APPELLATE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA IN LIGHT OF THE CONTROVERSIAL DECISION OF THE SUPREME COURT OF NIGERIA IN SKYE BANK V IWU (2017)

Matthias Zechariah*

Abstract

This article considered the appellate jurisdiction of the National Industrial Court (NIC) under the NIC Act and the Constitution of the Federal Republic of Nigeria in light of the decision of the Supreme Court in the Skye Bank Case. Contrary to the Supreme Court's interpretation of the Constitution, which was respectfully argued as being incorrect, the work asserts that, other than on questions of fundamental rights and criminal cases, there was no right of appeal from the decision of the NIC to the Court of Appeal, whether as of right or with the leave of that Court of Appeal. The creation of the NIC as a special Court was to facilitate speedy and just dispensation of cases for economic development. Therefore, it could not have been the intendment of the drafters of the NIC Act and of the Constitution (Third Alteration) Act to subject the decisions of the NIC to the normal appellate processes of conventional courts. The work urges caution on the part of the legislature when enacting laws to avoid the tendency to create ambiguities and contradictory provisions, legislators should rather engage experts in the law-drafting processes. The work further recommends an amendment of the NIC Act and the Constitution to create appellate chambers in the NIC. The composition of the Court of Appeal and Supreme Court should have justices with experience in the theory and practice of labour law and industrial relations.

Key words/phrases: National Industrial Court, Court of Appeal, original jurisdiction, appellate jurisdiction, fair hearing, right of appeal.

1. Introduction

The National Industrial Court of Nigeria has both original and appellate jurisdictions. Its original jurisdiction is as provided in the National Industrial Court Act and the Constitution of the Federal Republic of Nigeria (as altered). The original jurisdiction of the Court has not raised any controversy yet, although some commentators have criticised it as being too wide. For the appellate jurisdiction, there is no controversy on that either. However, the disagreement now is with the finality or otherwise of the decision of the Court in civil causes and matters especially following the decision of the Supreme Court in the *Skye Bank case* under consideration. This article reviews that decision and provides an alternative interpretation that seeks to go in tandem with the rules of interpretation of statutes and the intendment of the drafters of the National Industrial Court Act and the Constitution (Third Alteration) Act.

* **M. Zechariah** is lecturer at the Faculty of Law, University of Jos, Plateau State Nigeria where he teaches Labour Law Relations, and Public International Law. zechariahmatthias@yahoo.com

2. Jurisdiction of the National Industrial Court of Nigeria (NICN)

The Court has jurisdiction in both civil and criminal causes and matters relating to, arising from or connected with labour, employment and industrial relations matters.[1] Whereas its civil jurisdiction on the above subject matters is exclusive to it, its jurisdiction on criminal cases is not. The Court also has the power to set up an Alternative Dispute Resolutions Centre within the court premises for settlement of disputes on matters within its jurisdiction.[2]

2.1 NICN Jurisdiction in Criminal Causes and Matters

According to section 254C (5) of Nigeria's Constitution,

> The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Assembly or by any other law.

The jurisdiction of the Court in criminal causes and matters is not exclusive to it. In other words, it shares it with other courts, for instance the High Courts, the Magistrates' courts and

[1]See section 7 of the National Industrial Court Act, Cap N155, Laws of the Federation of Nigeria, 2004, as updated to the 31st Day of December, 2010. Its commencement date was 4th June, 2006; section 254C (1) to (5) of the Constitution of the Federal Republic of Nigeria, Cap C23, Laws of the Federation of Nigeria, 2004, as updated to the 31st Day of December, 2010, and as altered in 2010 and 2018. The Constitution (Third Alteration) Act, 2010 (No 3) (Commencement: 4th Day of March, 2011) revolutionized the status of the National Industrial Court of Nigeria (NICN) because that enactment did not only expand the jurisdiction of the Court but also gave it constitutional protection as a superior court of record. In this article, we will refer to the Constitution of the Federal Republic of Nigeria (altered in 2010 and 2018) in various ways, e.g. 'Nigeria's Constitution (as altered)' and 'the Constitution'. Section 9 of the Constitution prescribes the procedures for altering the Constitution. The words that that provision uses are 'alter', 'alteration' and 'altering', and not 'amend', 'amending' 'amended', or 'amendment', which many people (including legislators, scholars, lawyers, judges/justices and students) erroneously use. Although the words 'alter' and 'amend' may be synonymous in the contemplation of the drafter, it is safer to use the exact words that appear in the text of the Constitution.

