# LABOUR LAWS AND TRADE UNIONS IN NIGERIA

By

Hon. Justice
**Benedict Bakwaph Kanyip,**
PhD, OFR, FNIALS, FCTI, FCArb
President, National Industrial Court of Nigeria

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**Hon. Justice Benedict Bakwaph Kanyip, PhD, OFR, FNIALS, FCTI, FCArb[♠]**
**President, National Industrial Court of Nigeria**
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**Member, ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)**

## Introduction

1. As I thank the Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC) for the invitation to deliver the 2024 Pre-May Day Lecture, I must take this opportunity to extend to you all, on behalf of the judges and staff of the National Industrial Court of Nigeria (NICN), our felicitations as to the forthcoming 2024 May Day celebrations.

2. I have lamented to the President of the NLC that while government, employers and lawyers have engaged us at the NICN in discussions on the new labour jurisprudence that is evolving since the promulgation of the Third Alteration to the 1999 Constitution, labour appears to be indifferent. Not so anymore, it seems, given the present invitation to deliver this keynote lecture. This is a good sign. For unless we all go back to school, the evolving labour jurisprudence may elude us all.

3. The letter inviting me to delve this keynote lecture was specific in urging me to focus on the following issues:

- The role of the judiciary in resolving disputes between employers and trade unions.
- Recent legal developments and their implications for trade unions and workers' rights.
- Strategies for effective advocacy and legal representation for trade unions.
- The importance of promoting fair labour practices.

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♠ Formerly Associate Research Professor of Law at the Nigerian Institute of Advanced Legal Studies, Lagos.

- International dimensions to trade union rights.

4. If I am to accede to this request, I will have to write a dissertation or thesis, not a keynote lecture. I shall accordingly simply write generally, hoping that in the process I will touch on some or all of the above issues.

5. We at the NICN have been variously accused: government complains that they have unnecessarily lost so many cases at the NICN (in fact the former Governor of Kaduna State, Nasir El Rufai said we specialize in freeing crooks and that government made a mistake to establish the NICN); employers and their lawyers think that the NICN is an employee's court; and labour on its part, to borrow the words of the NLC President, Comrade Joe Ajaero, have accused us being pliant judges, compromised judges, who grant jankara and black market injunctions. So if the three stakeholders/social partners (government, employers and labour) all complain about the NICN, does it not show that we are simply doing our work? After all, "Lady Justicia" is blind!

6. The words of Comrade Ajaero were made in reaction to Justice Anuwe's grant last year of an *ex parte* order restraining labour from embarking on strike regarding the increase in fuel price. It dawned on me, and I explained this to Comrade Ajaero, that labour misunderstands that the NICN issues, as a matter of course, *ex parte* restraining orders as to industrial actions when the industrial action in issue is yet to commence. We do this given sections 7(1)(b) and 19(a) of the National Industrial Court (NIC) Act 2006, which grant powers to the NICN to restrain any person from embarking on a strike and the grant of urgent interim reliefs, and section 18(1) of the Trade Disputes Act (TDA) LFN 2004. Here, not just governments, but employers in the private sector as well, have benefited from this power of the NICN. Where, however, the strike action had commenced, we always insist that the other party be put on notice before the restraining order can be granted. The key point to note in this regard is that, by section 18(1) of the TDA, once any of the dispute resolution processes has been activated both strikes and lockouts must be called off. As notorious as this point is, experience shows that labour is not wont to adhere to it.

7. The accusation that the NICN is an employee's court is historically not incorrect. This is because labour law itself, the very subject matter of the

NICN, is a product of the uneven bargaining power between employees and employers. And so I must acknowledge that labour law itself admits of a good deal of paternalism, which has seen conscious effort being made to safeguard the interest of the worker. The International Labour Organization (ILO)'s decent work agenda is a pointer to this. Back home, as far back as 2014, *Afrab Chem Ltd v. Pharmacist Owoduenyi*[1], for instance, held that courts should not allow the imposition by employers of servile conditions on employees.

8. Paternalism in labour law dictated that the rules fashioned in terms of labour law were deliberately made to favour the employee, e.g. the rule which grants the employee the absolute right to leave an employment even when he is being investigated for an infraction; and any inhibition by the employer is held to be forced or slave labour[2]. Accordingly, it should be noted that labour laws, when ambiguous, are interpreted to benefit the employee[3]. The employer must accordingly note that in interpreting contracts of employment, ambiguity would be resolved against him, and as such in favour of that which gives the employee an advantage[4]. So an employer who chooses to terminate an employment shortly before the employee reaches the number of years needed to be entitled to a benefit, stands the risk of being held to the rule culled from the law of arithmetical approximation where anything from half but less than one is approximated to the next whole

[1] [2014] LPELR-23613(CA). See also *Clement Abayomi Onitiju v. Lekki Concession Company Limited* unreported Suit No. NICN/LA/130/2011, the judgment of which was delivered on 11 December 2018.

[2] See Ineh Monday Mgbeti v. Unity Bank Plc unreported Suit No. NICN/LA/98/2014, the judgment of which was delivered on 21st February 2017, Yesufu v. Gov. Edo State [2001] 13 NWLR (Pt. 731) 517 SC, Adefemi v. Abegunde [2004] 15 NWLR (Pt. 895) 1 CA, Abayomi Adesunbo Adetoro v. Access Bank Plc unreported Suit No. NICN/LA/293/2013 the judgment of which was delivered on 23rd February 2016, Taduggoronno v. Gotom [2002] 4 NWLR (Pt. 757) 453 CA and Dr (Mrs) Ebele Felix v. Nigerian Institute of Management unreported Suit No. NICN/LA/321/2014, the judgment of which was delivered on 4th July 2017.

[3] See http://cnn.it/2msSgpo as accessed on 22 April 2024, where:

> A group of dairy drivers argued that they deserved overtime pay for certain tasks they had completed. The company said they did not. An appeals court sided with the drivers, saying that the guidelines themselves were made too ambiguous by, you guessed it, a lack of an Oxford comma.

[4] See *New Nigeria Development Company Limited v. Daniel Ugbagbe* [2021] LPELR-56666(SC), *James Adekunle Owulade v. Nigerian Agip Oil Co. Ltd* unreported Suit No. NICN/LA/41/2012, the judgment of which was delivered on 12 July 2016 and *Mr M. A. Chiroma v. Forte Oil Plc* unreported Suit No. NICN/ABJ/165/2018, the judgment of which was delivered on 2 May 2019.

number[5]. And the rule that assumes junior staff to be members of a trade union based on eligibility has been rationalised by His Lordship Affen, JCA in *Executive Chairman & Management of Benue State Universal Basic Education Board v. Non-Academic Staff Union of Educational & Associated Institutions*[6] on the ground of paternalism. In the words of His Lordship:

> …the law assumes a paternalism towards junior staff by making eligibility the yardstick for trade union membership but donates to him the right to opt out in writing if he finds that his interest is not being served.

9. The paternalism of the law, however, has not beclouded our sense of justice and fairness to *all* litigants at the NICN. For there are cases in which the employer did not even make an appearance, or for one reason or another failed to enter any appropriate defence, and yet the employee lost. A number of examples will suffice:

(a) Where key facts required to ground the claimant's claims, especially claims for special damages, were not pleaded, or if pleaded, were not proved, the claimant had lost. In *Mr Odumaran Adewale v. Project Debbas Nig. Ltd*[7], despite the intransigence of the counsel to the defendant, the claimant still lost the case.

(b) In *Mr Ige Adediran v. Arik Air Ltd*[8], the claimant sued against his summary dismissal and prayed for reinstatement. His case was dismissed for lack of proof despite that the defendant did not enter any appearance or file any defence process.

