

LEGAL DIAGNOSIS OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA RULES, 2017 AS A CATALYST OF EGALITARIAN LABOUR ADJUDICATION

David Tarh-Akong Eyongndi* and Kingsley O Nnana Onu[#]

Abstract

The National Industrial Court of Nigeria (NICN) is a specialized court dealing with labor and employment matters; its functionality is contingent on its procedural Rules. To ensure optimal functioning of the Court, its President, according to the powers conferred on him, made the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017. The question are: in comparison to the erstwhile 2007 Rules what improvement (s) has these Rules introduced into the functionality of the Court and its shortcomings? This article adopts doctrinal methodology in addressing these issues. The paper through desk-based analytical methodology examines the powers, status, and functionality of the National Industrial Court of Nigeria under the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. The paper found that the NICN Rules, 2017, is a catalyst for expeditious, judicious, and egalitarian labor adjudication towards unearthing the benefits of the enhanced status of the Court under the Third 1999 Constitution (Third Alteration) Act 2010. It highlights the innovative provisions of the Rules. It identifies areas for improvement and recommends how to achieve the improvements.

Keywords: *Adjudication/Court/ Employer/ Employee/ National Industrial Court*

* LL.B (Hons) UNICAL, LL.M (Ibadan) BL, Lecturer, College of Law, Bowen University, Iwo, Osun State, Nigeria. Email; david.eyongndi@bowen.edu.ng or eyongndidavid@gmail.com.

[#] LL.B (Hons) EBSU, LL.M (Ibadan) BL. Lecturer, Department of Public Law, Adeleke University, Ede, Osun State, Nigeria. Email: kingsleyonu2020@gmail.com

1. INTRODUCTION

At present, the NICN has evolved as a Superior Court of Record (SCR) through a tumultuous sojourn since its creation under the Trade Disputes Act.¹ The Court was created to have exclusive original jurisdiction over labor and ancillary matters.² However, due to constitutional constraints, the NICN's status and powers were continuously undermined.³ In fact, it was held that the purported exclusive jurisdiction of the Court over labor disputes was a flagrant infraction of the jurisdictions of the Federal High Court, State High Court and High Court of the Federal Capital Territory High Court contained in Sections 251, 257, and 272 of the 1999 Constitution of the Federal Republic of Nigeria.⁴ The scope of remedies and orders that the court could legitimately grant as well as the kinds of labor disputes it could adjudicate upon, were grossly restricted which all hampered the efficiency and effectiveness of the Court.⁵ The exclusion of the Court under the 1979 and 1999 Constitutions further worsened the quagmire that had shrouded the NICN as it was argued to be a non-constitutional Court.⁶ As a result, the NIC was regarded as an inferior tribunal, subject to the supervisory jurisdiction of the High Court.⁷ Several legislative attempts were made as an aftermath of assiduous brainstorming to address the challenges that had confronted the Court.⁸ In 2003, the then President of the Court, Mr. Babatunde Adejumo OFR, organized a conference with the theme "Nigerian Industrial Dispute Settlement System: Challenges and Prospects of the National Industrial Court" under the Chairmanship of Chief Justice of Nigeria, Justice Mohammed Uwais (GCON).⁹ At the end of the brainstorming, a Bill was

¹Section 9 Trade Dispute Decree No. 7 of 1976; CK Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Ltd., 2011) 318.

²Alero E Akereolu, and David Tarh-Akong Eyongndi, "Jurisdiction of the National Industrial Court under the Nigeria Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" 10 (1) *The Gravitas Review of Business & Property Law* (2019) 1.

³*Western Steel Works Ltd. v Iron & Steel Workers Union of Nigeria (No. 2)* [1987] 1 NWLR (Pt. 49) 284; *Adisa v Olayiwola* [2000] 10 NWLR (Pt. 674) 116.

⁴*Attorney General of Oyo State v Nigerian Labour Congress* [2003] 8 NWLR (Pt. 821) 1.

⁵Oji D Amucheazi, and Paul U Abba, *The National Industrial Court of Nigeria; Law, Practice and Procedure*, 1st ed., (Dubai, Top Design Printing 2013) 3.

⁶Akereolu and Eyongndi, (n 2) 6-7.

⁷Akintayo OA John, and David T. Eyongndi, "The Supreme Court of Nigeria Decision in Skye Bank Ltd. v. Victor Iwu: Matters Arising" (2018) 9(3) *The Gravitas Review of Business & Property Law* 109-110.

⁸David T. Eyongndi, & Kingsley O.N Onu, "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" 10 *Babcock University Socio-Legal Journal* (2019) 243-270.

⁹Akintayo, and Eyongndi, (n 7) 111.

presented at the National Assembly and was passed into law as the National Industrial Court Act, 2006 (NIC Act).¹⁰ This laudable effort only had a short time palliative effect as the constitutionality of the Act soon became a front-burner issue.¹¹ The question that arose was whether an ordinary Act of the National Assembly could be used to amend the provision of the Constitution with the answer being in the negative.¹²

These challenges that had plagued the NICN led stakeholders in the labor sector to seek a permanent solution. Thus, in 2010, the National Assembly enacted the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.¹³ The long title of the Act reads thus: “an Act to provide for the establishment of the National Industrial Court as a Superior Court of Record; and related matters.”¹⁴ Section 254A establishes the NIC as a superior court of record just like the various High Courts.¹⁵ Section 254C provides the exclusive original civil jurisdiction of the NIC which is more expansive than that hitherto provided for under the NIC Act, 2006 to the extent that the NIC has the vires to adjudicate over the interpretation of international labor standards and international labor conventions, treaty, protocol which Nigeria has ratified.¹⁶ Section 254D clothes the NIC, to exercise any jurisdiction conferred on it, with all the powers of the High Court.¹⁷

From the above, it is crystal clear that the expansive original civil jurisdiction of the NIC vests enormous responsibility on the Court to ensure expeditious settlement of labor and employment disputes in Nigeria. While it could be said that the substantive legal framework of the NIC is settled, the aspiration of the legislature is in creating the NIC that can only be achieved through a robust procedural legal framework that will regulate its practice and procedure. Thus, section 254F (1) of the 1999 CFRN (Third Alteration) Act, empowers the President of the NIC to make Rules for regulating the practice and procedure of the Court.

