

A REVIEW OF THE CONTROVERCIES ON THE APPELLATE JURISDICTION OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA

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Abstract

The controversies surrounding the appellate jurisdiction of the National Industrial Court of Nigeria (NICN) called for a clear interpretation of the provisions of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. These calls have found expression in some recent cases, one of which is *Skye Bank Plc v. Iwu*, with the major issues of; when an appeal from the decision of the National Industrial Court to the Court of Appeal lies as of right and when it lies with the leave of court; whether all decisions of the National Industrial Court are appealable or whether its decision is final; and whether appeals from the decisions of the National Industrial Court to the Court of Appeal is limited to only questions of fundamental human rights and criminal matters. This paper argues that the provisions of the Constitution on the appellate jurisdiction of the National Industrial Court does not eliminate the ability to appeal to the Court of Appeal on other civil concerns and causes aside fundamental rights. This paper adopted the doctrinal research methodology and utilized both the primary and secondary sources of data including statutes, journals, textbooks, Newspaper publications and internet data and materials. This paper recommends that the need for legislative clarity and a unanimous judicial interpretation in relation to the provisions of the Constitution on the appellate jurisdiction of the National Industrial Court

Keywords: CONTROVERSIES, APPELLATE, JURISDICTION. NIC, NIGERIA.

1.0 Introduction

The lack of clarity on the jurisdiction of several existing courts over labour related matters in Nigeria led to the clamour for the establishment of a National Industrial Court. In 2006, the National Industrial Court was originally established by the National Industrial Court Act, 2006.¹ The Act made the National Industrial Court a superior court of record,² clothing it with an equivalent power to that of the High Court,³ in contravention of section 6(4)(a) and section 6(5) of the 1999 Constitution. These sections enabled the National Assembly or State House of Assembly to establish a court with subordinate jurisdiction to that of a High Court⁴, and provided the list of Nigeria's superior courts of record, of which the National Industrial Court was not enlisted.⁵

The National Industrial Court of Nigeria (NICN) is a specialized court with both original and appellate jurisdiction.⁶ In its original jurisdiction, the NICN has the authority to hear and determine cases related to labour, employment, industrial relations, and other matters specified in the Constitution and the National Industrial Court Act. However, the appellate jurisdiction of the National Industrial Court is enveloped with controversies on the issue of the finality of the decision of the National Industrial Court, when an appeal from the decision of the National Industrial Court to the Court of Appeal lies as of right and when it lies with leave of court; whether all decisions of the National Industrial Court are appealable; and whether appeals from the decisions of the National

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² DI Efevwerhan, *Principles of Civil Procedure in Nigeria* (2nd edn, Enugu: Snaap Press Ltd 2013) 88.

³ National Industrial Court Act 2006, S. 1 (3)(a).

⁴ *Ibid*, S. 1(3)(b).

⁵ The Constitution of the Federal Republic of Nigeria 1999(as amended), s 6(4)(a).

⁶ *Ibid* s 6(5).

⁶ Matthias Zechariah, '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)' [2018] (5) (2) UNIZIK- *Journal of Commercial and Property Law* 28.

Industrial Court to the Court of Appeal is limited to only questions of fundamental rights and criminal matters.

Thus, this paper seeks to analyze the controversies on the appellate jurisdiction of the National Industrial Court by examining some case laws on the subject, with a view to proposing solutions to put an end to the controversies.

2.0 Jurisdiction of the National Industrial Court of Nigeria (NICN)

According to Black's law dictionary, jurisdiction is defined as a court's power to decide a case or issue a decree.⁷ It is settled in law that the jurisdiction of a Court of law cannot be assumed or implied. Thus, in *Oloba v. Akereja*⁸, Obaseki JSC stated that;

“The issue of jurisdiction is very fundamental as it goes to the competence of the court or tribunal. If a court or tribunal is not competent to entertain a matter, claim or suit, it is a waste of valuable time for the court to embark on the hearing and determination of the suit, matter or claim. It is, therefore, an exhibition of wisdom to have the issue of jurisdiction or competence determined before embarking on the hearing and determination of the substantive matter. The issue of jurisdiction being a fundamental issue can be raised at any stage of the proceedings in the court of first instance or in the appeal courts.”⁹

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 vested the National Industrial Court of Nigeria with original jurisdiction over civil and criminal matters as provided in section 254(C) (1-6) and appellate jurisdiction.