(c) In *James Okeh v. Lagos State University*[9], despite that the defendant did not enter any formal appearance, nor was it represented by any counsel throughout the hearing of the case, the claimant's claims were dismissed because the claimant claimed under the wrong law and as such was held not to have successfully made out his case.

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[5] See *Mr Samson Iyanda v. First Bank of Nigeria Ltd* unreported Suit No. NICN/LA/292/2016, the judgment of which was delivered on 28 January 2019, *Olapade Samuel Olatunwo Oyebola & ors v. FAAN* unreported Suit No. NICN/LA/259/2013, the judgment for which was delivered on 20 May 2019 especially paragraph 57 and *Ekeoma Ajah v. Fidelity Bank* unreported Suit No. NICN/LA/588/2017, the judgment of which was delivered on 14 May 2019 per Ogbuanya J.

[6] [2021] LPELR-55724(CA).

[7] Unreported Suit No. NICN/LA/261/2014, the judgment of which was delivered on 21 February 2017.

[8] Unreported Suit No. NICN/LA/126/2016, the judgment of which was delivered on 14 December 2017.

[9] Unreported Suit No. NICN/LA/785/2016, the judgment of which was delivered on 16 February 2018.

(d) In *Jimmy Adeniyi Olugbenle v. Lagos NURTW (First BRT) Coop Society Ltd*[10], one R. B. Ijoma, who started as counsel for the defendant, later withdrew legal representation for the defendant. In the end, there was no legal representation for the defendant. Despite this, the claimant's case was dismissed for failure of proof.

(e) In *Agnes Omeyi Adoga (Mrs) & ors Ameh Adoga & ors*[11], there was no legal representation for any of the defendants, although one Mohammed Abdullahi, Litigation Officer, Western Naval Command, was in attendance representing the 2nd and 3rd defendants. The ruling on jurisdiction went the way of the defendants even without any legal representation from them.

(f) In *Churchill Onyeka Ibeagwa v. XL Logistics Limited*[12], the ruling held the case to be statute-barred. The verdict accordingly went in favor of the defendant despite that there was no legal representation.

(g) In *National Pension Commission v. Tradeways Express International Limited*[13], there was no legal representation for the defendant. Yet, the claimant's case was dismissed.

(h) In *P. C. Ibiwoye Adeola v. Police Service Commission & 2 ors*[14], despite that there was no legal representation for the defendants, the claimant's case was struck out.

(i) In contrast, but still exemplifying the point that the paternalism of the law has not beclouded the NICN, in *MRS Holdings Limited v. Ibrahim Akar*[15], the employee as defendant had no legal representation. The employer as claimant won two of the four reliefs claimed against the employee.

10. Aside from employees losing cases even when the employer did not enter any defence, there abound badly prosecuted cases on behalf of especially employees and trade unions. I have seen strategic blunders committed in the

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[10] Unreported Suit No. NICN/LA/314/2013, the judgment of which was delivered on 15 November 2016.

[11] Unreported Suit No. NICN/LA/15/2017, the ruling of which was delivered on 24 May 2017.

[12] Unreported Suit No. NICN/LA/98/2013, the ruling of which was delivered on 25 March 2014.

[13] Unreported Suit No. NICN/LA/424/2014, the judgment of which was delivered on 4 July 2017.

[14] Unreported Suit No. NICN/LA/235/2017, the ruling of which was delivered on 6 March 2018.

[15] Unreported Suit No. NICN/LA/616/2014, the judgment of which was delivered on 16 February 2018.

process. It was His Lordship Eko, JSC in *Isitor v. Fakorade*[16], who stated that strategic blunders by counsel in the conduct of a case should earn no sympathy from the court. The recent *Federal Government & anor v. ASUU*[17] case is one in point. ASUU refused to file defence processes despite all the opportunities given. When the Court in consequence foreclosed ASUU from filing the defence processes, ASUU came up with an ingenious prayer: that the Court should use, as the defence of ASUU, the counter-affidavit ASUU had filed in a motion on notice that was already moved and ruled on. This is what the Court held in paragraph 5 of the judgment:

> …the defendant's submission that the Court should consider its counter-affidavit to the claimants' motion for interlocutory orders, having been moved and ruled on, cannot be considered as the defence of the defendant to the substantive suit. The counter-affidavit had served its purpose i.e. as the defence to the motion for interlocutory orders. It is not the defence of the defendant to the substantive suit. In any event, when this Court refused to grant the defendant's application for extension of time, the prayer of the defendant for the said extension of time was to enable the defendant file its "counter-affidavit and witnesses' depositions". Aside from the questionable relationship of a "counter-affidavit" and "witnesses' depositions", as framed by the defendant, the application intuits that these processes are the defendant's defence processes, not the counter-affidavit to the motion for interlocutory orders. Like I pointed out in the considered Bench ruling of 2 May 2023 in which I rejected the application for extension of time, strategic blunders by counsel in the conduct of a case should earn no sympathy from the court…

11. And in *Academic Staff Union of Universities v. Minister of Labour and Employment & 2 ors*[18], the attempt by ASUU to relitigate *Federal Government & anor v. ASUU* was rebuffed by the Court in these words:

> [29] Now, in Suit No. NICN/ABJ/270/2022, the defendant (ASUU) did not enter any defence; and so judgment was entered on the basis of the evidence and submissions of the claimants. The defendant had the opportunity in that case to raise all the issues it is now raising in the

[16] [2018] All FWLR (Pt. 955) 494 at 507 - 509.

[17] Unreported Suit No. NICN/ABJ/270/2022, the judgment ion which was delivered on 30 May 2023.

[18] Unreported Suit No. NICN/ABJ/152/2023, the ruling of which was delivered on 22 November 2023.

instant suit including the discrimination issue. But because of their strategic blunder in not filing a defence in Suit No. NICN/ABJ/270/2022, they lost that opportunity. Having lost that opportunity, they now filed the instant suit using the pretext of discrimination as the distinguishing ground for bringing the instant suit…

…………………….

[32] …In paragraphs 6 to 12 and 15 of the affidavit in support of the instant suit, the claimant recounted what constitutes the work of a lecturer, how the strike it embarked upon does not abrogate the responsibilities of its members as lecturers, how despite that the defendants refused to pay its members their salaries for the period of the strike, how the strike continued thereby, how the teaching job component of their job was only restored upon the orders of this Court and the Court of Appeal, etc. These were matters ASUU ought to have canvassed in Suit No. NICN/ABJ/270/2022 if they had filed their defence processes. But ASUU "strategically" chose not to.

[33] … ASUU had all ample opportunity to make the payment of salaries to "members of the Joint Staff Union, National Association of Resident Doctors and lecturers in the Medical Facilities/Medical and Dental Academic of the Nnamdi Azikiwe University, Nnewi Campus, Anambra State during the period of industrial actions" an issue in Suit No. NICN/ABJ/270/2022 if it wanted to. It, however, once again chose not to. ASUU accordingly has itself to blame for all these "strategic" blunders. It cannot by the instant suit re-litigate a suit it deliberately refused to file a defence to. To do so would be re-litigation through the backdoor…

12. Labour must note, and it is in their own interest to do so, the increasing influence of ILO Conventions and Recommendations in the adjudication of labour disputes in the NICN given the statutory and constitutional mandate of the Court in virtue of section 7(6) of the NIC Act 2016 and section 254C(1)(f) and (h), and (2) of the 1999 Constitution, which permit the Court to, when adjudicating, apply international best practices in labour and the Treaties, Conventions, Recommendations and Protocols on labour ratified by Nigeria. This statutory mandate of the Court has been affirmed and reiterated by the

Court of Appeal. His Lordship Nimpar, JCA in *Ferdinand Dapaah & anor v. Stella Ayam Odey*[19] recognized the constitutional power of the NICN to rely and apply international conventions which have close bearing to the claims related to workplace and labour matters. And His Lordship Ogakwu, JCA, in his leading judgment in *Sahara Energy Resources Ltd v. Mrs Olawunmi Oyebola*[20], went the step further in reading section 254C(1)(f) and (h), and (2) of the 1999 Constitution as imposing an "obligation on [this] Court to now apply good or international best practices in adjudication".