¹⁰ Amucheazi and Abba (n 5) 50-51.

¹¹ *National Union of Road Transport Workers v. Road Transport Employers Association of Nigeria* (2012) NWLR (Pt. 1307) 170.

¹² Polycarp E Amechi, and David T. Eyongndi, “Casualisation of Labour Practice in Nigeria and Ghana: What Lessons are there for Nigeria?” 2017-2018, *Nigerian Current Law Review, Institute of Advanced Legal Studies* 121-162.

¹³ The President of the Federal Republic of Nigeria, H.E. Goodluck Ebele Jonathan Grand Commander of the Federal Republic of Nigeria (GCFRN) assented to the Act on the 4th day of March, 2011.

¹⁴ Akintayo and Eyongndi, (n 7) 113.

¹⁵ *Maduka v Microsoft Nig. Ltd.* [2014] 41 NLLR (Pt. 125) 67.

¹⁶ Elizabeth A Oji, and Offornde D Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates Nig. Ltd. 2015) 255.

¹⁷ Ifeoluwa O Olubiyi, “Jurisdiction and Appellate Powers of the National Industrial Court: Need for Further Reforms” 3 *The Gravitas Review of Business & Property Law* (2017) 46.

Thus, in 2017, the erstwhile President of the NIC, Mr. Babatunde Adejumo, made the National Industrial Court (Civil Procedure) Rules 2017 which revoked the 2007 Rules and the 2012 Practice Direction.¹⁸

The objective and intention of the Rules are to establish an enduring, equitable, just, fair, speedy, and efficient fast-track case management system for all civil matters within the jurisdiction of the Court; promote in the light of the specialized jurisdiction of the Court; the socio-economic importance of the jurisdiction of the Court, diverse composition of parties, easy and speedy resolution of civil matters, as well as, effective and prudent management of the resources of the Court.¹⁹ The Rules aim at enabling a Judge sitting as a single Judge or a panel of Judges to fast track hearing and determination of all processes, motions, and or applications in respect of civil cases within the jurisdiction of the Court. It also seeks to achieve a system for speedy dispensation of justice and fast-tracking of proceedings in the Court and in particular the hearing and determination of interlocutory applications, motions, and notices.²⁰ Egalitarian adjudication requires that all persons who seek justice from the court are treated fairly and equally through the elimination of technicalities and other adjudicatory roadblocks. Courts are established to ensure that legal grievances are adjudicated and resolved speedily however, it has become customary for cases to remain in court longer than necessary thereby causing a delay in justice delivery despite the fact that justice delay is justice denied. Labor disputes by their nature deserve quick and responsive adjudication free from the shackles of technicalities which the NICN as a specialized Court under the previous procedural regimes, is not free thereby making egalitarian adjudication of labor disputes difficult. Thus, fast-tracking justice delivery has become necessary.

When compared with the previous Rules and Practice Direction, does the 2017 NIC (Civil Procedure) Rule contain provisions that are capable of promoting the jurisprudence of the Court encapsulated in its expansive jurisdiction under its enabling law? The article critically examines the provisions of this 2017 NIC Rule to ascertain the innovative provisions. This article is divided into four parts. Part one is the general introduction. Part two discusses the anatomy of the NIC as a superior court of record. Part three examines the provisions of the NIC Rules which are innovative and adjudges if they are capable of attaining the jurisprudence of the NIC. Part four contains the conclusion.

¹⁸ Order 1 Rule 1 of the National Industrial Court (Civil Procedure) Rules 2017.

¹⁹ Order 1 Rule 4 (1) of the National Industrial Court (Civil Procedure) Rules 2017.

²⁰ Order 1 Rule 5 (a), (b), (c), (d), (e) and (f) of the National Industrial Court (Civil Procedure) Rules 2017.

2. ANATOMY OF THE EVOLUTION OF THE NATIONAL INDUSTRIAL COURT

This section of the article examines some salient aspects of the NIC from its evolution till its crystallization as a superior court of record under the 1999 CFRN (Third Alteration) Act, 2010. Prior to the advent of the British in Nigeria, labor relations had been on the basis of family and communal labor.²¹ Paid employment as it is today, was unknown.²² The British, through colonialism and business expansion, introduced wage employment in Africa and Nigeria in particular as they established and extended their British businesses in Nigeria such as John Holt Group, Royal Niger Trading Company, Chanria Group, etc. With these kinds of business concerns requiring a lot of manpower, there were bound to be conflict and their expeditious settlement would prevent truncation of business activities. Thus, in 1941, the colonial government promulgated the Trade Disputes (Arbitration and Inquiry) Ordinance to settle disputes within Lagos Colony without making the same provisions for the protectorates. In 1957, another Ordinance was promulgated known as the Trade Disputes (Arbitration and Inquiry) (Federal) which had a nationwide application, unlike its predecessor.²³ Upon gaining political independence in 1960, the indigenous government, in its bid to improve the trade dispute settlement mechanism of Nigeria, the Federal Military Government, promulgated two Decrees in 1968 and 1969; Trade Disputes (Emergency Provisions) Decree²⁴ and Trade Dispute (Emergency Provisions) (Amendment)Decree.²⁵ These legislations prohibited strike and lock-out in an effort to engender industrial tranquillity. The later Decree established a permanent tribunal known as Industrial Arbitration Tribunal for settling trade disputes.