[2] See s 254C (3) of Nigeria's Constitution (as altered). See also the following: (1) National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Instrument, 2015 (S. I. No. 9) Available at <http://nicn.gov.ng/publication/NICN%20(ADR)%20%20Centre%20Instrument%20PRINT.pdf> accessed 30 August 2018. It commenced on 6th Day of April, 2015. (2) National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Rules, 2015 (S. I. No. 10) Available at <http://nicn.gov.ng/publication/NICN%20(ADR)%20%20Centre%20Rules%20PRINT.pdf> accessed 30 August 2018. It commenced on 6th Day of April, 2015. (3) Section 7 (3) (4) and section 20 of the National Industrial Court Act (cited in n 1 above). (4) Sections 4 to 13 of the Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004, as updated to the 31st Day of December, 2010. (5) Orders 5 (f), 6 and 24 of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017. Pursuant to Order 1 rule 2, the Rules came into effect on the 5th day of January, 2017. The 2017 Rules revoked the National Industrial Court Rules, 2007 and Practice Direction, 2012: see Order 1 rule 1 of the 2017 Rules.

area courts.[3] Ejere confirms that the draftsmen of the Constitution intended the High Court to continue to enjoy concurrent jurisdiction with the NIC, otherwise they would have couched the provisions of section 254C (5) of the Constitution clearly and specifically the way and manner they couched section 254C (1).[4] Some of the offences over which the Constitution has conferred jurisdiction over the National Industrial Court are those created under the Trade Unions Act and the Trade Disputes Act. However, the National Industrial Court Act does not provide for the jurisdiction of the Court in criminal causes and matters, as section 7 of the Act impliedly shows.

2.1 (a) Criminal Appeals

Appeals from the decisions of the National Industrial Court in criminal matters shall lie as of right to the Court of Appeal. Thus, section 254C (6) of the Constitution of the Federal Republic of Nigeria says: 'Notwithstanding anything to the contrary in this Constitution, *appeal shall lie* from the decision of the National Industrial Court from matters in *sub-section 5 of this section to the Court of Appeal as of right.*[5] Generally, in civil and criminal proceedings, there are two rights of appeal. They are appeal as of right and appeal with the leave of court (the leave could be of the lower court, or of the appellate court, as the case may be). Appeals from the decisions of the NIC in criminal matters do not require the leave either of the NIC or of the Court of Appeal. Does appeal as of right extend also to interlocutory criminal appeals or is it in relation to only the final decisions of the Court? Section 254C (6) of the Constitution appears to have answered that question. The word 'decision' in that provision is omnibus; it could thus mean a 'judgment' or a 'ruling', of the NIC.

By the provision of section 254C (6) of the Nigeria's Constitution (as altered), appeals from the decisions of the NIC in criminal causes and matters shall lie to the Court of Appeal as of right. By implication of section 243 (4) of the Constitution, an appeal from the decision of the Court of Appeal can go right up to the Supreme Court.[6] Lawyers/litigants have not challenged the jurisdiction of the Court (original and/or appellate) in criminal causes and matters. Given that criminal cases rarely come to the Court, there is no controversy yet on the Court's jurisdiction in criminal causes and matters, and on whether an appeal as of right or with leave is dependent on whether the case is an interlocutory matter or a final decision.

---

[3]See, for instance, section 254C (1) (l) (iii) and (5) of the Constitution (as altered).

[4]OD Ejere, 'Legal Implications of the Constitution (Third Alteration) Act, 2010 on the Jurisdiction of the National Industrial Court of Nigeria' *Labour Law Review (NJLIR)* (2013) (7)(4)) 46 47.

[5]Emphasis added.

[6] See also, OV Ojo, 'The Jurisdiction of the National Industrial Court (NIC) in Nigeria Reviewed' <https://viyonlawblog.wordpress.com/2015/08/17/the-jurisdiction-of-the-national-industrial-court-nic-in-nigeria-reviewed/> Posted online on 17 August 2015 accessed 28 August 2018.

2.2 Right of Appeal in Civil Cases

Previously[7], there was no right of appeal from the decisions of the NIC to the Court of Appeal in civil causes and matters except on grounds or questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria.[8] Even then, the appeals must relate to matters upon which the National Industrial Court (NIC) had jurisdiction. Below is a further exposition of the law.

(a) Appeal shall lie from the decision of the NIC as may be prescribed by an Act of the National Assembly.[9] This means that outside appeals bordering on fundamental rights, the right to all civil appeals has to be expressly prescribed by an Act of the National Assembly; and even then, with the leave of the Court of Appeal. But as we will see below, the law has changed based on the Supreme Court decision in the *Skye Bank case.*

(b) 'Without prejudice to section 254C (5) of this Act,[10] the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.'[11]This means all civil appeals (including those on fundamental rights) terminate at the Court of Appeal. No civil appeal on labour matters will go to the Supreme Court. This will continue to be the law until there comes another constitutional alteration, or, as we foresee, until lawyers successfully challenge the interpretation of that provision.[12]

3. Purported Finality of Decisions of the NIC vis-à-vis the Controversial Judgement of the Supreme Court in the Skye Bank Case on 30th June 2017

Despite the seemingly clear previsions of the NIC Act and the Constitution as well some previous judicial decisions and opinions of some jurists on the finality of the decision of the NIC in civil causes and matters outside questions of fundamental rights, the Supreme Court gave a contrary decision. The judgment of the Supreme Court meant that there is a right of appeal from the decisions of the NIC in all civil cases. Thus, appeals from decisions of the NIC to the Court of Appeal lie as of right or with leave of the Court of Appeal, as the case may be, in all causes and maters, and not only on fundamental rights and criminal causes and matters.