13. A new labour jurisprudence is accordingly now with us, different from what it was in the past. It is in the interest of all to learn this new labour jurisprudence.

14. As new as this labour jurisprudence may be, I must caution that the jurisdictional scope of the NICN over it is hazy and so is still being worked out, if the decisions of the Court of Appeal are anything to go by. In this regard, I wish to draw attention to the following points:

(a) There is a good deal of misunderstanding of what the new labour jurisprudence under the Third Alteration stands for. Despite the Third Alteration Act 2010, which extended the jurisdiction of the NICN, the dispute resolution processes of Part I of the TDA remain valid and the NICN's jurisdiction remains appellate, and this is so even for inter and intra-union disputes,[21] except where a direct referral is made by the Honourable Minister of Labour under section 17 of the TDA[22]. The recent Federal Government-ASUU dispute showed a good deal of misunderstanding of the Part I processes of the TDA as regards the resolution of labour disputes[23]. The referral system under Part I of the TDA is grossly misunderstood. I saw a good of this misunderstanding in the preliminary objection raised as to the competence of the referral

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[19] [2018] LPELR-46151(CA); [2019] 16 ACELR 154 at page 181.

[20] [2020] LPELR-51806(CA).

[21] *Non-Academic Staff Union of Educational and Associated Institutions (NASU) v. Aniah Jacob & ors* [2020] LPELR-49951(CA).

[22] See *Federal Government & anor v. ASUU* unreported Suit No. NICN/ABJ/270/2022, the ruling of which was delivered on 28 March 2023; and *Federal Government & anor v. ASUU* unreported Suit No. NICN/ABJ/270/2022, the judgment of which was delivered on 30 May 2023.

[23] *Ibid*.

to the NICN by the Honourable Minister of Labour and Employment of the Federal Government-ASUU dispute in *Federal Government & anor v. ASUU*[24], and I pointed this out in the ruling of 28 March 2023 in the case.

(b) Neither the Constitution nor the NIC Act did away with conciliation and arbitration of labour disputes — the Part I dispute resolution processes of the TDA, to be precise. In fact, on the general application of Part I of the TDA, even under the Third Alteration to the 1999 Constitution, His Lordship Abimbola Osarugue Obaseki-Adejumo, JCA in *The Management of Syndicated Metal Industries v. Steel & Engineering Workers Union of Nigeria*[25] was quite emphatic as to the continued applicability of section 14 of the TDA, and holding that only Part II of the TDA had been repealed, not the procedures for appealing from the Industrial Arbitration Panel (IAP), which provisions can be found in Part I of the TDA. Accordingly, that the appellant jumped the gun (by by-passing the Minister of Labour and coming directly to the NICN, thus denying the Minister his powers under section 13 of the TDA) and did not comply with the steps provided in Part I of the TDA.

(c) Whether the NICN has jurisdiction over torts committed in the workplace is less than clear given the contrasting decisions of the Court of Appeal. *UBA & ors v. Oladejo*[26], for instance, held that the jurisdiction of the NICN does not extend to "criminal matters or tort" or "to malicious prosecution, assault, detinue or any liability in tort". The worrying part is the very general/sweeping holding that the jurisdiction of the NICN does not extend to "criminal matters" when section 254C(5) of the 1999 Constitution clearly shows that criminal jurisdiction has constitutionally been donated to the NICN over criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the NICN by section 254C or any other Act or law. *Akpan v. Unical*[27] and *Bisong v. Unical*[28] held that the NICN does not have jurisdiction over the tort of defamation. One panel of the

[24] Unreported Suit No. NICN/ABJ/270/2022, the ruling of which was delivered on 28 March 2023.

[25] [2019] LPELR-47859(CA).

[26] [2021] LPELR-55320(CA).

[27] [2016] LPELR-41242(CA).

[28] [2016] LPELR-41246(CA).

Court of Appeal in *MHWUN v. Dr Alfred Ehigiegba*[29] held that jurisdiction over defamation lies with the State High Court, not the NICN; another panel in same *Medical and Health Workers Union of Nigeria v. Dr Alfred Ehigiegba*[30] held that the NICN has jurisdiction over defamation arising from the workplace given the "matters incidental thereto or connected therewith" phrase used in section 254C(1) of the 1999 Constitution. *Ecobank Nig Ltd & ors v. Idris*[31] held that the NICN does not have jurisdiction over defamation. *Christopher Okoro v. Ecobank Nig. Ltd*[32], on its part, held that it is the NICN that has jurisdiction over claims in libel and malicious falsehood. And *Adeniyi Olushola & anor v. Adolphus Yakubu*[33], *Adeniyi Olushola & anor v. Billa Saliu*[34] and *Adeniyi Olushola & anor v. Giwa Friday*[35] all held that the NICN does not have jurisdiction over malicious prosecution.

(d) There is further confusion as to the jurisdiction of the NICN when the Court of Appeal in *Denca Services Ltd v. Mr Nnamdi Azunna*[36] held that the jurisdiction of the NICN under section 254C(1) of the 1999 Constitution is contingent on there being an employment relationship between the disputing parties. Taken out of the context in which this holding was made, which is vicarious liability, this holding can spell doom for the jurisdiction of the NICN. The jurisdiction of the NICN over strikes[37] under section 7(1) of the NIC Act 2006 and section 254C(1) of the 1999 Constitution would, for instance, not cover secondary or sympathy strikes, since there would be no employment

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[29] Unreported Appeal No. CA/B/401/2013, the judgment of which was delivered on 4 May 2016.

[30] [2018] LPELR-44972(CA).

[31] [2021] LPELR-52806(CA).

[32] Unreported Appeal No. CA/C/07/2016, the judgment of which was delivered on 16 July 2021.

[33] [2021] LPELR-56015(CA).

[34] [2021] LPELR-56027(CA).

[35] [2021] LPELR-56019(CA).

[36] [2018] LPELR-46043(CA); [2019] 16 ACELR 137 at 149 - 150.

[37] By ILO's jurisprudence, a strike generally is a temporary work stoppage (or slowdown) wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances. See paragraph 783 of the ILO's *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (International Labour Office: Geneva), 2018, 6th Edition.

relationship between the secondary or sympathy strikers with the employer against whom the strike is lodged, if the *Denca* decision is taken to its logical end.

(e) Regarding the jurisdiction of the NICN under section 254C(1)(k) of the 1999 Constitution, while *Nwagbo & ors v. National Intelligence Agency*[38] held that the NICN has jurisdiction in complaints of non-payment of death benefits of a deceased employee, and that once a demand for the death benefit was made, a dispute thereby arose, which dispute inures despite that the employer/employee relationship had even ceased, *Ministry of Local Government & Chieftaincy Affairs, Akwa Ibom State & anor v. Udoh & ors*[39], on its part, held that claims of payment of acknowledged arrears of allowances are claims for debts over which the State High Court, not the NICN, has jurisdiction given that since there was no dispute as to the quantum of the claims, there was no dispute and so section 254C(1)(k) of the 1999 Constitution cannot be brought to play. One may ask: even assuming that there is no dispute as to the quantum of the monetary claim, is the very fact of refusal to pay not itself a dispute over its payment or non-payment to warrant the NICN having jurisdiction over it?

