

## **ARE MEMBERS OF THE NATIONAL ASSOCIATION OF RESIDENT DOCTORS FREE TO EMBARK ON STRIKE IN NIGERIA? \***

### **Abstract**

In Nigeria of today incessant strike or industrial action by members of the National Association of Resident Doctors (“NARD”) has become a common place. This endangers the lives of many who depend on the medical services and assistance rendered by this group of people. Considering the extent of damage done to the health sector by withdrawal of service of the members of NARD, this paper questions the legality or otherwise of the strike action often embarked by this group. It is found that members of NARD fall within the group that renders ‘essential services’ and therefore prohibited from embarking on industrial action. The question remains how this group will be tamed to abide by the provisions of the law. Without discounting the need for government to invest in the health sector, it is suggested that the National Industrial Court of Nigeria when approached should always grant injunctive reliefs against NARD and its members.

### **Introduction:**

The Nigerian health sector is a challenged one.<sup>1</sup> It is faced with myriads of problems, including incessant strike or industrial actions by resident doctors under the umbrella of National Association of Resident Doctors (“NARD”). This group consists of qualified doctors who work either in private or public hospitals while undergoing further practical training called “residency”. The majority of medical services rendered in the hospitals are carried out by this group of doctors. Therefore, the health crisis facing Nigeria is further worsened any time NARD embarks on strike. This paper, therefore, examines the legality or otherwise of the strike actions or industrial action often embarked by this group. This raises several issues that will assist us arrive at the right answers. First, the following issues are raised:

- (a) Whether or not the members of the NARD are persons engaged in the provision of essential services within the meaning of Trade Disputes Act, and the Trade Union Act as amended by the Trade Union (Amendment) Act, No. 17 of 2005.
- (b) If the answer to issue (a) is in the affirmative, whether the members of the NARD are as such prohibited from taking part in any strike, or engaging in any conduct in contemplation or furtherance of any strike, by the provisions of section 31 (6) (a) of the Trade Union Act, Cap. T 14, LFN, 2004, as amended by the Trade Union (Amendment) Act, No. 17 of 2005.
- (c) If the answer to issue (b) is in the affirmative, whether or not the National Industrial Court of Nigeria (“NICN”) when approached by government or its agent, can grant declaratory and injunctive reliefs against NARD and its members.

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<sup>1</sup>In Nigeria, patients are confronted with so many problems ranging from lack of equipment and expertise to diagnose certain ailments and treatment of them thereof. In addition to this, industrial action or strike has come to exacerbate already existing problems. This has encouraged capital flight through medical tourism often embarked by the rich to developed countries. Medical tourism cannot rescue someone who needs urgent medical attention in a critical area of the health sector that our country is known to offer limited options. A good number of people have died in air ambulance before reaching their preferred destination for medical attention. Considering these and many more problems facing Nigeria’s health sector, all hands must be on deck to find out how we can improve our health system. As a contribution to the debate on how we can solve so many problems facing our health sector, this paper is restricted to looking at how to stop the incessant strikes often embarked by the members of NARD.

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The above issues are hereunder examined to determine the direction of the law.

**Issue (a):** *Whether or not the members of the NARD are persons engaged in the provision of essential services within the meaning of Trade Disputes Act, and the Trade Union Act as amended by the Trade Union (Amendment) Act, No. 17 of 2005.*

Section 31 (9) (b) of the *Trade Unions Act, Cap. T 14, LFN, 2004*, as amended by the *Trade Union (Amendment) Act, No. 17 of 2005* (“Trade Unions Act”) provides that “essential services” for the purpose of the Trade Unions Act shall be as defined in the First Schedule of the *Trade Disputes Act, Cap. T8, LFN, 2004* (“Trade Disputes Act”).

The First Schedule of the *Trade Disputes Act* (the “First Schedule”) defines “essential services” under three (3) distinct paragraphs each representing a separate group of services. The services of the NARD fall with the second, which defines ‘essential services’ to include:

“2. Any service established, provided or maintained by the *Government of the Federation or a State, by a local government council, or any municipal or statutory authority, or by private enterprise* –

- (a) for, or in connection with, the supply of electricity, power or water, or of fuel of any kind;
- (b) for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications;
- (c) for maintaining ports, harbours, docks or aerodromes, or for, or in connection with, transportation of persons, goods or livestock by road, rail, sea, river or air;
- (d) *for, or in connection with, the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely sanitation, road-cleansing and the disposal of night-soil and rubbish;*
- (e) for dealing with outbreaks of fire.” [Emphasis supplied]