For the avoidance of doubt, there had been conflicting decisions of the NIC on the appealable

---

[7]Prior to 30th June, 2017.

[8] See section 243 (2) of the Constitution of the Federal Republic of Nigeria (as altered) and section 9(2) of the NIC Act.

[9] Section 243 (3) of the Constitution; s. 9(1) of the NIC Act.

[10]This is the provision on jurisdiction in criminal matters.

[11]Section 243(4).

[12] On critique of the limited right of appeal against the decision of the NIC, see AFAperua-Yusuf*et al*, 'Non-Appealable Decisions of the National Industrial Court of Nigeria: A Critical Analysis' *American International Journal of Contemporary Research* (2015) (6) 156-164.

decisions of the NIC. The conflicting decisions had arisen mainly in that court's interpretation of sections 240 and 243 (1) (2) (3) (4) of the 1999 Constitution (as altered).[13]Therefore, it was imminent that only the Supreme Court could resolve the issue with finality.

3.1 The Case of *Skye Bank v Iwu*[14]

It was a constitutional matter. Therefore, the Supreme Court constituted a full panel of seven

[13] The conflicting decisions, which had come from different Judicial Divisions, were as follows. On the one hand, the Court held that parties had a right of appeal against the decisions of the NIC on questions of fundamental rights by virtue of section 243 (3) of the Constitution, and could appeal with leave of the Court of Appeal on all other causes and matters. The cases were , *Federal Ministry of Health v The Trade Union Members of the Joint Health Sectors Union &Ors* (2014) LPELR-23546 (CA), *Local Government Service Commission, Ekiti State and Anor v Mr. M. A. Jegede* (2013) LPELR – 21131(CA), *Local Government Service Commission, Ekiti State and Anor v Mr. M. K. Bamisaye*(2013) LPELR – 20407(CA), *Local Government Service Commission, Ekiti State & Anor v Francis OluyemiOlamiju* (2013) LPELR – 20409 (CA) and *Local Government Service Commission, Ekiti State and Anor v Mr. G. O. Osubiojo* (2013) LPELR 20403 (CA).
In contrast, the Court of Appeal, Lagos Judicial Division, held in the following cases that the right of appeal was limited to fundamental rights, while in other cases, no right of appeal existed even with leave of the court: *Mr. Lasisi Lawal v OAU Ile-Ife* (2016) LPELR-40290 (CA), *Mr. M. I. Ogunbawo v O. A. U. Ile-Ife* (2016) LPELR-40291 (CA), *Zenith Bank Plc v Caroline Dennis Durugbor* (2015) LPELR-24898 (CA), *Darnley Anifowoshe v WEMA Bank Plc* (2015) LPELR-24811 (CA), *Lagos Sheraton Hotel & Towers v H. P. S. S. S. A.* [2014] 14 NWLR (Pt 1426) 45, *Ports & Terminal Multiservices Ltd & Anor v Nwaosa* (2016) LPELR – 41490 (CA) and *Coca-Cola (Nig.) Limited v Akinsanya* [2013] 18 NWLR (Pt 1386) 225.

[14] (2017) LPELR – 42595 (SC); or as contained in the certified true copy (CTC):
Mainstream Bank Ltd. (Now Skye Bank Plc) v Victor AnaememIwu SC/885/2014. The abbreviation 'LPELR' stands for 'Law Pavilion Electronic Law Report'.
To download the CTC of the judgment, go to <https//www.lawyard.ng/download-certified-true-copy-of-skye>
On 21st September, 2018, the Central Bank of Nigeria (CBN) revoked the operating licence of Skye Bank Plc. Then the Nigerian Deposit Insurance Corporation (NDIC) commenced the processes for its liquidation. Even as far back as 4th July, 2016, the CBN had taken a 'regulatory action' on the bank that led to the resignation of some key members of the management team of the bank. In 2018, the NDIC, in consultation with the CBN, incorporated POLARIS Bank Limited (the 'Bridge Bank') to assume or acquire the assets and liabilities of Skye Bank Plc and to ensure the non-disruption of banking businesses/transactions. Consequently, the CBN issued an operating licence to the newly formed Polaris Bank Limited, which commenced banking business on 21/9/2018, with normal banking services continuing on Monday, 24th September, 2018. Polaris Bank Limited purchased the accounts and records of Skye Bank Plc. The customers of the old bank became automatic customers of the new bank. The Asset Management Corporation of Nigeria (AMCON) began the capitalization of the new bank to make it viable for sale to third party acquirers/investors. However, the CBN asserted that Skyebank Plc was neither distressed nor liquidated, though it had corporate governance challenges. See, NDIC, *Press Statement on the Resolution of Skye Bank Plc - Press Release*<http://ndic.gov.ng/press-statement-on-the-resolution-of-skye-bank-plc/> accessed 30 December 2018, and CBN press release at <https://www.cbn.gov.ng/out/2016/ccd/cbn%20press%20statement%20on%20skye%20bankjuly%20040716.pdf > accessed 30 December 2018. See also, Polaris Bank Media Centre, 'Skye Bank neither Distressed nor Liquidated – CBN' <https://www.polarisbanklimited.com/media-centre/skye-bank-neither-distressed-nor-liquidated-cbn > accessed 7 January 2019; BabajideKomolafe, 'CBN Revokes Skye Bank Licence' *Vanguard* (Lagos, 22 September 2018) <https://www.vanguardngr.com/2018/09/cbn-revokes-skye-bank-license/ > accessed 7 January 2019; ChimaNwokoji, 'CBN, NDIC Liquidate Skye Bank as AMCON Takes over' *Nigerian Tribune* (Ibadan, 22 September 2018) < https://www.tribuneonlineng.com/165365/> accessed 7 January 2019.