(f) Whether employment/labour law claims are caught up by the statutes of limitation including the Public Officers Protection Act LFN 2004 as to impact on the jurisdiction of the NICN suffers the same fate of contrasting decisions of especially the Supreme Court. *National Revenue Mobilisation Allocation and Fiscal Commission & 2 ors v. Ajibola Johnson & 10 ors*[40], reviewing the older authorities, held that the limitation laws do not apply to contracts of service. *Abubakar Abdulrahman v. NNPC*[41], *Michael Idachaba & ors v. University of Agriculture, Makurdi & 4 ors*[42] and *Philip Ikhanoba Aroyame v. The Governor of Edo State & anor*[43], however, retreated and held that the limitation laws applied.

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[38] [2018] LPELR-46201(CA).

[39] [2019] LPELR-47004(CA).

[40] [2019] 2 NWLR (Pt. 1656) 247.

[41] [2020] LPELR-55519(SC) decided on 5 June 2020.

[42] [2021] LPELR-53081(SC) decided on 15 January 2021.

[43] [2022] LPELR-57819(SC).

15. At the NICN, we are not finding this easy at all. Given this unsettled state of the law, our decisions are also bugged down as the appellate decisions librate from one stand point to another and back.

16. I stressed earlier the need for labour to note the increasing influence of ILO jurisprudence in the adjudication of labour disputes, a product of the statutory and constitutional mandate of the NICN in virtue of section 7(6) of the NIC Act 2006 and section 254C(1)(f) and (h), and (2) of the 1999 Constitution. And so no where is the increasing influence of ILO jurisprudence more pronounced that in litigation as to unfair labour practices. This can even be seen in the manner in which section 254C(1)(f) of the 1999 Constitution is couched. The section confers exclusive jurisdiction on the NICN in civil causes and matters "relating to or connected with unfair labour practice or international best practices in labour employment and industrial relation matters".

17. I must note that even before the unfair labour practice concept was formally recognised by our laws as in section 254C(1)(f) of the 1999 Constitution, labour had used it to litigate against what they perceive as the injustices or wrongdoings in the workplace. For instance, despite that outsourcing is itself a veritable source of employment, labour is often quick to kick against it; and here majority of the cases brought to the NICN by labour are often calls for outsourcing to be declared unlawful or an unfair labour practice[44]. And similar calls have also been made to the Minister of Labour, despite that the ILO does not see it as such.

18. The concept of unfair labour practice must be seen as the law's attempt to denounce practices that are unfair in the workplace. And as His Lordship Hon. Justice Arowosegbe put it in *Dr Awkadigwe Fredrick Ikenna v. Dr Olusegun Olaopa & 2 ors*[45], the NICN "has the sacred duty to prevent unfair labour practice". Though neither the Constitution nor any enactment defines unfair labour practice, it must, however, be noted that while the notion of

[44] *PENGASSAN v. Mobil Producing Nigeria Unlimited* [2013] 32 NLLR (Pt. 92) 243 NIC.

[45] Unreported Suit No. NICN/EN/26/2019, the judgment of which was delivered on 27 February 2020; available at https://nicnadr.gov.ng/judgement/details.php?id=4528&party=Dr%20Awkadigwe%20Fredrick%20Ikenna%20-VS-%20Dr.%20Olusegun%20Israel%20Olaopa%20&%202%20Ors as accessed on 23 April 2024.

unfair labour practice relates more to employees (unfair practice being seen from the prism of the actions of the employer), there is nothing in principle that says that employees cannot act unfairly in the workplace (as by unlawful industrial actions) as to warrant their actions being challenged on the ground of the unfair labour practice principle.

19. Nigeria has not ratified the Termination of Employment Convention, 1982 (No. 158) (C.158) and its accompanying Termination of Employment Recommendation, 1982 (No. 166) (R.166). Yet, when the provisions of these instruments are closely considered, the issues they cover easily qualify as issues of fair or unfair labour practices. The termination of the employment of an employee for union membership or participation in union activities (Article 5 of C.158) is an unfair labour practice. Failure to terminate an employment for misconduct within reasonable time must be deemed as waiver or condonation by the employer (paragraph 10 of R.166) — any subsequent termination must thus qualify as unfair labour practice. Failure, upon request, to issue a certificate of employment upon the termination of an employment (paragraph 17 of R.166) would also qualify as unfair labour practice.

20. The NICN has over time held a number of practices to be unfair labour practices. These include:

(a) *Mr Olabode Oguntale & 64 ors v. Globacom*[46] held as unjust, exploitative and unfair labour practices the following:

- The respondent's failure to issue the claimants with written particulars of the terms of their contract of employment.
- The respondent having to stop the issuing of pay-slips to the claimants.
- The respondent's failure to allow the claimants go on annual leave, or pay leave allowance and overtime allowance.
- The respondent compelling the claimants to bank with a specified bank chosen by the employer, Equatorial Trust Bank, a Bank that the respondent has an interest in, by paying the claimants' salaries into accounts they were compelled to operate with the Bank since the claimants were not left with any option as to the choice of a Bank.

[46] [2013] 30 NLLR (Pt. 85) 49 NIC.

(b) *Sunday Chukwu Ukpai v. Ajuba Nigeria Limited & anor*[47] reiterated in paragraph 58 some of these unfair labour practices: the failure of the 1st defendant to reduce to writing the oral terms and conditions of the contract of employment; the claimant having to work day and night for 7 years without leave (there was no specific denial of this by the 1st defendant); the claimant not being given pay-slip; and the 1st defendant opening a virtual salary account (VSA)[48] for the claimant and 17 other employees. The NICN held that a VSA should never be accepted in our employment and labour relations as it is demeaning to the dignity of the worker or employee; and so offend section 34 of the 1999 Constitution.

(c) In *Leonard Oyinbo v. Guinness Nig. Plc*[49], dismissal on false allegation was held to be an unfair labour practice. The claimant employee was accused of the crime of stealing, his salary seized, and while the investigation was on going he was suspended and later dismissed. But it was later found that he was innocent, yet not recalled or paid his seized salaries. Hon. Justice Ogbuanya held that the dismissal on false allegation amounts to unfair labour and awarded damages. The decision of His Lordship Ogakwu, JCA in *Promasidor (Nig.) Ltd & anor v. Asikhia*[50] in a sense affirmed the stance of Ogbuanya J though not in the direct words of unfair labour practice. But that can be implied. The appellants had written Exhibit D/G2 to the respondent (the claimant in the trial court), which was a letter purportedly accepting the respondent's

[47] Unreported Suit no. NICN/LA/77/2015, the judgment of which was delivered on 28 January 2019.

[48] In the course of their banking relationship, the 1st defendant requested the 2nd defendant to open a Virtual Salary account (VSA) for the benefit of 18 members of its staff (including the claimant) and the 2nd defendant granted the request. This VSA can only be operated with an ATM card and it does not require any account opening documentation from the account holder as the accounts are opened at the instance of a well-known customer/organization (the 1st defendant) for the purpose of payment of the monthly salary of its staff via ATM. Upon the opening of the accounts, the 1st defendant through its sister company (CCECC Nig Ltd) demanded that the 2nd defendant release the ATM cards and PIN numbers of the accounts to it, which the 2nd defendant obliged. In the course of their banking relationship, the 1st defendant started instructing the 2nd defendant to credit the accounts. The 2nd defendant honoured the payment instructions and the payments made into the accounts were subsequently withdrawn by the staff of the 1st defendant (including the claimant) who are the beneficiaries of the accounts. The claimant, in the course of events, approached the 2nd defendant for an accounts statement relating to the account but his request was declined to by the 2nd defendant given that he was not the account holder and had no contractual right to request for the accounts statement.