Of particular importance to this discussion is Paragraph 2(d) above. The introductory part of Paragraph 2 of the First Schedule to the *Trade Disputes Act* maintains that the place(s) of work or where the service(s) of those who provide essential services could be “...established, provided or maintained by the Government of the Federation or a State, by a local government council, or any municipal or statutory authority, or by private enterprise...” So, it does not matter if the service is provided in the public or private sector. What matters is the nature of the service(s) rendered. It is obvious the members of NARD are employees working in “hospitals” and whose services relate to “the treatment of the sick and prevention of disease”. It does not matter whether the hospital is of public or private holding. It is of common knowledge to Nigerians that members of NARD whether in public or private “hospitals” do treat the “sick” and work for the “prevention of diseases”. Therefore, on the strength of the provision of section 124(1)(a) of the *Evidence Act 2011* (the “Evidence Act”) the above notorious facts about the work of the members of NARD require no proof. It, therefore, follows that members of NARD are persons engaged in the provision of essential services within the meaning of the Trade Unions Act.

From the above, it is safe to say that the members of NARD are persons engaged in essential services within the meaning of Trade Disputes Act, and the Trade Union Act as amended by the Trade Union (Amendment) Act, No. 17 of 2005. In doing this, reliance is placed on the decision of the National Industrial Court of Nigeria in *Hon. Attorney-General of Enugu State v. National*

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*Association of Government General Medical and Dental Practitioners &anor.*<sup>2</sup>In that case, the question arose for determination as to whether the members of the National Association of General Medical and Dental Practitioners (“NAGMDP”) in the employment of the Enugu State Government were engaged in essential services. This Court, *per* Hon. Justice B. B. Kanyip, held that the members of NAGMDP, inasmuch as they were engaged in services for hospitals and in connection with the treatment of the sick, were people engaged in essential services “as per paragraph 2(d) of the First Schedule to the Trade Disputes Act. In coming to that conclusion, the Court had considered the concept of “essential services” as espoused by the International Labour Organization (“ILO”) and concluded that the “ILO conception of essential services approximates with the notion under Nigerian law in classifying the hospital sector as an essential service.”

It is therefore my view that Resident Doctors, inasmuch as they are engaged in the provision of services in hospitals related to the “treatment of the sick and the prevention of diseases”, are engaged in essential services under the Trade Disputes Act.

**Issue (b):** *If the answer to issue (a) is in the affirmative, whether the members of the NARD are as such prohibited from taking part in any strike, or engaging in any conduct in contemplation or furtherance of any strike, by the provisions of section 31 (6) (a) of the Trade Union Act, Cap. T 14, LFN, 2004, as amended by the Trade Union (Amendment) Act, No. 17 of 2005.*

Section 31 (6) (a) of the Trade Union Act provides that –

No person, trade union or employer shall take part in a strike or lockout or engage in conduct in contemplation or furtherance of a strike or lockout unless the person, trade union or employer is not engaged in the provision of essential services.

In clear and unambiguous words, the above section disqualifies a person or trade union whose members are engaged in the provision of essential services from participating in a strike, lockout, or conduct in contemplation or furtherance of a strike. Therefore, as I have already argued under issue (a) above, “essential services” for the purposes of the Trade Unions Act is as defined in the First Schedule of the Trade Disputes Act. Thus, it has been proved beyond doubt that the members of NARD are persons engaged in the provision of essential services. It follows therefore that for as long as the provisions of s. 31 (6) (a) of the Trade Unions Act as quoted above remain in force, the members of NARD have no lawful right to go on strike or engage in conduct in contemplation or furtherance of a strike. Again, I rely on the decision of the NICN in *Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners &anor.*<sup>3</sup> In that case, consequent upon the finding that the defendants were engaged in essential services, the Court held that the defendants cannot embark on strike action or threaten to embark on one. In the words of the Court, it held that: “The defendants are engaged in the provision of essential services within the meaning of the term under the Trade Disputes Act. Consequently, the defendant cannot embark on any strike action or threaten to embark on one.”

Therefore, I am of the view that just as it is with the defendants in the National Association of Government General Medical and Dental Practitioners Case above, so it is with the members of NARD. They are disqualified by the law from embarking on strike or industrial action because they provide essential services.