of its justices to hear and determine the appeal.[15] The Court had consolidated this case with that of *Coca-Cola Nigeria Ltd v Mrs Titilayo Akinsanya* (citation in note 13 below). The consolidated appeal had come by way of reference[16], at the instance of Dr Charles Mekwunye, counsel to the claimant/appellant (Skye Bank, Plc) in the *Skye Bank case*. The purpose of applying for case stated was to enable the Supreme Court to address the constitutional issues and substantial points of law, which had arisen before the Court of Appeal.

3.1(a) Brief facts of the Case

On 2nd February 2012, at the National Industrial Court, Lagos Judicial Division, the appellant took out an action against the now defunct Afribank Nigeria Plc. The action was for alleged wrongful termination of employment (he had been dismissed for alleged gross misconduct), unpaid accrued salaries, unremitted Pension Contribution and National Housing Scheme due to him in the course of his employment in the bank. The bank had terminated the claimant's employment on 6/07/2011. When Afribank Plc went extinct, Mainstream Bank became its successor-in-title. Mainstream Bank later metamorphosed into Skye Bank Plc. The appellant was incorporated on 3/8/2011 under the laws of Nigeria (as a separate entity from the respondent's employer) to take over some assets and liabilities of the defunct bank.

Parties filed and served their pleadings pursuant to the Rules of the trial court. On 10/7/2012, Mainstream Bank Ltd filed and raised a preliminary objection, praying the trial court to determine the action *in limine* (as a preliminary matter, at the very beginning) on want of jurisdiction, as the claimant had predicated his action on employer and employee relationship. However, the court, Coram Obaseki-Osaghe, J, delivered a ruling dismissing the objection, holding that the trial court had jurisdiction to hear and determine the matter.The appellant/bank appealed to the Court of Appeal, Lagos Division via its notice and grounds of appeal dated 19/11/2012. The court heard the appeal; but before it could give its ruling, the appellant applied for a case to be stated to the Supreme Court. The Court of Appeal granted the application. In order to resolve the contention, the Supreme Court formulated one issue for determination: *Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria.*[17]

In determining the appeal, the Supreme Court considered the provisions of sections 36 (2) (b),

[15] See proviso to section 234 of the Constitution and section 233 (2) (b) of the Constitution. The panel of Justices that sat on the appeal consisted of: Mary Ukaego Peter-Odili, JSC (she presided), Musa Dattijo Muhammad, JSC, Clara Bata Ogunbiyi, JSC, Kumai BayangAka'ahs, JSC (dissented), Kudirat M.O. Kekere-Ekun, JSC, ChimaCentusNweze, JSC (Delivered the lead/majority judgment), and EjimbiEko, JSC.

[16] Pursuant to section 295 (3) of the Constitution – reference of question of law to a higher court for interpretation.

[17] Emphasis added

240, 243 (2) and (3), and 254C (3) (4) (5) (6) of the Constitution. The court held that the trial Court (NIC) and the High Court are courts of coordinate jurisdiction and as such the Court of Appeal has jurisdiction to the exclusion of any other court in Nigeria to hear and determine appeals from those courts. Accordingly, a right of appeal exists to the Court of Appeal in criminal matters, under section 254C (5) and (6), and in fundamental rights, under section 243 (2). On the other hand, appeal lies with the leave of the Court of Appeal in all other civil causes and matters in which the NIC has exercised jurisdiction, pursuant to section 240 read disjunctively with section 243 (1) and (4). Specifically, the Supreme Court endorsed the decision (the position of the law and finding thereof) in the case of *Local Government Service Commission, Ekiti State and Anor v Mr. M.A. Jegede* (cited above).