[49] Unreported Suit No. NICN/LA/639/2012, the judgment of which was delivered 20 September 2019. See also https://thenationonlineng.net/dismissal-on-false-allegation-is-unfair-labour-practice-2/ as accessed on 23 April 2024.

[50] [2019] LPELR-46443(CA).

letter of resignation. The respondent acknowledged the receipt of the appellant's said letter (Exhibit D/G2). The letter of resignation referred to in Exhibit D/G2 was found not to be a statement of fact, but an absolute falsehood, untrue and a lie as the respondent did not write any letter of resignation. The issue that thus arose for determination was whether damages can be awarded for malicious falsehood different from the wrong arising from the termination of employment. His Lordship Ogakwu, JCA made a distinction between the two heads and answered the question in the affirmative. The fact that the Court of Appeal affirmed that damages can be awarded against the appellants for the falsehood means that such an act of the appellant was wrong and so would qualify as an unfair labour practice.

(d) *Aghata N. Onuorah v. Access Bank Plc*[51] held it to be unfair labour practice for an employer dictating to an employee where to invest his/her computed gratuity benefit.

(e) I have ordered in open court, even when there was no pleading to that effect, but simply because it was revealed in open court, that an employer holding the certificates of an employee as security for the employment of the employee on terms that it will not be released until the employer no longer desires the services of the employee must forthwith release same, it being an unfair labour practice.

(f) *Mrs Abdulrahaman Yetunde Mariam v. University of Ilorin Teaching Hospital Management Board & anor*[52] held a vindictive suspension and/or vindictive denial of promotion to be unfair labour practice.

(g) *Ineh Monday Mgbeti v. Unity Bank Plc*[53] held as unfair labour practice clauses in conditions of service where employers reserve the right to reject resignations by employees simply because the employee is question is being investigated for an infraction. More on this is said below.

(h) *Adesanya Adeyemi Joachim v. Union Registrars Limited*[54] held as unfair labour practice the termination of the claimant's employment on grounds of trade union activities.

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[51] [2015] 55 NLLR (Pt. 186) 17.

[52] [2013] 35 NLLR (Pt. 103) 40 NIC.

[53] Unreported Suit No. NICN/LA/98/2014, the judgment of which was delivered on 21 February 2017.

[54] Unreported Suit No. NICN/LA/139/2014, the judgment of which was delivered on 17 December 2019.

(i) *Ekeoma Ajah v. Fidelity Bank*[55] held as unfair labour practice an employee being subjected to a retroactive policy so as to deny him a benefit.
(j) *Ese Okojere v. Ecobank Ltd*[56] held as unfair labour practice a bank unlawfully placing a lien on an employee's account. In like manner, *Emmanuel C. Ekwem v. Unity Bank Plc*[57] held it to be wrong, for which damages of N1 Million was awarded, the employer bank freezing the claimant's accounts domiciled with it.
(k) *Eric Ivivie Baror v. Polaris Bank Ltd*[58] held it to be unlawful the refusal by the defendant to issue work reference in favour of the claimant; and when it chose to react, it stated categorically that it is not giving the work reference because the claimant is indebted to it, a reason that was false and misleading.

21. I must state, however, that the categories of unfair labour practices are not closed; and I envisage more litigation in the future in this area of labour law.

22. Employee rights are often treated on the basis of, and as, human rights for the simple reason that they attach on the basis of our humanity. As the saying goes: "We hired workers and human beings came instead"[59]. In other words, human beings remain human when they come to work, and so are entitled to basic dignity in the workplace as well[60]. The admonition of Pope Leo XIII in his 1891 encyclical *Rerum Novarum*, comes to mind i.e. labour is not a commodity. With digitalisation and AI, this papal admonition must today be rephrased thus: workers are neither commodities nor robots.

23. Having to view employee/labour rights from a rights perspective raises a fundamental question: is the constitutionalization of employee/labour rights

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[55] Unreported Suit No. NICN/LA/588/2017, the judgment of which was delivered on 14 May 2019.

[56] Unreported Suit No. NICN/PHC/110/2018, the judgment of which was delivered on 30 January 2020.

[57] Unreported Suit No. NICN/ABJ/183/2018, the judgment of which was delivered on 3 March 2020.

[58] Unreported Suit No. NICN/ABJ/159/2018, the judgment of which was delivered on 24 November 2022.

[59] See Hoyt N. Wheeler – "Employee Rights as Human Rights" in R. Blanpain (ed.) – *Employee Rights and Industrial Justice*, *Bulletin of Comparative Labour Relations 28 – 1994*, (Kluwer Law and Taxation Publishers: Deventer, Boston) 9 – 18.

[60] See *Ferdinand Dapaah & anor v. Stella Ayam* Odey (*suora*).

the best way to protect the employee? The point is that the constitutionalization of labour rights may pose policy dilemma in practice. Frances Raday[61] argues that the constitutionalization process has engendered a move from collective rights to individual justice thus undermining union organizing power[62]. Is the right to strike a collective right or an individual right? Cortebeeck[63] at page 70 holds the view that contrary to popular thinking, the right to strike is an individual right of every worker. In Nigeria, the right to strike is considered as a collective, not individual, right, which belongs to a trade union[64]. But can the union compel its members to take part in a strike? Against whom is the right? Is the right against the State or against everyone including private individuals? Rights carry special weight in political argument. They are not absolute. They cannot be exercised without due regard to the costs it might be imposing on others – the principle of utilitarianism enjoins that actions can only be taken if they maximize the greatest benefit or pleasure to the greatest number.

24. Trade unionism is one of the vehicles through which the freedom of association granted under section 40 of the 1999 Constitution is given effect to. The right is held so high that by *Olgette Projects Ltd v. Ufokiko*[65], "an employer cannot lock the workers because they refused to denounce and dissociate themselves from membership of a Trade Union". Accordingly, the freedom to organize or associate is generally thought to include an equal, a negative right at that, freedom not to organize or associate, as was held by the NICN in *Corporate Affairs Commission v. Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Service Employees*

[61] Frances Raday – "The Decline of Union Power – Structural Inevitability or Policy Choice?" in Joane Conaghan, Richard Michael Fischl and Karl Klare (ed.) – *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* (Oxford University Press), 2005 at pp. 359 – 360.

[62] See, for instance, *Associated Newspapers Ltd v. Wilson and Associated British Ports v. Palmer & ors* [1995] 2 WLR 354 (the cases were heard together). Here employees who opted out of the collective agreement governance of employment conditions but opted for individual employment contracts were offered pay rises. The 'omission' to give the pay rise to employees who refused to opt for individual contracts was held by the House of Lords not to amount to 'action' short of dismissal for purposes of deterring union membership. Similar scenarios have worked themselves out in the Nigerian banking sector.

[63] Luv Cortebeeck - *Still Work to be Done: The Future of Decent Work in the World* (Lannoo Publishers nv, Tielt), 2020 at page 70.

[64] See *The Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners (NAGGMDP) & anor* unreported Suit No. NIC/EN/16/2010 delivered on 20 June 2011.

[65] [2021] LPELR-56951(CA).

that "the freedom to associate under section 40 of the 1999 Constitution certainly includes the freedom to disassociate or not to associate"[66] — *in law as in logic, the converse of a proposition commands the same respect as the proposition itself*[67]. However, in the Scandinavian countries, the constitutional freedom of association does not incorporate a negative freedom to disassociate[68].

