN to apply all and any international labour practice codified in an International Labour Convention/Treaty that has not been ratified or domesticated by Nigeria as strictly required by **Section 12 of the Nigerian Constitution**.

In ***Bello Ibrahim v Ecobank Plc(supra),*** the NICN was, with respect, wrong to have interpreted **Section 7(1)(6) of the NICN Act** as giving the NICN powers to apply all or any International Labour Convention/Treaty without taking into consideration the strict constitutional requirements for applying International Conventions/Treaties as prescribed in **Section 12 of the Nigerian Constitution.**

To stretch **Section 7(1)(6) of the NICN Act** as giving the NICN mandate to whimsically apply non-ratified or undomesticated international labour conventions/treaties is to imply that the said provision is inconsistent with Section 12 of the Nigerian Constitution; if that be the case, Section 7(1)(6) of the NICN Act would then have to suffer the fate of being a nullity to the extent of that inconsistency.

Doctrine of *Stare decisis et non quela movera*

In literal translation, this doctrine means standing by what has been decided. It is a common law principle that has been deeply embedded as an immutable position of Nigerian Law to ensure consistency and certainty in adjudication. By this principle, in deciding current cases, courts are completely bound to apply the decision of a superior court in the judicial hierarchy in an earlier case where the facts and law in contention in both cases are similar[19] A lower court is completely obligated to follow the decision of a superior court in an earlier case no matter how wrong or unsuitable the lower court considers that decision of the superior court to be.[20]

In **PDP v. Oranezi & Ors**[21], the Supreme Court aptly captured the essence of the hallowed doctrine of *stare decisis* and its applicability under Nigerian law as follows:

> *"It is a cardinal principle of law under the doctrine of stare decisis that an inferior Court is bound by a decision of a superior Court, however sure it may be that it has been wrongly decided."*

The sanctity of this doctrine is further captured in the following words of Nweze, JCA(as he then was):

> "*One impregnable canon which has evolved as ubiquitous corollary to the doctrine of stare decisis is the postulation that all other Courts in Nigeria may loosely be compared to the Biblical Centurion at Capernaum, who described himself as a man under authority. The difference, however, is that the said Courts are under a different kind of authority: the irreproachable authority of the rationes decidendi of the judgments of the Supreme Court. Hence, no other Court is permitted the indulgence or allowed the liberty to arrive at decisions that have the effect of nibbling at or denigrating the magisterial prescriptions of the apex Court."* ***[22]***

The significance of the sacred doctrine of *stare decisis* in Nigerian law cannot be overemphasized. It is in keeping with this doctrine that all lower courts in Nigeria, including the NICN, are bound by the earlier decisions of the Nigerian Supreme Court or any other superior court when these lower courts are faced with the same issues decided by the superior court.

It is commonplace that the age-long position adopted by the Supreme Court and the Court of Appeal – both of which are superior to the NICN, is that an employer can validly terminate the employment of his employee with or without reason provided that the termination is in accordance with the terms of the Contract of Employment.[23]This has remained the position of the Court of Appeal and the Supreme Court even after the advent of the Third Alteration Act (which created Section 254C of the Nigerian Constitution) in 2010.

Recently in ***Obanye v. U.B.N. Plc***[24], the Supreme Court reiterated the above position as follows:

> *"Under the common law and Nigerian laws, the position is that, ordinarily, a master has the right to terminate his servant's employment for good or bad reasons or for no reason at all. The basic principle considered normally is in the resolution of a dispute between a master and his servant where the former terminates the latter's appointment is the determination of whether the contract of service between the two of them is one with statutory colouration/flavour"*

Also recently in ***Oforishe v. Nigerian Gas Co. Limited***[25], the Supreme similarly held as follows:

> *"In an ordinary contract of master and servant, i.e. a contract without statutory flavour, a master can terminate the appointment of the servant without giving any reasons and his motive is an irrelevant consideration."*

Clearly, since the position adopted by the Supreme Court and the Court of Appeal pre and post the inception of Section 254C of the Nigerian Constitution is that an employer has the right to terminate the employment of his employee without reason, it follows that the NICN cannot be taking a different position to hold that an employer can only terminate the employment of his employee for good reason; to do so will amount to judicial rascality.

Given the sacrosanct doctrine of *stare decisis*, the NICN is unauthorized in law to take a different position from the extant position of the Appellate Courts. The decisions of the NICN such as those in ***Ebere Onyekachi Aloysius v. Diamond Bank Plc*** and ***Bello Ibrahim v Ecobank Plc*** holding that an employment can only be validly terminated for good reason, cannot stand in the light of the superior decisions of the Court of Appeal and the Supreme Court that an employment can be validly terminated without reason.