Moreover, the apex court held that the right to fair hearing guaranteed under section 36 of the Constitution includes procedures for achieving the right of appeal. In his words, Nweze, JSC said:

> Suffice it to say that an appeal is a continuation of its litigation process. It is akin to the right to access to Court which is constitutionally guaranteed under Section 36 of the Constitution. In other words, the right to access to Court does not end with access to trial Court only. The right so guaranteed is substantive and continues right through to the appeal process. The right is not dependent on whether the appeal is of right or with leave. See also the case of Local Government Service Commission, Ekiti State and Anor. v. Mr. M. A. Jegede (2013) LPELR-21131 at ...[18]

The Supreme Court further said that section 243 (2) (3) of the Constitution, though clumsily and inelegantly drafted, seems to prescribe the procedure for exercising the right of appeal or accessing the appellate jurisdiction of the Court of Appeal over decisions of the NIC. It added that section 243 (2) merely prescribes the procedure for exercising the right of appeal – appeal as of right. The court opined that the problem actually was with section 243 (3), where the problem of interpretation had arisen before the Court of Appeal. The court then employed the use of side (marginal or explanatory) notes as a subsidiary aid to interpretation to show that the intendment of the draftsman was not to create a right of appeal but it was on how the right of appeal was to be exercised. The court cited authorities to justify its reliance on marginal notes as signpost. In that regard, it said that although they are generally not aids to interpretation, they could be useful for the court to find general purpose and the mischief at which the statement in the notes aimed to achieve.[19]

The Supreme Court reiterated its status as 'the highest Court in the land, while all other Courts

[18]*Skye Bank case* (n 14) 116 -117 paras D-B.

[19]It cited the cases of *Idehen v Idehen* (1991) 7 SCNJ 196; [1991] 6 NWLR (Pt 198) 382, per Karibi-Whyte, JSC. It also cited the cases of *FRN v Ibori &Ors.* (2014) LPELR – 23214 (CA, per Saulawa, JCA, relying on some English decisions), and of *Uwaifov A. G. Bendel State* (1982) NSCC 221 at 242.

are subordinate to it. The Constitution cannot be interpreted to create by implication (NIC) as another Supreme Court.'[20] The Court further said that:

> The law is firmly established that if any Court and moreso an appellate Court is to be divested of its conferred jurisdiction, it is done expressly and not impliedly. A Court of law can be clothed with power of finality only by express provision to that effect and not by implication. The substantive power vested in the Court of Appeal to hear and determine appeals, either as of right or with leave, from decisions of subordinate Courts, cannot be caged, confined, curbed or curtailed. Courts must be wary not to foreclose the right of access to Court. See section 36 of the Constitution. No Court can therefore be a final Court by mere implication. In support of this is the provision of Section 243 (4) of the Constitution which unequivocally and expressly made the Court of Appeal the final Court in respect of any civil appeal from the decision of the NIC. *In the absence of express provision of an Act from the National Assembly, appeal in civil matters other than as of right on questions of fundamental right shall be to the Court of Appeal*.[21]

The Court concluded that unlike the Federal High Court and other categories of High Courts, the decisions of the NIC are deliberately made appealable to the Court of Appeal, there being no further appeal beyond that court (the Court of Appeal): section 243 (4) of the Constitution. On the strength of the above, the Supreme Court allowed the appeal. It undertook to transmit its judgment to the Court of Appeal, Lagos Division for its guidance and action.

3.1(b) Critique of the Supreme Courts' Decision in the Skye Bank-the Dissenting Judgment

Surprisingly, throughout the lead judgment, the Supreme Court did not mention or rely on the National Industrial Court (NIC) Act and the legislative history of the basis of limiting the rights of appeal against the decision of the NIC. Even on the face of the judgment, the Supreme Court, inadvertently, opened up another controversy that may eventually confront it in the near future. If appeals against the decisions of the NIC end at the Court of Appeal, what about the right guaranteed by section 36 (2) (b) of the Constitution to appeal to the Supreme Court? Prospectively, this will be a curious scenario worth witnessing.

---

[20] *Skye Bank case* (n 14) 118.

[21] Ibid 118-119, per Nweze, JSC. Words in italics are for our emphasis. There was an Act, the NIC Act, which prescribed the finality of the decision of the NIC in specified matters; however, for inexplicable reasons, the Supreme Court ignored it. In fact, the Court did not consider that Act, at least in its lead judgment. That Act has an equal status to the Court of Appeal Act.

Only one Justice, Kumai BayangAka'ahs, JSC, dissented.[22] This writer commends the dissenting opinion because it demonstrated a better interpretation of the law. Whereas we respect the Supreme Court as the apex court of the country, we disagree with the majority judgment. In dissenting, Aka'ahs, JSC opined, rightly in our opinion, that aside from the decisions of the NIC not concerning criminal matters and fundamental rights cases in which appeals are of right, the decision of the NIC should be final. He gave a fundamental reason for the legislative curtailment or restriction to the right to appeal, with which we also agree:

> Specialized Courts of limited and exclusive jurisdiction are seen as fulfilling a growing need for expertise in increasingly complex areas of law. The resolution of labour and employment disputes is guided by informality, simplicity, flexibility and speed. Specialized business Courts will no doubt play an important role in the economic development of the country.[23]

Aka'ahs, JSC concludes:

> I am of the firm view that decisions of the National Industrial Court in relation to matters spelt out in Section 254C (2), (3) and (4) of the Constitution should be final since it is a specialized Court and is meant to cater for special interests and foster economic development... In conclusion I answer the questions formulated by the Court of Appeal in the following manner: 1. The Court of Appeal has jurisdiction to the exclusion of any other Court in Nigeria to hear appeals from the decisions of the National Industrial Court where such decisions touch on questions of fundamental rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). 2. The Court of Appeal is divested of its appellate jurisdiction in the decisions of the National Industrial Court in respect of Section 254C (2) (3) and (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). 3. The Court of Appeal has jurisdiction to hear appeals from the decisions of the National Industrial Court in respect of other matters apart from questions of fundamental rights but the exercise of such jurisdiction must be with leave of the Court of appeal.[24]

The interpretation that Justice Aka'ahs has given appears to be more in tune with the provisions of the Constitution (as altered) and in consonance with the rules of interpretation.