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<sup>2</sup> Unreported Suit No. NIC/EN/16/2010, decided on 20 June 2011

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**Issue (c):** *If the answer to issue (b) is in the affirmative, whether or not the National Industrial Court of Nigeria (“NICN”) when approached by government or its agent, can grant declaratory and injunctive reliefs against NARD and its members.*

First, with the provision of section 254C (1)(a)(b) of the *Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010* the controversy surrounding the exclusivity or otherwise of the jurisdiction of the National Industrial Court of Nigeria (NICN) has been put to rest. It is no longer a subject of disputation. The above section confers exclusive jurisdiction in civil causes and matters to NICN in any or all of the following matters: labour, employer, trade unions, industrial relations and matters arising from workplace, the condition of service, including health, safety, welfare of labour, employee, worker(s) and matters incidental thereto or connected therewith. This section has effectively divested the State High Courts, Federal Capital Territory High Court, and the Federal High Court the jurisdiction of entertaining matters bothering on any or all of the above subjects or fields.<sup>4</sup> Thus, the section also put beyond doubt the controversial issue of whether or not the NICN is a superior court of records under section 6(3) & (5) of the *Constitution of the Federal Republic of Nigeria, 1999* by adding the NICN to the list of superior courts of records.

With the above provisions, it is no longer in doubt that the NICN is the proper forum to ventilate issues bothering on strike(s) or industrial actions. Therefore, the NICN is the right court to be approached for the grant of declaratory and injunctive reliefs against striking workers who embark on strike or industrial action despite that they provide ‘essential services’. Most often, it is the government, either State or Federal, or its agent that normally seeks relief in the court against striking workers. In order occasion, especially in matters bothering on the provision of services, private employers of labour could be the complaining party to approach the court: especially when it involves essential service providers working in the private sector.

On whether or not the NICN can grant declaratory and injunctive reliefs, the NICN itself in *Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners & anor*,<sup>5</sup> declares that it: “... has powers under sections 14, 16 and 19 of the National Industrial Court Act 2006 to grant declaratory and injunctive reliefs, and do all such things as are necessary to resolve a labour dispute and stop multiplicity of suits.” It follows that in respect of the declaratory relief, the government or complaining party with locus standi against the strike or industrial actions embarked upon by the NARD is entitled to a declaratory relief confirming that all NARD members render ‘essential services’.

Coming to the grant of injunctive relief, such as perpetual injunctions, the Supreme Court’s opinion (per Adekeye JSC) in *Goldmark Nig. Ltd. v. Ibafo Co. Ltd.*<sup>6</sup> is relevant. The court is of the view that:

The grant of the relief of perpetual injunction is a consequential order which should naturally flow from the declaratory order sought and granted by court. The essence of granting a perpetual injunction on a final determination of the rights of the parties is to prevent permanently the infringement of those rights and to obviate the necessity of bringing multiplicity of suits in respect of every repeated infringement.

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<sup>4</sup>See, *Sunday Ainabebholo v. Edo State University Workers Farmers Multi-purpose Co-operative Society & Ors* (2015) LPELR-24513(CA); and *Central Bank of Nigeria v. James EjembiOkefe* (2015) LPELR-24825(CA)

<sup>5</sup> Unreported Suit No. NIC/EN/16/2010, decided on 20 June 2011

<sup>6</sup> (2012) 3 KLR (Pt. 309)1251 at 1288, paragraph D-F

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Commissioner of Works, Benue State vs. Devcon Ltd. 1988 3 NWLR pt. 83, pg. 407, LSPDC vs. Banire 1992 5 NWLR pt. 243 at pg. 620, Afrotec vs. MIA (2001) 6 WRN pg. 65, Globe Fishing Industries Ltd. vs. Coker (190) 7 NWLR pt. 162. Pg. 265.”

Thus, the NICN is invited to note that s. 31(7) of the Trade Unions Act makes it a crime for anybody to contravene the provision of s. 31 (6) (a) of the Trade Unions Act (which *inter alia* prohibits persons engaged in essential services from embarking on strike). It therefore follows that the NICN does not only have a duty to punish crimes but also to prevent the commission of crimes. Therefore, restraining the members of NARD through injunctive reliefs sought by governments or their agents will be a proactive enforcement of section 31(6)(a) of the Trade Unions Act. In this direction, the Supreme Court in *Amechi v. INEC*<sup>7</sup> held: “The court has a duty to enforce the provisions of the laws validly enacted by National Assembly pursuant to powers derived from the Constitution.”

**Conclusion:**

In this paper, it is established that the members of NARD are persons engaged in essential service within the meaning of Trade Disputes Act, and the Trade Union Act as amended by the Trade Union (Amendment) Act, No. 17 of 2005. Being persons who are engaged in essential services, the members of NARD are prohibited from taking part in any strike, or engaging in any conduct in contemplation or furtherance of any strike, by the provisions of s. 31 (6) (a) of the Trade Union Act, Cap. T 14, LFN, 2004, as amended by the Trade Union (Amendment) Act, No. 17 of 2005. It is also shown that in consequence, the government or its agents or a legitimate complainant is entitled to both declaratory and injunctive reliefs to prohibit industrial action or strike amongst ‘essential service providers.

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<sup>7</sup> (2008)1 KLR (Pt. 247)237 at 297, paragraph D