3.0 The NICN Jurisdiction in Civil Causes and Matters

The National Industrial Court of Nigeria is vested with exclusive jurisdiction over civil causes and matters as stated in section 254(C) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. It provides as follows;

254(C)(1)-Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

- a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;
- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;
- c) relating to or connected with the grant of any order restraining any person or body from taking

⁷ Bryan A Garner (ed), *Black's Law Dictionary* (9th edn, West Publishing Co 2009) 297.

⁸ (1988) 3 NWLR (Pt 84) 508 SC.

⁹ *Madukolu v. Nkemdilim* (1962) 2 All NLR (Pt 581) SC where the Court held inter alia; “that the issue of jurisdiction can be challenged at any time or stage even for the first time at the Supreme Court.”

part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;

d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;

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

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

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

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

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

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

i. collective agreement;

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

iii. award or judgment of the Court;

iv. term of settlement of any trade dispute;

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

vi. trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;

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

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

l) relating to-

i. appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;

ii. appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and

iii. such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;

m) relating to or connected with the registration of collective agreements.

Subsections:

(2) Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

(3) The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution or any Act or Law:

Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.

(4) The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain. Also, Section 7(1) of the National Industrial Court Act, 2006 provides that:

7(1) the Court shall have and exercise exclusive jurisdiction in civil causes and matters-

a. relating to –

i. labour, including trade union and industrial relations: and

ii. environment and conditions of work, health, safety and welfare of labour and matters incidental thereof and

b. relating to the grant of any order to restrain any person or body from taking part in any strike lock-out or any industrial action, or any conduct in contemplation or in furtherance of strike lock-out or any industrial action:

c. relating to the determination of any question as to the interpretation of-

i. any collective agreement

ii. any award made by an arbitral tribunal in respect of labour dispute or an organisational dispute

iii. the term of settlement of any labour dispute, organisational dispute as may be recorded in any memorandum of settlement,

iv. any trade union constitution, and

v. any award or judgment of the Court.

Therefore, in *Echelunkwo John O. & 90 Others v. Igbo Etiti Local Government Area*¹⁰, John Inyang Okoro JCA, stated thus:

“Following the enactment of the Constitution (Third Alteration) Act, 2010 which gave exclusive jurisdiction to the National Industrial Court on Labour matters, both the State and Federal High Courts including that of the Federal Capital Territory, Abuja ceased to have jurisdiction in those matters pending before them.”

However, the National Industrial Court of Nigeria is only limited to civil causes and matters on labour and employment disputes. Notwithstanding, issues about what constitutes labour and employment disputes continue to persist as litigants try to thread their claims into the NICN's jurisdictional remit.¹¹ This was the issue in *Cornelia Marsh-Okoro v. Swiss Pharma Nigeria Limited*¹² recently decided by the National Industrial Court. In the case, the claimant's employment with Swiss Pharma Nigeria Limited ("Swiss Pharma") had ended mutually, and the parties had executed a severance agreement. According to the severance agreement, the claimant would be

¹⁰ (2013) 7 NWLR (Pt 1352) 1 CA.

¹¹ 'Does The National Industrial Court of Nigeria Have Jurisdiction Over Claims For Unpaid Commission Arising From A Distributorship Contract?' [8 March 2023] <<https://www.banwo-ighodalo.com/resources/does-the-national-industrial-court-of-nigeria-have-jurisdiction-over-claims-for-unpaid-commission-arising-from-a-distributorship-contract>> accessed 14 January 2024.