---

[22]See pp 124-156 paras E- A of the judgment. However, see our reservation in note 23 on an aspect of the dissenting opinion.

[23]See dissenting opinion at p 146 paras D-F.

[24]Ibid 156-157 paras A-A. However, the third point in the learned Justice's conclusion seems unclear. It seems to suggest that there are other avenues for appeal with the leave of the Court of appeal. This writer thinks that position is incorrect as there was no and there is no Act or a constitutional alteration allowing this. There is no room for an implied or imaginary right of appeal in this context – the law has couched the provisions on right of appeal in civil cases, in absolute terms.

It seems this interpretation will stand the test of time. If the intendment of the drafters of the Constitution was to extend the appeals in all matters, what then was the purpose of establishing the NIC in the first place? Instructively, section 9(1) of the National Industrial Court Act provides, unmistakably, that subject to subsection (2), 'no appeal shall lie from the decisions of the Court to the Court of Appeal or any other court except as may be prescribed by this Act or any other Act of the National Assembly.' Subsection (2) - the provision on appeal as of right to the Court of Appeal on questions of fundamental rights - says 'An appeal from the decision of the Court shall lie only as of right to the Court of Appeal only on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999.' We think that the mention of the adverb 'only' in two places is deliberate, in order to underscore the absoluteness of the provision and to clear a possible ambiguity. We agree, absolutely, with the reasoning of the Court of Appeal in its decision in the *Ports & Terminal Multiservices Ltd case*.[25] It is very important to note that there is no court that has unlimited jurisdiction, whether original[26] or appellate; not even the Supreme Court does. Thus, jurisdiction is prescribed by statute. Once an enactment or law confers limited or unlimited jurisdiction on a court on a particular subject matter, it remains so, unless and until that enactment is repealed or amended; or unless it contravenes a superior law, particularly the Constitution. Labour matters, like election petitions, are *suigenerus*. The law cannot donate jurisdiction with one hand and take it away with another.

3.2 The Intent of the NIC Actin Creating a Specialised Court withExpedited Judicial Process

With the decision of the Supreme Court on 30/06/2017, there is a more compelling need to ensure that only those with specialization in labour matters should sit over labour related cases whether at the trial court or appellate court. The revolutionary innovations under the NIC dispensation need specialist knowledge by both judges and lawyers to appreciate. There is no doubt that constitutionally, the NIC is a superior court of record. The NIC is also a specialized court. Accordingly, it is *sue generis* (in a class of its own) both in terms of procedure and jurisdiction. The Supreme Court did not appreciate the jurisdiction of the NIC under an extant law – the NIC Act. Secondly, it did not delve on the fact that, statutorily, the NIC was not only a court of first instance but also an appellate court.[27] Admittedly, the Supreme Court

[25](n 13) pp 1-12, per, per Uzo Ifeyinwa Ndukwe-Anyanwu, JCA (delivering the leading Judgment).

[26]For instance, according to the Supreme Court (Additional Original Jurisdiction) Act, Cap S16, Laws of the Federation of Nigeria, 2004, as updated to 31st December, 2010, the Supreme Court is vested with original jurisdiction, in civil matters, 'to the exclusion of any other court' in any dispute between the National Assembly and the President; the National Assembly and any State House of Assembly; and the National Assembly and the State of the Federation, 'in so far as that dispute involves any question (whether of law or fact)on which the existence or extent of a legal right depends.' See s 1(1) (a) – (c). See also subsection (2).

[27] See ss 7 (3) (4) and 8 of the NIC Act. See also Order 5 (a) of the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 and s 254C (1) (j) (ii), (l) (i) (ii), (3) (4) of the Nigeria's Constitution (as altered).

decision in *NUEE v BPE*[28] faulted the purported conferment of status of a superior court of record on the NIC without express constitutional backing (a decision that also triggered the enactment of the Constitution (Third Alteration) Act, 2010). However, the Court did not strike down the NIC Act itself. Therefore, that Act is still a valid law.The enactment of the NIC Act followed the repeal of Part II of the Trade Disputes Act in 2006[29].