Six years after the unrest caused by the Nigerian Civil War, in 1976, the Trade disputes, Decree²⁶ was promulgated and it set up a Court known as the National Industrial Court to adjudicate over trade disputes.²⁷ Unfortunately, when the 1979 Constitution was enacted, section 6 (5) thereof that contained all the Superior Courts of Record in Nigeria, omitted the NICN. This led to the NICN being considered as a court not recognized by the Constitution leading to a challenge of its constitutionality.²⁸ In 1992, in a bid to rectify this defect, the

²¹ Joe I Roper, *Labour Problems in West Africa* (London, Penguin, 1958) 12.

²² Akintunde Emiola, *Nigerian Labour Law* 4th Ed. (Ogbomoso, Emiola Publishers Ltd., 2008) 1.

²³ Oji, and Amucheazi, (n 15) 254.

²⁴ Trade Disputes (Emergency Provisions) Decree No. 21 of 1968.

²⁵ Trade Dispute (Emergency Provisions) (Amendment Decree) Amendment No. 2 of Decree No. 53 of 1969.

²⁶ Decree No. 7 of 1976.

²⁷ Section 9 Trade Dispute Decree No. 7 of 1976; Oji, E. A., and Amucheazi, O. D. (n 15) 253.

²⁸ *Kalango v Dokubo* [2003] 15 WRN 32.

Trade Disputes (Amendment) Decree was promulgated and it elevated the NICN to the status of a superior court of record.²⁹ Being a military Decree during a military regime, the NICN status could no longer be challenged. When the 1999 Constitution was enacted, the NICN was again, omitted amongst the listed Superior Courts of Record. This opened up the floodgate of contention against its constitutionality and purported exclusive jurisdiction over labor and employment matters.³⁰ It was the argument that the provisions of the 1992 Decree that vested exclusive original civil jurisdiction on the NICN over trade disputes infringed the jurisdiction of the High Courts under the 1999 CFRN.³¹ To resolve this jurisdictional cum constitutional impasse, the National Industrial Court Act, 2006 was enacted.³² This attempt soon turned out to be an exercise in futility as it could not remedy the perforated and defective constitutional status cum jurisdiction of the NICN. To prescribe a permanent solution to this issue, the 1999 CFRN was amended via the 1999 Constitution of the Federal Republic (Third Alteration) Act, 2010. This Act included the NICN in the list of Superior Courts of Record in Nigeria and gave it expanded exclusive original civil jurisdiction overall labor and employment matters.

The exclusive original jurisdiction of the NICN and right of appeal from its decisions to the Court of Appeal generated controversies under section 243 (3) 1999 CFRN (Third Alteration) Act. Two schools of thought cropped up as a result of this controversy. One posited that only decisions of the NICN arising from fundamental human right cases as contained in Chapter IV of the Constitution can be appealed to the Court of Appeal while the other argued that every decision of the NICN, is appealable to the Court of Appeal either as of right or with leave as a court of the first instance cannot exercise final jurisdiction over a dispute. The Supreme Court settled this controversy in *Skye Bank Ltd. v Victor Iwu*³³ where it held that the Court of Appeal exercises appellate jurisdiction over all decisions of the NIC under two options, either as of right (decisions on fundamental human rights cases) or with the leave of the Court (all other decisions of the court not arising from Chapter IV of 1999).

²⁹ Trade Disputes (Amendment) Decree No. 47 of 1992.

³⁰ *AG Oyo State v. NLG, Oyo State* [2003] 8 NWLR (Pt. 821) 1 at 33-34; *Ekong v. Oside* [2005] 9 NWLR (Pt. 929) 102.

³¹ *Inspection Service Nig. Ltd. v Petroleum and Natural Gas Senior Staff Association of Nigeria*. Digest of the Judgment of the NICN 1978-2006 at 428-430.

³² *Amucheazi and Abba* (n 5) 3.

³³ [2017] 13 NWLR (Pt. 1590) 24.

Worthy of note is the fact that while section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act gives the NIC exclusive jurisdiction over fundamental human right suits, the section, or any other, did not make provision for the abatement of such matters pending before other Courts prior to the enactment of the Act. The consequence of this omission is that while appeals from the decisions of the NIC goes to the Court of Appeal and terminates there, such labor disputes, commenced before courts other than the NIC, would be appealed to the Court of Appeal and to the Supreme Court having not emanated from the NIC. This is contrary to the intendment of the legislature when it inserted section 243 (3) of the 1999 CFRN (Third Alteration) Act. This notwithstanding, these labor cases pending before other Courts would be spent but their effect in disrupting the prevailing jurisprudence of the Court cannot be wished away.

Since 2010, pursuant to its enhanced status and stature, the NICN has introduced very radical developmental strides in Nigeria's labor jurisdiction to the admiration of several labor stakeholders. In *Mix and Bake Flour Mills Industries Ltd. v FBTSSA*³⁴ the NICN contrary to the prevailing common law position that reinstatement cannot be ordered in master-servant employment, order it. While it is the position that an employer, in master-servant employment, can terminate the employment of the employee for any or no reason as was held in *Olanrewaju v Afribank Nigeria Plc.*³⁵ In *Petroleum and Natural Gas Staff Association of Nigeria v Schumberger Anadrill Nigeria Ltd.*³⁶ the NICN held that it is no longer fashionable in accordance with global best practice for an employer to terminate the employment of an employee for any reason (good or bad) or no reason at all. This decision was reached placing reliance on ILO Termination of Employment Convention, 1982 (No. 158) and Recommendation No. 166. The Court in *Aloysius v. Diamond Bank Plc.*³⁷ held that where the employer gives a reason for termination (as it is expected), the employee reserves the right to contest the reason. At present, the NIC is trailblazing a labor jurisprudence that is worker-friendly in accordance with ILO standards. The employee, in a contract of employment, particularly in the master-servant employment, is perpetually at the disadvantaged position requiring protection. Unfortunately, the common law and our

³⁴ [2004] 1 NLLR (Pt. 2) 247.