¹² [2021] NICNLA 205.

appointed as a distributor of Swiss Pharma's products on particular terms and conditions. When dispute arose between the parties over the distributorship arrangement, the claimant brought an action against Swiss Pharma before the NICN for unpaid commissions. The case did not raise any question about the claimant's employment and/or termination. Swiss Pharma challenged the NICN's jurisdiction to hear the matter, claiming that the claim originated from a purely commercial arrangement between the parties. In response, the claimant contended that the unpaid commissions were related to her mutual separation from Swiss Pharma, and therefore the claim was incidental to her employment to that degree. The NICN agreed with Swiss Pharma on the grounds that the matter was not a labour and employment dispute. Thus, for a claim to stand in the National Industrial Court, it must be directly related to labour and/or employment dispute.¹³

4.0 The NICN Jurisdiction in Criminal Causes and Matters

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 conferred on the National Industrial Court the jurisdiction to hear criminal causes and matters which are labour and employment based. Section 254(C) (5)¹⁴ provides that; 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 Act of the National Assembly or by any other Law.

Furthermore, all criminal causes and matters decided by the National Industrial Court is appealable as of right to the Court of Appeal. This is provided for in section 254(C) (6)¹⁵, which states that; "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". By virtue of section 243 (4) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, which provides that; without prejudice to the provisions of section 254C (5) of this Act, 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. The implication of this provision is that an appeal from the decision of the Court of Appeal on criminal matters as it relates to labour and employment can proceed all the way to the Supreme Court.¹⁶

5.0 Appellate Jurisdiction of the National Industrial Court of Nigeria

Prior to the third alteration of the Constitution of the Federal Republic of Nigeria which established the parameters of appeals from the decisions of the National Industrial Court, the National Industrial Court Act 2006 outlined the instances when appeals can lie from the National Industrial Court to the Court of Appeal.

Section 9 of the National Industrial Court Act provides that;

(1) Subject to the provisions of the Constitution of the Federal Republic of Nigeria 1999 and subsection (2) of this section, 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.

(2) An appeal from the decision of the Court shall lie only as of right to the Court of Appeal only

¹³ *Olumide Olayomi v. Emerging Markets Telecommunication Services Limited* [2014] NICNLA 125, *Akpan v. University of Calabar* [2016] LPELR 41242 (CA).

¹⁴ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.

¹⁵ *Ibid.*

¹⁶ O V Ojo, 'The Jurisdiction of the National Industrial Court (NIC) in Nigeria Reviewed' [17 August 2015] <<https://viyonlawblog.wordpress.com/2015/08/17/the-jurisdiction-of-the-national-industrial-court-nic-in-nigeria-reviewed/>> accessed 14 January 2024.

on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.

The provisions of the Act are to the effect that no appeal shall lie to the Court of Appeal or any other court except as may be prescribed by the Act itself or any other Act of the National Assembly, and where the decision is on any matter arising from questions of Fundamental Rights as contained in Chapter IV of the 1999 Constitution, then the appeal will lie as of right to the Court of Appeal.¹⁷

However, section 243(2), (3) and (4) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, reiterated the provisions of section 9 of the NIC Act 2006, but further made clarifications and expanded the powers of the Court of Appeal in hearing appeals from the National Industrial Court. Therefore, the Constitution being the grundnorm, its provision would prevail over that of section 9 of the NIC Act.

Section 243(2), (3) and (4)¹⁸, provides as follows;

(2). An Appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly:

Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such Appeal shall be with the leave of the Court of Appeal.

(4) Without prejudice to the provisions of Section 254C (5) of this Act, 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.

The implication of subsection (2) as aforementioned is that for an appeal from the decisions of the National Industrial Court to lie as of right to the Court of Appeal, it must be matters on fundamental rights as it relates to labour, employment, industrial relations, trade unionism, employers' association or any other matter which the NICN has jurisdiction to hear and determine.