25. Union power is, however, gradually being eroded and made to be in decline via measures such as the restrictions placed on secondary strike actions and the strike ballot requirements[69]. Even the changing legal construct of the employment relationship serves to undermine collective bargaining. The proliferation of the triangular mode of employment and other new forms of work have seen a corresponding liberalization of the laws meant to regulate same. The legitimization of atypical employment is, therefore, a form of indirect rather than direct deterrence of trade unionism and collective bargaining power. The response in Nigeria to this particularly in the oil and gas sector is to particularize unionization to the contract staff in question as was the case in *PENGASSAN v. Mobil Producing Nigeria Unlimited*[70]. Privatization and transfers of undertakings also indirectly undermine collective bargaining power given the incidence of identity change of employment inherent therein.

26. I indicated earlier that the constitutionalization of labour rights may pose policy dilemma in practice. The right against discrimination is another case in point. Other than in relation to the right to join a trade union where a worker's right against discrimination is provided for under section 12(1) of the Trade Unions Act (TUA) 2004, nowhere in our labour laws is the right

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[66] [2004] 1 NLLR (Pt. 1) 1 at p. 32. In *Habu v. NUT, Taraba State* [2005] 4 FWLR (Pt. 283) 646, it was, however, held that where a plaintiff contracted out of the check-off dues system, it is for the trial Court to determine whether thereby the plaintiff can be forced or compelled to continue to be a member of the trade union he is contracting out from and whether the continuation of the deduction of check-off dues from his salaries and wages cannot be stopped.

[67] B. S. Markesinis and D. F. Deakin – *Tort Law* (Clarendon Press. Oxford) 1994, 3rd ed. at p. 41.

[68] Frances Raday (2005), *op. cit*, at p. 360 as well as O. Hasselbach and P. Jacobsen – *Labour Law and Industrial relations in Denmark* (The Hague: Kluver Law International), 1992 at p. 212.

[69] See, for instance, section 31(6)(e) of the Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act, which stipulates for balloting and the securing of a simple majority of all registered members of a trade union before a strike can be embarked upon.

[70] [2013] 32 NLLR (Pt. 92) 243 NIC.

against discrimination specifically provided for. The tendency is to subsume the right within the broader context of the constitutional right to freedom from discrimination under section 42 of the 1999 Constitution, and then treat it as a constitutional, not a workplace issue. The drawback with this approach is that discrimination as a workplace issue is more peculiar (and takes account of more issues such as HIV/AIDS, equality of pay and treatment, gender mainstreaming, sexual harassment, etc.) than discrimination as a constitutional issue. The protective nuances that the right against discrimination gains when it is specifically provided for in the labour statutes is lost if it is left to the general realm of constitutional law. And in this context, experience shows that the worker's right in that regard becomes diluted and tends to be inconsequential at the end of the day. The assumption, therefore, that labour law is meant to be protective of workers given the imbalance in power relations between employers and workers, becomes questionable. An example of the point I seek to make is *Festus Odafe & ors v. Attorney General, Federation & ors*[71], where the Federal High Court held that there was no breach of the constitutional right against discrimination for a prisoner living with HIV/AIDS because the Constitution did not expressly state HIV/AIDS as a prohibited ground of discrimination.

27. I took a different viewpoint in *Adeyemo Ayodele Omoniyi & ors v. University of Lagos*[72], where in interpreting section 42(1) of the 1999 Constitution, I held thus at paragraph 12:

> I now proceed to the merit of the preliminary objection. The issue before this Court is whether it has jurisdiction over this case. The claimants think that this Court has the jurisdiction. The defendant thinks not giving two reasons: …the second that the claimants did not framed (sic) their case within any of the prohibited grounds listed in section 42(1) of the 1999 Constitution given the manner in which relief (1) is couched. I start off with this second reason. The defendant relied on section 42(1) of the 1999 Constitution, which provides that "a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person" be discriminated or subjected to disabilities or

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[71] Unreported Suit No. FHC/PH/CS/680/2003.

[72] Unreported Suit No. NICN/LA/426/2016, the ruling of which was delivered on 29 March 2017, available at https://nicnadr.gov.ng/judgement/judgement.php?id=1382 as accessed on 25 April 2024.

restrictions on those grounds. This provision does not state that the categories of the grounds of discrimination are closed. Even in using the word "only" in section 42(1), it must be appreciated the context in which it is used. The provision that "a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person" means that citizens without more cannot be discriminated on just the ground that he/she is of a particular community, ethnic group, place of origin, sex, religion or political opinion. The statement cannot be read to mean that these grounds of discrimination are the only grounds of discrimination. In other words, it cannot be read to mean that discrimination on grounds other than the listed out would thereby be valid and legal (and so not remediable in law) simply because the discrimination was not done on any of the listed constitutional grounds. To uphold the argument of the defendant would mean, for instance, that albinos discriminated against as albinos or a worker with HIV/AIDS discriminated against as such would have no remedy in law. May be, if the defendant's argument is taken within the strict confines of constitutional law (even at this, I have my doubts as I have shown)… that conclusion may be reached, erroneously I dare say. The point is that even if an act, to go by the defendant's argument, is outside of the constitutionally listed grounds for discrimination, there is nothing that says that it cannot be discriminatory on grounds recognized as such by other laws, other than the Constitution. Discrimination at the workplace encompasses actions of an employer way outside of the constitutionally listed grounds in section 42. Is the defendant saying that this Court, with its jurisdiction under section 254C(1) of the 1999 Constitution to apply international best practices, and Treaties, Conventions, Recommendations and Protocols pertaining to labour law and ratified by Nigeria, should turn a blind eye to such discriminatory practices simply because they are not listed in section 42 of the Constitution? I do not think the defendant gave this issue a second thought before advancing its argument. I must accordingly discountenance the defendant's argument on that score…

28. One area less utilised in the use of international standards by especially labour relates to the economic and social (eco-soc) rights which inure under Chapter II of the 1999 Constitution. Chapter II deals with Fundamental

Objectives and Directive Principles of State Policy. The rights here include: the right to work (not just to be employed, but to be given work when employed); the right to fair and decent wages; rights as to working conditions including decent service conditions (the rights here bear close affinity with the concept of unfair labour practice); right to safe and healthy working conditions; right against unfair dismissal (the NICN already recognises the concept of constructive dismissal[73]) relative to the right of the employer to hire and fire at will (this brings to the fore the problem of flexicurity i.e. the tension between flexibility demanded by the employer and security demanded by the employer — the employer's cry for sustainable enterprises is at the heart of this tension); equality rights including as between men and women, equal pay, equal treatment, etc; right to privacy in the workplace; right to information, consultation and representation within the organisation; right to work reference, etc.

29. These workplace rights are also covered in a number of international instruments ratified by Nigeria such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Cultural Rights, the Convention on the Elimination of all Discrimination Against Women and the African Charter on Human and Peoples' Rights. And so in virtue of section 254C(1)(f), (h) and (2) of the 1999 Constitution, these rights can be applied by the NICN when adjudicating. To Hon. Justice Andrew KC Nyirenda (Judge President, District Registry, High Court, Lilongwe), labour rights as human rights begin on the premise of fair labour practices and then descend to other attributes[74].

30. The point I seek to make here is that though section 13 enjoins all organs of government, and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of Chapter II of the Constitution, section 6(6)(c) provides that judicial power shall not, except as otherwise provided by the Constitution, extend to any

[73] See, for instance, *Miss Ebere Ukoji v. Standard Alliance Life Assurance Co. Ltd* [2014] 47 NLLR (Pt. 154) 531 NIC, *Mr Patrick Obiora Modilim v. United Bank for Africa Plc* unreported Suit No. NICN/LA/353/2012 the judgment of which was delivered on 19 June 2014., and *Joseph Okafor v. Nigerian Aviation Handling Company Plc* unreported Suit No. NICN/LA/291/2016, the judgment of which was delivered on 25 April 2018.