³⁵ [2001] 13 NWLR (Pt. 731) 691.

³⁶ [2008] 11 NLLR (Pt. 29) 164.

³⁷ [2015] 58 NLLR (Pt. 199) 92.

obsolete labor legislation protected the employer to the chagrin of the employee. The NIC Act seems to have heeded to the Biblical Macedonia call to help labor.

Since 2010 pursuant to its enhanced status and stature, the NICN has delivered some landmark decisions that have positively impacted Nigeria's labor jurisprudence. For instance, under the common law, the employer has absolute right of termination of the contract of employment for any reason (good or bad) or no reason at all as was held in *Shell Petroleum Development Company Nig. Ltd. v Ifeta*³⁸ in fact, where the employer in terminating the employment, does so arbitrary in breach of the contract of employment, the contract is nevertheless determined the only remedy available to an aggrieved employee, is to seek damages for breach of contract.³⁹ However, the NICN has held that it is no longer fashionable to terminate the employment of an employee for any reason or no reason in accordance with international best practices. This position was established by the NICN per Kola-Olalere J in *Mr. Ebere Onyekachi Aloysius v Diamond Bank Plc.*⁴⁰ Defendant, in this case, had terminated the claimant's employment contrary to the terms and conditions spelt out in the letter of employment. Upon being challenged, it contended that it has the right to terminate the employment for any reason or no reason at all. On this contention, the NICN held as follows:

The Termination of Employment Convention, 1982 (No. 158) and Recommendation No. 166 regulate termination of employment at the initiative of the employer. Article 4 of this Convention requires that the employment of an employee shall not be terminated unless there is a valid reason for such termination connected with his capacity or conduct or based on the operational requirements of the undertaking, establishment, or service. The Committee of Experts has frequently recalled in its comments that; the need to base termination of employment on a valid reason is the cornerstone of the Convention's provisions. This is the global position on employment relationships now. It is the current International Labour Standard and International Best Practice. Although this Convention is not yet ratified by Nigeria, since March 4, 2011, when the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration) Act, 2010 came into effect, the National Industrial Court has power under the Constitution to apply International Best Practice and International Labour Standard to matters like this by virtue of Section 254C (1) (f) and (h) of the Constitution as amended. In other words, by the Constitution, as amended, National Industrial Court can now move away from the harsh and rigid Common Law posture of allowing an employer to terminate its employee for bad or no reason at all. It is now contrary

³⁸ [2001] 11 NWLR (Pt. 724) 473.

³⁹ *Mobil Prod. (Nig.) Unltd. v Udo* [2008] 36 WRN 62.

⁴⁰ [2015] 58 NLLR (Pt. 199) 92.

to international labor standards and international best practices and, therefore, unfair for an employer to terminate without a 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 the determination of 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's bank. In addition, I hold that it is no longer conventional in this twenty 1st century labor law practice and in industrial relations for an employer to terminate the employment of its employee without any reason even in private employment.⁴¹

The above position of the Court was reiterated in its subsequent decision in *Petroleum and Natural Gas Staff Association of Nigeria v Schumberger Anadrill Nigeria Ltd.*⁴² Thus, the employer in Nigeria, no longer has unfettered power of termination of a contract for employment. It must be for a credible reason which must be in accordance with Article 4 of the ILO Termination of Employment Convention, 1982 (No. 158).

Also, the measurement of damages for an employee whose employment has been wrongfully terminated under common law has always been what he/she would have been entitled to if the period of notice required had been complied with and nothing more.⁴³ This is irrespective of any injury that the employee would have suffered to his reputation or prospect of securing another employment arising from the process of termination.⁴⁴ However, the NICN has held that computation of damages for cases of wrongful termination of a contract on this basis, is not realistic with current realities hence, damages can be awarded over and above the common law anachronistic prescription. Thus, wherein terminating the employment of an employee, the employer inflict an injury either on the character of future employment prospect of the employee, this fact will be countenanced in the measurement of damages and the employee can be awarded damages over and above what he/she is ordinarily entitled if the period of notice to be given had been complied with by the employer. This was the position taken by the NICN in *Sahara Energy Resources Ltd. v Mrs. Olawunmi Oyebola.*⁴⁵

3. INNOVATIVE PROVISIONS OF THE 2017 NATIONAL INDUSTRIAL COURT RULES

⁴¹ [2015] 58 NLLR (Pt. 199) 92 at P. 134, Paras. A-F, G-B.

⁴² [2008] 11 NLLR (Pt. 29) 164.

⁴³ *Nigeria Telecommunications Plc. v I. A. Ocholi* [2001] 10 NWLR (Pt. 720) 188.

⁴⁴ *Osisanya v Afribank Plc.* (2012) 2 NILR 214.

⁴⁵ (2020) LPELR-51806 (CA).