Therefore, if a fundamental right question did not arise from the preceding matters stated above, the suit would not qualify as a fundamental right matter in which appeal shall lie as of right to the Court of Appeal. This was the decision in *Smart Mark Ltd v. Ajuziogu*,¹⁹ where the Respondent filed an action at the National Industrial Court (trial Court) claiming for a declaration that the suspension of the Claimant is unlawful and a declaration that the Claimant's appointment is still subsisting among other claims. The suit was instituted at the trial Court during the pendency of a criminal matter against the Respondent. The Appellant claimed that he was not aware of the suit at the National Industrial Court Lagos Division while the Respondent claimed that the Appellant was served with the General form of complaint. Default judgment was therefore granted against the Appellant for failure to defend the suit. The Appellant appealed to the Court of Appeal. The Respondent objected to the appeal on the grounds that the instant appeal is a civil appeal which requires the leave of the Court of Appeal in order to be valid and competent; the Appellant failed to seek and obtain the leave of the Court of Appeal to initiate the instant appeal. The Appellant contended that the appeal does not require leave of the Court since the grounds of appeal was based on denial and lack of fair hearing and breach of fundamental rights of the Appellant by the trial

¹⁷ R Idaeho, 'The Jurisdiction of the National Industrial Court of Nigeria and Finality of its Judgments: What Does the Law Say?' <<https://jee.africa/wp-content/uploads/2019/10/NIC-Jurisdiction-NAA-review-pdf.pdf>> accessed 13 January 2024.

¹⁸ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.

¹⁹ [2022] LPELR58904(CA).

court which occasioned miscarriage of Justice against the Appellant. The appeal was struck out by Court for being incompetent. It held that the claims cannot be referred to as a Fundamental Right action under chapter IV of the Constitution.

Despite the seemingly clear provisions of the National Industrial Court Act 2006 and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 on appeals from the decisions of the National Industrial Court, there are enormous conflicting decisions of the Court of Appeal on when an appeal from the decision of the National Industrial Court to the Court of Appeal lies as of right and when it lies with leave of court; whether all decisions of the National Industrial Court are appealable or whether its decisions are final; and whether appeals from the decisions of the National Industrial Court to the Court of Appeal is limited to only questions of fundamental human rights and criminal matters.

The conflicting decisions of the Court of Appeal arose mainly from the interpretation of sections 240 and 243 (2-4) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010. This is evident from the divided decisions of the Court of Appeal as to whether the decision of the National Industrial Court is subject to appeal and when appeals to the Court of Appeal lies as of right or with the leave of court. In 2013, the Court of Appeal sitting at Ado-Ekiti Division decided five cases viz: *Local Government Service Commission, Ekiti v Francis Oluyemi Olamiju*²⁰; *Local Government Service Commission, Ekiti v Asubiojo*²¹; *Local Government Service Commission, Ekiti v Jegede*²²; *Local Government Service Commission, Ekiti v Ajayi*²³; *Local Government Service Commission, Ekiti v Bamisaye*²⁴, giving judgment to the effect that, under section 243(2) of the Constitution, litigants have the right of appeal in all cases pertaining to fundamental rights and, in all other cases, litigants can appeal with the leave of the Court of Appeal.

The implication of the above decisions of the Court of Appeal is that the National Industrial Court is not a final court and its decisions are appealable to the Court of Appeal.²⁵ However, later the same year, the Court of Appeal was presented with an opportunity to make a pronouncement on the right of appeal from the decision of the *National Industrial Court in Coca-Cola (Nig) Limited v Akinsanya*.²⁶ In this case, the respondent instituted an action in the National Industrial Court challenging her dismissal from her employment with the appellant. She was employed by the appellant as a Human Resources Manager in 2001. In the course of her employment, she incurred costs and expenses, which she submitted for reimbursement. The out-of-pocket expenses were neither processed nor paid despite several demands and reminders by the respondent. In 2010, the respondent was dismissed from her employment. Dissatisfied with her summary dismissal, she commenced an action against the appellant.