Some notable judges of the NIC, Honourable Justice Babatunde Ademola Adejumo (President) and Honourable Justice Benedict BakwaphKanyip (Presiding Judge Lagos Division) have written extensively on the rationale for making the NIC a specialized court as well as its implications. As rightly observed by Adejumo in the introductory parts of his paper:

> Given the dynamics of employment interrelationship and the challenges of ever expanding global society, the need to establish a specialized Court to tackle disputes connected with labour and industrial relations has become poignant. This is because labour and industrial disputes are economic issues which need expeditious dispensation and it was felt that the regular Courts which were already saddled with enough duties should be spared the additional duties of handling labour and industrial cases. It was also felt that the procedure at the non-specialized Courts were too slow and cumbersome such that a nation desirous of rapid industrialization and economic development could not afford to be bogged down by such procedures and delays.[30]

In the concluding part of his paper, he said:

> The intendment of the law makers and all those who participated in ensuring the passage of the Constitution (Third Amendment)Act, 2011 [(Third Alteration) Act, 2010]] was to create a specialized superior court of record that would expeditiously resolve employment, labour and industrial relations disputes, thereby creating a harmonious industrial relation, this would definitely usher in a new era of certainty, reliability in employment and labour issues. It would also produce the additional advantage of ensuring cordiality and harmony in the work place and create conducive atmosphere which would in turn encourage foreign investors to be interested in investing in the country. This is bound to create confidence in the minds of foreign investors desirous of investing in Nigeria. This is borne out of the fact that a medium for quick and

[28][2010] 7 NWLR (Pt 1194) 538; (2010) 1 NACLR (Nigerian Institute of Advanced Legal Studies (NIALS) Appellate Courts Law Report) 91.

[29]Part II of the Trade Disputes Act (as updated to 31st December, 2010) reads: '*The National Industrial Court* [Part II (sections 20 to 32) repealed by s. 53 (1) of No. 37 of 2006.]'

[30] See Babatunde Adeniran Adejumo, 'The National Industrial Court of Nigeria: Past, Present and Future' <nicn.gov.ng/nji.php> accessed 2 November 2012.

> efficient resolution of disputes now exists. Employment disputes are recurrent decimals between employers/employees throughout the world … The movement into specialized courts is the in-thing in most advanced economies all over the world and Nigeria cannot be an exception. Exclusive jurisdiction is given to the Court in areas critical to the economy and such issues must be handled timely in line with international best practices.

Furthermore, he had said in relation to the innovation in the Constitution (Third Alteration) Act, thus:

> The controversy on the finality of the decision of the National Industrial Court has been clarified as section 243(3) of the Constitution provides that an appeal shall lie from the decision of the NICN to the Court of Appeal as maybe prescribed by an Act of the National Assembly. And even when an Act is enacted dealing with a right of appeal on the decisions of the NICN, the appeal shall be with the leave of the Court of Appeal

Similarly, Kanyip has said:

> The current jurisdiction of the NICN is much wider than it used to be. Not only has jurisdiction in civil causes and matters been enlarged, the court now can entertain criminal causes and matters so long as they relate to issues pertaining to the civil causes and matters that the court has jurisdiction to hear and determine. The right of appeal from the decisions of the NICN to the Court of Appeal remains circumscribed. Only in respect of issues of fundamental rights or criminal causes and matters is the appeal as of right. In all other cases, an Act of the National Assembly must first provide for an appeal; even here the appeal is possible only upon the leave of Court of Appeal. In essence, the NICN cannot grant leave to appeal. This means that the old dispensation when the decision of the NIC was final and binding is almost now the norm. See also s. 9 of the NIC Act; s. 243 (2) (3) (4) of the 1999 Constitution, and the Court of Appeal decision in *Schumberger Anadril Nig. Ltd. v PENGASSAN*.[31]

The Supreme Court, and indeed any other court of law, does not have the power to rewrite a statute; though it has the power to strike down or declare void, a law, say for being unconstitutional or for being repugnant to natural justice, equity and good conscience, or incompatible (expressly or by necessary implication) with an extant law. The task of a court is, basically, to interpret the law to reflect the intendment of the lawmaker.[32] The usual way to

[31]See Benedict BakwaphKanyip, 'The National Industrial Court: Yesterday, Today and Tomorrow' Available at <nic.gov.ng> accessed 4 November 2013.

[32] See, for example, *Agwalogu&Ors v Tura Int'l Ltd Nigeria &Ors* (2017) LPELR-42284 (CA).

determine intendment is through the literal meaning of a word or an expression. The literal interpretation (plain meaning rule) is always the first port of call unless and until a literal interpretation will lead to absurdity (in the real sense of the word), in which case other canons of interpretation should be used.[33] It is not within the function of the court to import into a law what the lawmaker did not intend to include. It does not matter how bad the law may appear to the judge; he/she has the duty to interpret the law as it is, and not as he/she thinks it ought to be by his/her idiosyncrasies or personal opinions. Law and morality do not always co-exist.

In essence, there is a limit to the exercise of 'judicial legislation'[34] or 'judge-made law.' Judges can 'make' the law, by judicial activism only where there is a lacuna in the law, and the court has to act in one way or the other to avoid injustice, a bizarre situation or logjam. The law itself, therefore, guides judicial power of interpretation. The Supreme Court is a court of both law and policy. It charts a consistent judicial direction for the country through policy formulations on rule of law and issuance of rules, practice directions and other instruments to, among other things, facilitate the speedy dispensation of justice. Notwithstanding, its policy-making role must be within the law; otherwise, it becomes unconstitutional, void and a recipe for anarchy. Where a court is helpless – that is where its 'hands are tight (tied?)', as it were, the worst it can do is to express judicial regret and call for reform and not to take over the role of the legislature under the guise of giving effect to some imaginary legislative intent or purposive construction of a statute.