Conclusion

Wrongful termination Claims are so common in Nigeria that it would be completely unpleasant to have any uncertainty about the position of Nigerian law in that regard. No doubt, the move by the NICN to adopt progressive international labour practices and standards is a laudable one, but the NICN cannot be doing so in disregard of the provisions of the Nigerian Constitution as well as the hallowed principle of abiding by judicial precedent.
Ensuring the emergence and application of best international labour practices and standards in Nigeria requires that Nigeria ratify and domesticate the International Conventions/Treaties codifying these best international labour practices/standards. This would give them the force of law in Nigeria and allow their applicability in Nigerian Courts. The interpretation of **Section 254C(f) and (h) of the Nigerian Constitution(as amended)** by some Judges of the NICN to hold that it allows the willy-nilly application of international labour best practices and Conventions, is, with respect, wrong; that section of the Nigerian Constitution makes no such provision.

It is only upon the ratification and domestication of the ILO Convention on Termination of Employment that the NICN can rely on that Convention and validly hold that an employment cannot be terminated without good reason. Until then, the correct extant position of Nigerian Labour Law, as consecrated by the Nigerian Supreme Court and Court of Appeal, still remains (with all due respect to the judges of the NICN) that a person's employment can be validly terminated without any reason at all provided that same is done in accordance with the terms of the Contract of Employment.

Endnotes

[1] Federal University of Technology Akure v. BMA Ventures (Nig.) Limited (2018) 17 NWLR [Pt.1649] 477
[2] Enyadike v. Omehia (2010) 11 NWLR [Pt. 1204] 92
[3] FUTA v. BMA Ventures (Nig.) Limited (*supra)*
[4] Abacha v. F.R.N. (2014) 8 NWLR [1402] 43
[5] **(2017) 17 NWLR (Pt. 1593) 74**
[6] (2005) 12 NWLR (Pt. 940) 452
[7] (2014) 7 NWLR (Pt. 1405) 165
[8] Article 12 (2) (b) the Vienna Convention on the law of Treaties, 1969
[9] Section 12 Constitution of the Federal Republic of Nigeria 1999 (as amended), on the implementation of treaties
[10] (2009) LPELR-8375(CA) (Pp. 59-66, para. F)
[11] Tolani v. Kwara State Judicial Service Commission & Ors (2009) LPELR-8375(CA) (Pp. 59-66, para. F)
[12] C158 – Termination of Employment Convention, 1982 (No. 158), by the General Conference of the International Labour Organization having convened at Geneva by the Governing body of the International Labour Office, and having met in its sixty-eighth session on June 2, 1982.
[13] https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158> accessed on February 3, 2021
[14] [2015] 58 N.L.L.R 92

[15] (Unreported) Suit No. NICN/ABJ/144/2018, delivered on December 17, 2019
[16] <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103259> accessed on February 3, 2021
[17] Section 1(1) of the Constitution of the Federal Republic of Nigeria, 1999(as amended); EFCC v. Agbele (2018) LPELR-44677(CA); Amechi v. I.N.E.C. (2007) 9 NWLR (Pt. 1040) 504
[18] Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999(as amended)
[19] A.G Lagos State v. Eko Hotels Limited (2018) 7NWLR [1649] (P.539, para C-E); Ardo v. Nyako (2014) LPELR-22878 (SC) (2014) 10 NWLR (Pt.1416) 591 at p.626, paras D-E
[20] NEPA V. Onah (1997) LPELR-1959 (SC); CBN & Ors V. Okojie (2015) LPELR-24740 (SC)
[21] (2017) LPELR-43471(SC)
[22] Tolani v. Kwara State Judicial Service Commission & Ors (supra)
[23] Daodu v. UBA PLC. (2003) LPELR-5634(CA) ; IDONIBOYE - OBU V. N.N.P.C. (2003) LPELR - 1426 (SC)**;** Ibama V. Shell Pet. Dev. Co. (Nig.) Ltd (1998) 3 N.W.L.R. (pt. 542) 493; Warri Refining and Petrochemical Company Ltd V. Onwo (1999) 12 N.W.L.R. (Pt. 630) 312, NITEL PLC. V. Ocholi (2001) F.W.L.R. (Pt. 74) 254
[24] (2018) LPELR-44702(SC)
[25] (2017) LPELR-42766(SC) (P. 21, paras. E-F)