The appellant contended that the subject matter of the suit is an individual or executive management contract and not an issue of labour relations, trade union relations or industrial relations. Thus, the National Industrial Court had no jurisdiction. The appellant further sought an order of the NIC stating a case to the Court of Appeal on the question: whether the jurisdiction of the NIC as contained in section 254(C) (1) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 extends to all cases of private individual contractual employment or is

²⁰ [2013] LPELR 20409 (CA).

²¹ [2013] LPELR20403 (CA).

²² [2013] LPELR21131 (CA).

²³ [2013] LPELR 21133 (CA).

²⁴ [2013] LPELR20407 (CA).

²⁵ 'Every National Industrial Court Decision Now Appealable: Supreme Court' [1 July 2017] <<https://www.legalempereors.com.ng/every-national-industrial-court-decision-now-appealable/>> accessed 15 January 2024.

²⁶ [2013] 18 NWLR (Pt.1386) 225.

limited to Industrial relations and only to employment matters arising from or connected with trade disputes, collective agreements, labour and individual actions? The court dismissed the application and held that the appellant did not raise any substantial question of law to warrant the case stated.

The appellant aggrieved, appealed to the Court of Appeal, Lagos Division. The Court of Appeal agreed with the National Industrial Court, that the NIC has jurisdiction in all employment disputes including those arising from private individual contract of employment. Still aggrieved, the appellant further appealed to the Supreme Court. The respondent objected to the appeal, challenging the jurisdiction of the Supreme Court on the grounds that pursuant to section 243(4) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court is final.

The Court held that the decisions of the NIC are not appealable, other than decisions on fundamental rights and criminal matters. That until the National Assembly passes a law granting litigants right of appeal with leave, that the right does not exist. The implication of this decision is that the right of appeal from decisions of the National Industrial Court to the Court of Appeal is limited to decisions of the National Industrial Court relating to fundamental rights.²⁷ It further held that the decision of the Court of Appeal on the civil jurisdiction of the National Industrial Court is final, and the Supreme Court has no appellate jurisdiction over such matters.

The uncertainty persisted as many Courts of Appeal expressed differing opinions on the matter.²⁸ In *Federal Ministry of Health v Trade Union Members of the Joint Health Sectors Union (JOHESU) & Ors*²⁹ the Court of Appeal Abuja Division was called upon to determine the question of whether by the combined effect of Section 243(3) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 and Section 9 of the National Industrial Court Act, 2006, the Court of Appeal can exercise appellate jurisdiction over the decision of the National Industrial Court in civil matter not predicated on fundamental rights. The Court did not hesitate in holding that it is vested with the appellate jurisdiction to determine Appeal from the National Industrial Court in all civil matters. Thus, Tur, JCA clearly explained the Court's reasoning for this ruling as follows;

"my humble view is that in the course of the National Industrial Court exercising jurisdiction, a question of the fundamental rights of a party under Chapter IV of the Constitution may arise which may necessitate the party aggrieved to appeal to the Court of Appeal. Where such a circumstance has arisen, an appeal shall lie from the National Industrial Court as of right to the Court of Appeal. But in all other situations or circumstances the aggrieved party has to obtain leave to appeal to the Court of Appeal else the appeal shall be rendered incompetent. Indeed, that was the situation in *Coca Cola Nig. Ltd & Anor vs Akinsanya* (supra) heavily relied upon by the learned Counsel to the respondents. Section 243(2) of the Constitution of the Federal Republic of Nigeria, 1999 Act No. 3 of 2010 is not intended to preclude a party

²⁷ Ibid 23.

²⁸ Etefia E Ekanem and Bassey J Ekanem, 'An Analysis of the Jurisdiction of the National Industrial Court of Nigeria as a Court of First and Last Resort in Civil Matters'[2017] (22) (4) *IOSR Journal of Humanities And Social Science* (IOSR-JHSS) 64.

²⁹ [2014] LPELR 23546 (CA).

aggrieved by the decision of the National Industrial Court from applying for leave to appeal to the Court of Appeal.”