[74] See Andrew KC Nyirenda – "Labour Rights as Human Rights" in Andrew Nyirenda & Rachel Zibelu Banda (ed.) – *Protection & Promotion of Labour Rights* (Industrial Relations Court Series: Malawi) at page 19.

issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution. In other words, except otherwise provided by the Constitution, everything in Chapter II is, as lawyers are wont to say, are non-justiciable[75].

31. However, to the extent that the 1999 Constitution allows, a provision granting a right in Chapter II of the Constitution can be justiciable. Section 254C(1)(f), (h) and (2) of the 1999 Constitution is one such section. This section allows the NICN to apply international best practices in labour, and Conventions, Treaties, Recommendations and Protocols ratified by Nigeria when adjudicating — and this has been judicially sanctioned as shown earlier[76]. What this means is that workplace rights enshrined in Chapter II of the 1999 Constitution can be justiciable at *only* the NICN in virtue of the Nigerian ratified Conventions.

32. The application of ILO Conventions can even be seen in the law's treatment of disengagement from work, where the rule is that an employee has an absolute/unfettered right to disengage from work, and there is no discretion on the part of the employer to refuse to accept the notice to resign[77]. Thus *any* attempt to stop an employee from disengaging by an employer would be interpreted as forced or compulsory labour[78]. This is the

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[75] See *Finarr Okoye & ors v. Collins Ezechukwu & anor* [2021] LPELR-56646(CA), which I note was specific in holding that "the provisions of Section 13 restrict the powers to enforce the observance of the duties in Chapter 2 to the organs of government specified therein; but do not extend to or include private individuals".

[76] See, for instance, *Ferdinand Dapaah & anor v. Stella Ayam Odey* and *Sahara Energy Resources Ltd v. Mrs Olawunmi Oyebola* (both *supra*).

[77] See *Yesufu v. Gov. Edo State* [2001] 13 NWLR (Pt. 731) 517 SC, *Adefemi v. Abegunde* [2004] 15 NWLR (Pt. 895) 1 CA, *Abayomi Adesunbo Adetoro v. Access Bank Plc* unreported Suit No. NICN/LA/293/2013, the judgment of which was delivered on 23 February 2016 and *Taduggoronno v. Gotom* [2002] 4 NWLR (Pt. 757) 453 CA.

[78] See *Ineh Monday Mgbeti v. Unity Bank Plc* (*supra*) and *Dr (Mrs) Ebele Felix v. Nigerian Institute of Management* unreported Suit No. NICN/LA/321/2014, the judgment of which was delivered on 4 July 2017.

basis upon which the NICN ruled against the Unity Bank clause[79] (named as such from *Ineh Monday Mgbeti v. Unity Bank Plc*) found in some employers' conditions of service.

33. I am not unmindful of the fact that cases like *University of Calabar Teaching Hospital & anor v. Juliet Koko Bassey*[80] held that an employee placed on suspension cannot resign and if he or she applies for resignation, it will not be allowed. And that my colleague Hon. Justice Obaseki-Osaghae in *Mr Oluseyi Abiodun Fajuyitan v. Guinea Insurance Plc* toed this line[81].

34. However, I note that attention of the courts in *University of Calabar Teaching Hospital & anor v. Juliet Koko Bassey* and *Mr Oluseyi Abiodun Fajuyitan v. Guinea Insurance Plc* to section 34(1)(c) of the 1999 Constitution, section 73(1) of the Labour Act and the ILO Convention Concerning Forced or Compulsory Labour, 1930 (No. 29), a Convention ratified by Nigeria on 17 October 1960[82], was not drawn. Had this been done, it is likely that the decisions may have gone differently. The rule that there is an absolute/unfettered right to resign finds support in section 306(1) and (2) of the 1999 Constitution in terms of constitutional office holders.

35. How labour reacts in practice sometimes calls to question the actions they take. I do not know what to make of this other experience. In *National Union of Shop and Distributive Employees (NUSDE) v. The Steel and Engineering Workers Union of Nigeria (SEWUN)*[83], one of the processes filed was a letter dated 9 August 2004 from a union to a Managing Director requesting "for the sum of Four Hundred Thousand Naira (N400,000) as check-off dues in advance from your good management". The letter continued: "This is to enable us solve a very pressing financial problem confronting us right now". The letter then went on: "This amount when granted should be recovered

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[79] The Unity Bank clause is a clause in the conditions of service where the employer reserves the right to reject the resignation by an employee simply because the employee is question is being investigated for an infraction.

[80] [2008] LPELR-8553(CA).

[81] Unreported Suit No. NICN/LA/209/2012, the judgment of which was delivered on 21 March 2019.

[82] See https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103259 as accessed on 23 April 2024.

[83] Unreported Suit No. NIC/ABJ/74/2011, the judgment of which was delivered on 8 March 2013.

from the check-off dues meant for our union until the total sum is finally liquidated". The letter concluded with the statement: "Counting on your usual cooperation and understanding".

36. The conclusion of the letter suggests that what the union was asking for and how it is being asked must have been a recurring feature in the relationship between the union and the company in question. I worry here, as this experience raises a number of questions. Is it legal to pay check-off dues in advance? Since salary by conception is almost always paid in arrears, should check-off dues (derived from salary) not also be deducted when salary is paid? When a union borrows check-off dues in advance from an employer, will it have the moral courage to challenge the employer if the need arises? How did the union manage its accounts in the first place to get to the sorry pass that necessitated asking for a loan from an employer? In this regard, where is the Registrar of Trade Unions regarding his oversight responsibilities over the accounts of unions? If the employer had insisted on some sort of interest over the check-off dues sought for in advance, would that be legal? After all, as the saying goes, there are no longer free lunches today. Or are there?

37. There is even a more profound question. The issue the Court was called upon to resolve was an allegation of poaching of members. Now, assuming the verdict of the Court was that the union asking for the check-off dues in advance is not the appropriate union to unionize the workers of the company advancing the check-off dues, how would the moneys advanced have been repaid?

38. The conclusion I can draw from all of this is that labour sometimes unwittingly gets itself in positions that yield to conflicts in the workplace. A trade union that acts in this manner is merely courting for trouble. Should an employer refuse to advance such a loan, that will surely be a recipe for crisis in that organization. In any case, this example portrays the poor oversight or regulatory framework (both external and internal) over activities of trade unions in the country.

39. There is this practice of trade unions that we have had to call to question in some of the cases that came before us at the NICN. In countless cases, I have seen communiqués and minutes of meetings branded by labour as

collective agreements. In *PENGASSAN v. Mobil Producing Nigeria Unlimited*[84], decided on 21 March 2012 by the NIC, for instance, the Court had to comment as follows: "How minutes and communiqué of meetings can amount to collective agreement beats our imagination". And in *Mr Mohammed Dungus & ors v. ENL Consortium Ltd*[85], the Court held thus:

> Minutes of meetings cannot generate the kind of entitlement that the claimants plead here. Minutes of meetings do not approximate to a collective agreement…

40. Nigeria has often been queried by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) regarding the application of its ratified Conventions. Given the present topic of discourse, I shall limit myself to only the Freedom of Association and Protection of the Right to organise Convention, 1948 (No. 87) (C.87) and then Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98).

41. The queries between 2015 and 2017 regarding C.87 related to denial of right to join trade unions, massive dismissals for trying to join trade unions, and mass persecution and arrest of trade union members[86].