The 2017 NIC Rules contain some innovative provisions which are geared towards the realization of the speedy and effective dispute resolution mandate of the NIC. This part of the article examines these innovative provisions of the Rules. At this juncture, the various innovative provisions of the Rules are hereunder examined under various heads:

a. Electronic Filing of Processes and Documents

Technological advancement has infiltrated every area of human relations with its disruptive effect.⁴⁶ There is hardly any sphere of human endeavor that technology has not been deployed.⁴⁷ Technology has been deployed to improve the ease of doing business and advance the course of human life.⁴⁸ The 2017 NIC Rule, in recognition of the usefulness of technology in enhancement of the functionality of the Court, made provisions for electronic filing of court processes. Order 6A of the Rules contains copious provisions on the e-filing of processes. It provides that “there shall be an E-filing Centre for electronic filing and payment of filing fees for processes and documents relating to or connected with a matter before the court.”⁴⁹ A party or counsel to a party may e-file any process or document that may be filed with the Court in paper form except, documents to be presented to the Court in Chambers or in-camera solely for the purpose of obtaining a ruling and documents to which access is otherwise restricted by law or Court order.⁵⁰ In order to ensure the efficient and effective function of the e-filing system of the NIC, there shall be an officer of the Court, known as the Electronic File Manager (EFM), who shall be in charge of the E-filing center. The Rule empowers the President of the NIC to issue direction to establish a communication and service center which may include designated electronic filing workstations for online filing of processes and documents.⁵¹

The EFM shall be responsible for the management of processes and documents transmitted to the electronic filing portal of the Court. A party or a counsel, who is desirous of utilizing the e-filing option of the Court, shall register with the EFM as an e-filer. Upon registration as an e-filer, the EFM shall issue an Authentication Registration Number (ARN) which shall be used by the e-filer for subsequent e-filing of any process or e-communication or

⁴⁶ George N Ikpeze, “Issues in Admissibility of Computer Generated and Electronic Evidence in Nigeria” (2015) 3(1) *Nnamdi Azikiwe University Journal of Commercial and Property Law* 119.

⁴⁷ Rauf F Mahmoud, “The Potential of WhatsApp as a Medium of Substituted Service in the Nigerian Judicial System” (2019) 5 *Section on Law Practice Law Journal* 66-86.

⁴⁸ Femi Daniel, *Introduction to Computer Law in Nigeria* (Lagos, Ins-Pire Ventures Ltd., 2015) 1-2.

⁴⁹ Order 6A Rule 1(2) NIC Rules, 2017.

⁵⁰ Order 6A Rule 2 (1) and (2) NIC Rules, 2017.

⁵¹ Order 66 Rule 1 and 2 NIC Rules, 2017.

correspondence with the Court on the matter before the Court. No process or document e-filed without an ARN will be accepted by the portal of the Court and the EFM will forward the document to the Registry of the Court. Once a process is properly e-filed and accepted by the portal, the portal will automatically generate an email acknowledging receipt of the e-filing, send the automatically generated email to the designated email address of the e-filer. Upon this, the e-filer will thereafter receive a confirmation of the Registrar's acceptance of the filing, and a file-stamped copy of the document. The Rules also make provisions for electronic signature on all processes to be filed in the Court in compliance with the requirement of Rule 10 of the Rule of Professional Conduct for Legal Practitioners (RPCLP).⁵²

This provision of the Rules is novel as far as the NIC is concerned and it is meant to facilitate the filing of cases with ease at the Court. It supplements the onsite filing of processes at the Court Registry at its various judicial division and administrative registries established for that purpose.

b. Trial on Records

Another innovation introduced by the Rules in the practice and procedure of the NIC is the effective case management system of trial on records (ToRs). Trial on Records is a system of litigating a case filed before the NIC based on the state of the pleadings only whereby the claimant and defendant consent to the Court, in lieu of an oral hearing, after the close of pleadings, to adopt the processes filed, examine them, ascribe evidential value and deliver judgment. By this method of trial, the parties consent to and forego the rigors and delay associated with the process of oral trials (characterized by evidence-in-chief, cross-examination, and re-examination where it is considered necessary), filed and exchange final written addresses as arguments in support of their cases as disclosed in their pleadings. Order 38 Rule 33 of the NIC rules⁵³ provides as follows:

In any proceeding before the Court, parties may by consent at the close of pleadings agree to a trial on records where they rely only on the documents and exhibits frontloaded and thereby dispense with the need for oral testimony and/or cross-examination. Where parties agree to a trial on records, Written Addresses shall be filed starting with the Claimant on the basis of the document on record. The Written Address which shall be in the format provided in rule of Order 45 of these Rules

⁵² Order 6A Rule 8 (1) NIC Rules, 2017.

⁵³ Order 38 Rule 33 (1) (2) and (3) of the National Industrial Court of Nigeria (Civil Procedure) Rules 2017.

shall be served first on the defendant in compliance with the provisions of rules 20 of this order.

This mode of case management is novel in Nigeria's procedural *corpus juris*. It totally eliminates the pitfalls engendered by oral advocacy, it eliminates the delays occasioned by objections taken in the course of tendering pieces of evidence owing to their admissibility or otherwise and interlocutory appeals that usually ensue from such disagreement. These interlocutory appeals, sometimes, move up to the Supreme Court while the substantive suit has stayed and judicious and judicial time, as well as resources, are wasted. From the provision of the Rules, all that is required to set in motion, the machinery of trial on records, is for the parties to consent to it at the close of pleadings. Once this is done, the Court, is duty-bound, to accede to this and deliver judgment based on the record.⁵⁴