These uncertainties were partly laid to rest in the *locus classicus* case of *Skye Bank Plc v Iwu*.³⁰ In this case, the respondent was an employee of the defunct Afribank Nigeria Plc. He commenced a suit against Mainstreet Bank Ltd at the National Industrial Court, Lagos Division, claiming that he was wrongfully terminated from his employment, had unpaid accrued salaries, and other benefits which were due to him in the course of his employment. The appellant raised a preliminary objection challenging the jurisdiction of the NIC. The objection was dismissed, and the Court held that it had jurisdiction to hear and determine the matter.

Aggrieved by the decision, the appellant appealed to the Court of Appeal. Here, Skye Bank became the successor-in-title of Mainstream Bank and was granted leave of court to continue with the matter. The respondent, raised an objection to the jurisdiction of the Court of Appeal to entertain the appeal, on the ground that decisions of the NIC were only appealable on issues of fundamental rights, and that the appeal was not so based. The appellant applied that the Court of Appeal should state a case for the Supreme Court's opinion on the constitutional issues raised in the respondent's objection. The principal ground for the application was that there were on record, two sets of conflicting decisions of the Court of Appeal on whether the Court of Appeal had jurisdiction over appeals against all decisions of the National Industrial Court. In one set of decisions, the Court of Appeal held that it had appellate jurisdiction over all decisions of the NIC, and in the other set of decisions, the Court of Appeal held that it only had appellate jurisdiction over decisions of the NIC on fundamental rights matters. The Court of Appeal granted the application.

At the Supreme Court, the appellant argued that since the NIC was one of the courts in section 240 of the 1999 Constitution, then all decisions of the Court were subject to review by the Court of Appeal. On the other hand, the respondent argued that by virtue of section 243(2) - (4) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, the Court of Appeal could only exercise limited appellate jurisdiction over the decisions of the NIC on questions of fundamental rights and to appeals from the criminal jurisdiction of the NIC. The Supreme Court held that the combined effect of the provisions of section 36(2) (b), 240, 243 and 254 (C) (5), (6) of the Constitution is that an appeal lies to the Court of Appeal as of right in fundamental rights cases and criminal matters, and with leave of the Court of Appeal in all other civil matters where the NIC exercises jurisdiction. It further held that the effect of section 243(4) of the Constitution is that the decisions of the National Industrial Court are appealable only to the Court of Appeal. That is, there is no further appeal against the decision of the Court of Appeal in any appeal against the decision of the National Industrial Court.

This decision has partly laid to rest the substantial questions of law on the finality of the decisions of the National Industrial Court, and when an appeal from the decision of the National Industrial Court to the Court of Appeal lies as of right and when it lies with the leave of court, as there still exist critique of the Supreme Courts' decision in the aforementioned case, and calls for a clearer interpretation of the provisions of the Constitution as it relates to the appellate jurisdiction of the National Industrial Court.³¹

³⁰ [2017] 16 NWLR (Pt 1590) 24 (CA).

³¹ Matthias Zechariah, '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)' [2018] (5) (2) *UNIZIK- Journal of Commercial and Property Law*35.

6.0 Conclusion

This paper has undertaken a thorough exploration of the appellate jurisdiction of the National Industrial Court of Nigeria (NICN), shedding light on the intricacies and controversies surrounding the appellate jurisdiction of the National Industrial Court. The findings emphasize the urgent need for the settlement of the controversies enveloping the appellate jurisdiction of the NICN.

7.0 Recommendations

This paper recommends the requirement for legislative clarity in ensuring that the provisions of the Constitution as it relates to the appellate jurisdiction of the National Industrial Court does not contain any clauses that appear to be in conflict with one another or unclear. It also recommends that appeals of the decisions of the National Industrial Court should not end at the Court of Appeal, rather the decisions of the Court of Appeal should be appealable to the Supreme Court in line with the provisions of section 233 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

Finally, it recommends the need for a clearer judicial interpretation of the provisions of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 by the Supreme Court as it relates to the appellate jurisdiction of the National Industrial Court in order to circumvent the controversies enveloping the appellate jurisdiction of the National Industrial Court.