4. Conclusion

We think the Supreme Court gave its decision in the case under review *per incuriam.* We

[33]The other canons of interpretation are the mischief rule (which together with the literal rule, form the referential approach to interpretation) and the golden rule (purposive approach). According to Imhanobe, under the referential approach, 'the court simply interpret (sic) the words and apply (sic) the meaning to the statute', while under the purposive approach, 'the court considers the entire purpose (goal) of the statute as aid in the construction of the statute'. See SO Imhanobe, *Legal Drafting and Conveyancing* (1st edn, Secured Title Publishers nd) 99. There are other principles/rules of interpretation/construction, which are 1. *Ejusdem generis* rule, where general words follow particular words, the court interprets the general words to mean or belong to the same class as the particular words. 2. *Ut res magis valet quampereat,* meaning that interpretation should be such that will rather preserve and not destroy or defeat the legislative intent. 3. *Expressiounisest exclusion atterius,* meaning the express mention of one thing is the exclusion of another or others not mentioned. 4. *Noscitur asocus,* the meaning of doubtful or unclear words or phrases in a sentence can be determined by the meaning of other words following or going with it. 5. *Contra proferentes rule,* meaning where a word or phrase has more than one meaning or interpretation, the interpreter is to construe the expression strictly against the maker. 6. *Lex non cogitadimpossibilia,* which means the law does not compel the doing of impossibilities. For details, see Imhanobe, Ibid 99-110; Tonye Clinton Jaja, *Legislative Drafting and Stautory Interpretation: An Introduction* (Malthouse Press Limited 2017) 55; National Open University of Nigeria, *Law 515: Jurisprudence and Legal Theory 1* Course Guide (Reprinted 2014) 29-30.

[34]The Supreme Court has frowned at 'judicial legislation'. See, for instance, *Okotie-Eboh v Manager &Ors* [2004] 18 NWLR (Pt 905) 242; *Egbe v Yusuf* (1992) LPELR-1035 (SC).

hope the Supreme Court will overrule itself in a subsequent appeal that will come before it. Alternatively or additionally, the National Assembly can further amend the NIC Act and alter the relevant provisions of the Constitution. For now, we are helpless, as the 'finality' of the Supreme Court is decisively 'final'.[35] However, it does not mean the Supreme Court is infallible. As Justice Chukwudifu Oputa, said in *Adegoke Motors Ltd. v Adesanya*[36]:

> We are final not because we are infallible; rather we are infallible because we are final. Justices of this court are human beings, capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this court can do incalculable harm through its mistakes. This court has the power to over-rule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to persevere in error.

5. Recommendations

i)The legislature should work hard at ensuring that there exist no seeming contradictory or ambiguous provisions in the Constitution e.g. section 240 and section 243(1) to (4) of the Constitution and section 9 (1) and (2) of the NIC Act . Therefore, the National Assembly should further alter the Constitution to resolve these seeming contradictory provisions. One way of ensuring this is to engage, actively, experts and experienced legal practitioners in the drafting processes of bills. Accordingly, Jaja says

> In accordance with the decisions of the Courts, in their choice of "the words of a statute" legislative drafters must choose words that have a clear cut definition of what constitutes "clear and unambiguous words" when they are framing the "words of a statute" ... "Clarity, precise (sic: precision) and ambiguity" are identified as the key pillars of "effective legislation the highest goal that legislative drafter pursue (sic) when drafting legislation.[37]

ii) The composition of the Justices of the Court of Appeal and the Supreme Court should include persons with expertise in the theory and practice of labour law and industrial

---

[35] See *Tomtec Nigeria Limited v F.H.A.* [2010] All FWLR (Pt 509) 414-415; *Shashi v Smith* (2009) 40 NSCQR 255 at 288-289;

[36] [1989] 13 NWLR (Pt 109) 250 at 274-275. Note that the Supreme Court, in considering a future case, may only overrule a precedent set in a previous decision, and not the previous decision itself. As far as the jurisprudence is concerned at present, no court in Nigeria has the power to set aside its previous decision or sit on appeal against its own decision, except in exceptional circumstances. A court may, however, correct clerical errors discovered in a decision it has delivered. The only grounds on which a court may set aside its decision are where a judgment is later found to have been obtained by fraud or duress; etc, thereby making it a nullity. Nigeria may move away from its current position if it decides to change its laws to allow for review of judgments, as is done in some international organizations.

[37]Jaja (n 32) 51.

relations. This will greatly help in the event of interpretation of critical constitutional/statutory interpretations in respect of labour law and industrial relations issues.

iii) Rather than make the civil aspects of labour cases go up to the Court of Appeal (or assuming, the Supreme Court), the National Assembly should amend the NIC Act and alter the Constitution to create appellate chambers in the NIC, to handle appeals.

The Supreme Court should overrule itself in the *Skye Bank case.*