This process is capable of achieving the speedy, cost-effective, and efficient dispute settlement mandate of the NIC if deployed by litigants particularly in non-contentious matters for which it is most suitable.⁵⁵ Although, this procedure, robs the court of the opportunity and the benefits of observing the demeanor of the witnesses to ascertain the truthfulness or otherwise of their written depositions before the Court this is not comparable to the benefit of the quick dispensation of justice. Besides, the demeanor of witnesses is adjudged, more important in criminal trials than civil. For the effective deployment of this procedure, counsel in their address and the various witness depositions must tie each document frontloaded as an exhibit to be used in court to the relevant averment. Each of the exhibits must be adequately linked to the relevant portion of the claim and supporting deposition so that the judge is not made to engage in the strenuous duty of attaching documents to relevant portions of the claim. Failure to diligently do so can negatively impact the use of the procedure.

c. Fast-Track Procedure

When cases are filed in Court, they go through the normal adjudicatory channel. However, there are certain matters that due to their nature, require expeditious resolution one way or the other. The 2017 NIC Rules recognize the need for quick adjudication of a certain case

⁵⁴ Bimbo Atilola, *Recent Developments in Nigerian Labour and Employment* (Lagos, Hybrid Consult, 2017) 76.

⁵⁵ David T Eyangndi, "Attainment of Speedy Justice Delivery through the National Industrial Court Trial on Records Procedure: Prospects and Challenges" 6 *Nigerian Bar Association Section on Legal Practice Law Journal* (2020) 163-176.

and respond by making provisions for the placing of certain matters on the fast-track lane of the Court. Order 25 of the Rules make provision for the placement of certain cases on the fast-track lane of adjudication at the NICN. Thus, cases concerning a strike or lockout or any other form of industrial action that threatens the peace, security, stability, and economy of the country or any part thereof; a declaration of trade dispute by essential service providers; a trade dispute directly referred to the Court by the Minister of Labour, Employment and Productivity pursuant to the powers conferred on him/her by the relevant Trade Disputes Act (TDA). Also, any matter relating to the outstanding salary, pension, gratuity, claims, allowances, benefits or any other entitlement of a deceased employee; or any other matter which the President of the NICN may *suo motu* or, on the application of either of the parties to a suit direct to be placed on fast-track in the overall interest of the peace, stability, and economy of the nation or any part thereof.

Once a matter is ordered to be placed on a fast-track lane, it enjoys priority over every other matter in terms of hearing as it is given a speedy hearing. Matters on fast-track shall be marked “qualified for the fast track” by the Registrar after filing. This is to ensure that everything pertaining to the case, is given the urgent attention it deserves. The parties (claimant and Defendant) shall be put on notice to the effect that the matter has been placed on fast-track lane for adjudication. Defendant has not later than fourteen days from the date of being served with the originating processes to file defense and the Claimant has seven days from the date of service of the defense, to file a reply to the defense.⁵⁶ Any matter on the fast-track procedure shall be brought to the attention of the President by the Registrar for onward assignment to a judge or a panel of judges for expeditious adjudication.

The judge or panel to whom a fast-track case with an urgent interlocutory application is assigned shall within five (5) days or so soon thereafter but not later than ten (10) days, set down any such urgent pending application to be disposed of timeously, and direct hearing notices to be issued and served on all the parties.⁵⁷ The parties are to litigate such a case in good faith by cooperating with the Court in formulating a suitable case management timetable which once approved by the Court, they are bound to strictly comply with for the expeditious adjudication of the matter. Where either party fails to comply with any trial direction given by the Court, the other party may apply to the Court for an order directing

⁵⁶ Order 25 Rule 6 NIC Rules, 2017.

⁵⁷ Order 25 Rule 8 NIC Rules, 2017.

compliance or for a sanction to be imposed or both.⁵⁸ Unless the Court otherwise directs, the trial shall be conducted from day to day and in accordance with any order previously made by the Court. Adjournment shall only be countenanced as a last resort and adjournment where inevitable, and deemed fair and just, shall be for the shortest possible time. In all fast-track cases, the Judge or the panel of Judges shall endeavor to deliver judgment as quickly as practicable after completion of the trial or adoption of written addresses.⁵⁹

d. Jettisoning of Technicalities

Litigation as a means of dispute settlement is not free of technicalities, which is strict adherence to form as against substance, even to the extent that injustice or avoidable hardship may be perpetuated. The Rules of Court are to midwife the attainment of justice in their application but slavish adherence to them can work untold hardship. Some litigants and legal practitioners have tenaciously held unto procedural irregularity, which has not occasioned any injustice to them, all in a bid to deny the meritorious determination of the suit between them. Attitudes like this, fan to flame, the embers of technicality as opposed to substantial justice.

To ensure that the Rules are not abused to attain technical justice, Order 5 thereof, makes provisions for the effect of failure to comply with any provision of the Rules: such non-compliance may be treated as an irregularity.⁶⁰ Thus, the Court may direct a departure from the provision of the Rules where the interest of justice so requires.⁶¹ By this, the Rules place the interest of attaining justice over and above every other interest even to the extent of departing from any provision of the Rule that may serve as an obstacle to the course of justice.⁶² In fact, the Rules enjoins the Court to apply both the Rules of common law and equity concurrently in any proceeding before it. Where there is any conflict between the rules of common law and equity, the latter shall prevail.⁶³ In any proceeding before it, the Court shall apply the fair and flexible procedure and shall not allow mere technicalities to becloud

⁵⁸ Order 25 Rule 6 (1) and (2) NIC Rules, 2017.

⁵⁹ Order 25 Rule 19 NIC Rules, 2017.

⁶⁰ Order 5 Rule 1 NIC Rules, 2017.

⁶¹ *Ibid.* 3.

⁶² Order 5 Rule 4 (1) provides that “at any time before or during the hearing of a matter the Court may-direct, authorize or condone a departure from the Rules, where the Court is satisfied that the departure from the Rules, where the Court is satisfied that the departure is required in the overall interest of justice, fairness and equity. Give such directions as to procedure in respect of any matter not expressly provided for in these Rules as may appear to the Court to be just, expedient and equitable. The Court may, on good cause shown, condone non-compliance with any period prescribed by these Rules.”

⁶³ Order 5 Rule 1 NIC Rules, 2017.

doing justice to the parties based on the law, equity, and fairness while also considering the facts of any matter before it. In the interest of justice and fairness, the Court can regulate its proceedings, in appropriate circumstances. It can depart from the provisions of the Evidence Act that deals with the admissibility of evidence sought to be tendered in Court in the interest of justice, fairness, equity, and fair play.

e. Institutionalization of Alternative Dispute Resolution

There are certain matters that can be suitably resolved through means other than litigation but which have been filed in Court. While the NICN fast-track procedure ensures speedy adjudication of matters placed on it, it may not foster relationships after the adjudication of the dispute which is necessary for industrial harmony. This makes the need for amicable settlement imperative. The 2017 NIC Rules, have institutionalized the adoption of Alternative Dispute Resolution mechanisms in the settlement of matters filed at the NICN. Thus, the President of the Court (or the Presiding Judge in a particular judicial division) may refer amicable settlement through conciliation or mediation any matter filed in any of the Registries of the Court to the Alternative Dispute Resolution Centre maintained by the Court within its premises.

Any matter referred for settlement through mediation or conciliation, shall be settled within twenty-one working days. Where this is not possible, the President or Presiding Judge of the concerned division shall extend the time for not more than ten days. Where the dispute is successfully mediated, a certified copy of the Mediation Agreement shall be submitted to the Judge. Once this is done, the Court shall cause to be issued and served on the parties, hearing notice of the date of adoption of the agreement which shall become the judgment of the Court and have the same force as a judgment delivered by the Court which is binding between the parties.⁶⁴ It is unclear if, at present, every judicial division of the NIC has a functional ADR Centre.

f. The arrest of Absconding Party

The possibility of a party to a matter before the Court absconding or removing assets from the jurisdiction of the Court, that may be used to satisfy a judgment that may be given against him/her at the conclusion of the matter, to render the judgment unenforceable or nugatory is not improbable. Where this happens, the successful party is a constraint to incur extra expenses to have the judgment enforced in the jurisdiction where the unsuccessful party has

⁶⁴ Order 24 Rule 5 (1) (2) NIC Rules, 2017.

assets or has absconded to. This is one of the gimmicks employed by unscrupulous litigants to bewitch the process of litigation making it unattractive.

The 2017 NIC Rules have made adequate provisions to curtail this menace by providing that “wherein any suit a party (Respondent/defendant) is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction, the party’s property, or any part thereof, or is about to do so, the other party may, either at the institution of the suit or at any time thereafter until final judgment, make an application to the Court that security be given for the appearance of the absconding party to answer and satisfy any judgment that may be passed against the party in the suit.”⁶⁵ This is to ensure that the judgment of the Court is not rendered in futility.⁶⁶ Where an absconding party, fails to show any such cause, the Court shall order the party to give bail for the party’s appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgment that may be passed against the party in the suit or to give bail for the satisfaction of such judgment. The surety (ies) shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the party in the suit, with costs. Where the party fails to furnish security or offer sufficient deposit, the party may be committed to custody until the decision in the suit, or if the judgment is given against the party, until the execution of the decree if the Court so orders.

4. CONCLUSION AND RECOMMENDATIONS

It has been shown that the NIC is a specialized court having exclusive original jurisdiction over labor and employment disputes. Through its travails, the NIC has overcome all the challenges that had confronted its status and stature, and today, it is a Superior Court of Record having concurrent jurisdiction with other High Courts. The substantive legal framework of the NIC has placed her on a pedestal of revolutionary adjudication which can only be achieved through a robust framework on its practice and procedure. To achieve this aim, the President of the Court, made the NIC (Civil Procedure) Rules, 2017 which revoked the 2007 and 2017 Practice Direction. A perusal of the 2017 NIC Civil Procedure Rules, as seen above, makes one to come to the irresistible conclusion that the Rules contains a lot of

⁶⁵ Order 19 Rule 1 NIC Rules, 2017.

⁶⁶ Order 19 Rule 2 NIC Rules, 2017. It provides that “where after investigation, the Court is of the opinion that there is probable cause for believing that a party is about to leave the jurisdiction of the Court, or has disposed of or removed from jurisdiction, the party’s property, or any part thereof, or is about to do so, it shall be lawful for the Court to issue a warrant to bring the party before the Court to show cause why that party should not give good and sufficient bail for the party’s appearance.”

innovative provisions which are capable of aiding the Court advanced its evolving jurisprudence of speedy, efficient, cost-effective adjudication and employee protection. It is hoped that the Court will avail itself of the justice-enhancing provisions of its Rules to unshackle itself from unnecessary technicalities that legal practitioners have used to slow down the effectiveness of other Courts.

To achieve this aim, the following recommendations are hereby made. To realize the objectives of these Rules, there is the need to continually organize capacity development symposia on the Rules amongst its Judges to ensure that there is an unwritten synergy among them in its application. A situation where there is a conflicting application by the Judges will easily defeat its laudable objectives as it will leave litigants with the opportunity of urging the Court to apply a decision that favors their cause while avoiding the unfavorable one; this scenario must be avoided at all cost.

Legal practitioners who litigate before the Court, are also expected to acquaint themselves with the rules so as to take advantage of its numerous innovative provisions towards achieving its aim of effective speedy resolution of labor and employment disputes so as to engendered industrial tranquillity. The Nigeria Bar Association, both at the national and branch level, should through its Continuing Legal Education Committee (CLEC), sensitize lawyers on the workings and functionality of the NICN as many still view the NICN with a pre-2010 eye or as a regular court where technical justice flourishes.

It is also necessary for the Court to ensure that in every judicial division, there is a functional Alternative Dispute Resolution Centre to enable amicable settlement of suitable labor and employment disputes which has the potential of fostering relationships and engendering industrial tranquillity which is direly needed. The capacity of the personnel to administer the various ADR Centres of the Court should be enhanced and necessary facilities for easy administration should be provided.

Also, to effectively realize the fast-track procedure of the NIC, it is important, like in other instances, where the procedure has been adopted, for a specific time frame for the settlement of such disputes to be specifically provided and not an ambiguous prescription of “timeous hearing of the case.” A period of not more than three weeks, from the date of closing of pleadings, is recommended as the time frame for the completion of such matters. It is therefore needful for the Rules to be amended to specify a definite period within which to adjudicate such matters.

Furthermore, to ensure that the novel pronouncements of the Court as exemplified in some of its decisions discussed above where it has jettisoned anachronistic common law principles are sustained, the 1999 CFRN as well as the Court of Appeal Act, should be amended to ensure that the composition of the justices of the Court of Appeal in each judicial division includes at least a judge with specialist knowledge on labor and industrial relations matters from the NICN. This will ensure that the decisions of the court are not overturned due to a lack of understanding of their underlying philosophy by a division of the Court of Appeal that lacks is not abreast with current trends in labor and employment relations.

BIBLIOGRAPHY

1. *Adisa v Olayiwola* [2000] 10 NWLR (Pt. 674) 116.
2. *AG Oyo State v NLG, Oyo State* [2003] 8 NWLR (Pt. 821) 1 at 33-34;
1. Agomo CK, *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Ltd., 2011) 318.
2. Akeredolu, E. Alero and Eyongndi, T. David, “Jurisdiction of the National Industrial Court under the Nigeria Constitution Third Alteration Act and Selected Statutes: Any Usurpation?” 10 (1) *The Gravitas Review of Business & Property Law* (2019) 1.
3. Akintayo JOA and Eyongndi DT, “The Supreme Court of Nigeria Decision in Skye Bank Ltd. v. Victor Iwu: Matters Arising” (2018) 9(3) *The Gravitas Review of Business & Property Law* 109-110.
3. *Aloysius v Diamond Bank Plc.* [2015] 58 NLLR (Pt. 199) 92.
4. Amucheazi DO and Abba PU, *The National Industrial Court of Nigeria; Law, Practice and Procedure*, 1st ed., (Dubai, Top Design Printing 2013) 3.
5. Atilola B, *Recent Developments In Nigerian Labour and Employment* (Lagos: Hybrid Consult, 2017) 76.
4. *Attorney General of Oyo State v Nigerian Labour Congress* [2003] 8 NWLR (Pt. 821) 1.
5. *Ekong v Oside* [2005] 9 NWLR (Pt. 929) 102.
6. Emiola A, *Nigerian Labour Law* 4th Ed. (Ogbomoso, Emiola Publishers Ltd., 2008) 1.
7. Eyongndi DT, “Attainment of Speedy Justice Delivery through the National Industrial Court Trial on Records Procedure: Prospects and Challenges” (2020) 6 *Nigerian Bar Association Section on Legal Practice Law Journal* 163-176.

8. Eyongndi, D.T. & Onu, K.O.N. “The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water” 10 *Babcock University Socio-Legal Journal* (2019) 243-270.
6. *Inspection Service Nig. Ltd. v Petroleum and Natural Gas Senior Staff Association of Nigeria*. Digest of the Judgment of the NICN 1978-2006 AT 428-430.
7. *Kalango v Dokubo* [2003] 15 WRN 32.
8. *Maduka v Microsoft Nig. Ltd.* [2014] 41 NLLR (Pt. 125) 67.
9. *Mix and Bake Flour Mills Industries Ltd. v FBTSSA* [2004] 1 NLLR (Pt. 2) 247.
10. *Mobil Prod. (Nig.) Unltd. v Udo* [2008] 36 WRN 62.
11. *National Union of Road Transport Workers v. Road Transport Employers Association of Nigeria* (2012) NWLR (Pt. 1307) 170.
12. *Nigeria Telecommunications Plc. v. I. A. Ocholi* [2001] 10 NWLR (Pt. 720) 188.
9. Oji EA and Amucheazi OD, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi & Associates Nig. Ltd. 2015) 255.
13. *Olanrewaju v. Afribank Nigeria Plc.* [2001] 13 NWLR (Pt. 731) 691
10. Olubiyi IO, “Jurisdiction and Appellate Powers of the National Industrial Court: Need for Further Reforms”⁷ (2017) 3 *The Gravitas Review of Business & Property Law* 46.
14. *Osisanya v Afribank Plc.* (2012) 2 NILR 214.
15. *Petroleum and Natural Gas Staff Association of Nigeria v. Schumberger Anadrill Nigeria Ltd.* 2008] 11 NLLR (Pt. 29) 164.
11. Roper JJ, *Labour Problems in West Africa* (London, Penguin, 1958) 12.
16. *Sahara Energy Resources Ltd. v. Mrs. Olawunmi Oyebola* (2020) LPELR-51806 (CA).
17. *Shell Petroleum Development Company Nig. Ltd. v. Ifeta* [2001] 11 NWLR (Pt. 724) 473.
18. *Western Steel Works Ltd. v. Iron & Steel Workers Union of Nigeria (No. 2)* [1987] 1 NWLR (Pt. 49) 284.