42. The CEACR had also specifically asked Nigeria to amend[87]:

> Section 3(1) of the TUA, which requires a minimum of 50 workers to establish a trade union, so as to explicitly indicate that the minimum membership requirement of 50 does not apply to the establishment of trade unions at the enterprise level;
> Section 3(2) of the TUA, which restricts the possibility of other trade unions from being registered where a trade union already exists (given that trade union unity imposed directly or indirectly by law is against C.87);

[84] [2013] 32 NLLR (Pt. 92) 243 NIC.

[85] [2015] 60 NLLR (Pt. 208) 39.

[86] See, for instance, *Application of International Labour Standards 2022: Report of the Committee of Experts on the Application of Conventions and Recommendations* (International Labour Conference, 110th Session, 2022) at pages 278 - 279.

[87] *Ibid*, at pages 280 - 281.

Section 7(9) of the TUA, which provides that the Minister may revoke the certificate of registration of any trade union, by repealing the broad authority of the Minister to cancel registration;
Section 11 of the TUA, which denies the right to organize to employees of Customs, Immigration, Nigeria Security Printing and Minting Co. Ltd, Central Bank and Nigeria Telecommunications (given that the only exceptions allowed by C.87 are members of the Police and the Armed Forces);
Sections 30 and 42 of the TUA, which impose compulsory arbitration, require a majority of all registered union members for calling a strike, define “essential service” in an overtly broad manner, contain restrictions relating to the objectives of strike action, impose penal sanctions including imprisonment for illegal strikes and outlaw gatherings or strikes that prevent aircraft from flying or obstruct public highways, institutions and other premises, so as to lift these restrictions on the exercise of the right to strike;
Section 34(1)(b) and (g) of the TUA as amended by section 8(a) of the Trade Unions (Amendment) Act 2005, which requires Federations to consist of 12 or more trade unions; and
Sections 39 and 40 of the TUA, which grant broad powers to the Registrar to supervise union accounts at any time, so as to limit this power to the obligation of submitting periodic financial reports, or in order to investigate a complaint.

43. For C.98, the CEACR queries[88] related to anti-union discrimination and interference in the banking sector, education, electricity, petroleum, gas, and telecommunications sectors. Nigeria has also been queried as to the promotion of a non-registered union in the education sector by various State governments, which would appear to constitute attempted interference. Also queried are statutory restrictions on certain categories of workers e.g. of Customs, Immigration, Prison Services and Central Bank as to the right to organise and the right to collective bargaining especially workers not engaged in the administration of the State. The legal obligation, as by section 19 of the Trade Disputes Act (TDA), to submit any collective agreement on wages to government for approval was also queried, this being interference.

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[88] *Ibid*, at pages 281 - 282.

44. Interference with trade union affairs could come in from government or from employers. As far back as 2004, the refusal by an employer of the appropriate trade union to unionise its staff, and instead allowing the formation of a Joint Consultative Council (JCC) to cater for the interests of the employees (but which was more amenable to the interests of the employer) was frowned on by the NICN in *CAC v. AUPCTRE*[89]. And when this became notorious, the NICN in 2021 in *Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Services Employees (AUPCTRE) v. Corporate Affairs Commission (CAC) & anor*[90] had to intone thus at paragraph 129:

> I cannot end this judgment without expressing the displeasure of this Court to the actions of the defendants, who over the years have shown a marked displeasure and hence disapproval to having trade unionism take place and flourish in especially the 1st defendant. Since *CAC v. AUPCTRE* [2004] 1 NLLR (Pt. 1) 1, the defendants have never hidden their dislike of trade unionism in their premises. Even when this Court ruled against them, they have managed to come up with something new and different. This is uncalled for. The defendants must come to terms with the reality that trade unionism has come to stay. And it is in their own interest to come to terms with and respect the laws governing it. The dislike they have for trade unions must cease. This Court will not sit by and allow them do as they wish. A word, it is said, is enough for the wise.

45. The formation of an Employee Council was recently frowned on by the NICN in *MTN Nigeria Communications Plc v. Private Telecommunications and Communications Senior Staff Association of Nigeria (PTECSSAN)*[91]. The trio of Obaseki-Osaghae, Haastrup and Oyewumi, JJ intoned thus:

> [41] …the Employee Council formed by the Appellant is surreptitiously performing the role of a trade union; even as the Appellant tries to take refuge in Section 1(3)(a) of the TUA. It is unlawful by the provisions of section 2(1) of the TUA for the unregistered Employee Council to engage in trade union matters, specifically discussions on the terms and conditions of employment its

[89] [2004] 1 NLLR (Pt. 1) 1.

[90] Unreported Suit No. NICN/ABJ/62/2021, the judgment of which was delivered on 7 October 2021.

[91] Unreported Suit No. NICN/ABJ/177/2023, the judgment of which was delivered on 26 April 2024.

> staff on grade level L1 and L2; and representative elections…We are certain that the purpose of the Employee Council is to whittle down the influence of the Respondent trade union in the Appellant and depopulate it. By so doing, the Appellant as the employer is interfering in the exercise of the fundamental rights of its employees on grade level L1 and L2 to trade unionism.
>
> [42] The exercise of the employees rights to trade unionism is so important that employers are enjoined not to interfere with its exercise in any way…

46. An employer who came to court asking whether "every worker or employee of the claimant must compulsorily be a member of the 1st defendant union"; and if yes, whether it (the employer) "can be compelled by the defendants to make deductions [from] the wages of its employees who are not members of the 1st defendant in order to pay same directly to the 1st defendant as union dues"; and whether it (the employer) is entitled to an order of injunction restraining the defendants from disturbing picketing or disturbing the day-to-day operations and running of the employer's offices and factories on the pretext that the claimant is violating extant labour laws of Nigeria, was held in *Beloxxi Industries Limited v. National Union of Food, Beverage and Tobacco Employees (NUFBTE) & 2 ors*[92] to lack the locus to come to the NICN to ventilate those issues. In the words of the NICN at paragraph 9:

> Since the claimant is aware that deductions is (sic) hinged on "mere eligibility", I wonder why the claimant came to Court in terms of the instant suit. If membership of the requisite union is based on mere eligibility, then the claimant ought to know that once its staff are eligible to be members of NUFBTE, deductions must be made. It is only the staff who can say that he/she does not want the deductions to be made. In other words only, the staff can come to Court to raise the issues raised by the claimant, not the claimant. The claimant cannot assume the role of a policeman here or be more Catholic than the Pope or cry more than the bereaved. All that the claimant has done in bringing this suit is nothing but interference. *Nestoil*[93] frowned on interference of whatsoever nature by an employer in union matters. The

[92] Unreported Suit No. NICN/LA/437/2016, the ruling of which was delivered on 30 March 2017.

[93] *Nestoil Plc v. NUPENG* [2012] 29 NLLR (Pt. 237) 557.

Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) ratified by Nigeria also frowns on interference by employers in union matters. *Premier Lotto Limited v. National Union of Lottery Agents and Employees & anor* unreported Suit No. NICN/LA/218/2016, the ruling of which was delivered on 9th November 2016 reinforced *Nestoil* and the ILO Convention No. 87. The claimant cleverly lost sight of this stance of *Nestoil*. The argument of the claimant that section 5(3) of the Labour Act must be interpreted in the light of section 17 of the TUA, the necessity of this suit, does not take away the fact that it is the employee that has the right (locus) to raise that issue and come to Court, not the claimant. The claimant is nothing but an interloper and a busybody. The error made by the claimant is that it thinks that it can be a claimant. The ratio of the cases is that the employer should remain passive; it can be defendant but not a claimant. See *Panya Anigboro v. Sea Trucks Nigeria Ltd* [1995] 6 NWLR (Pt. 299) 35 at 62, *ASCSN v. INEC and 2 ors* [2006] 5 NLLR (Pt. 11) 75 at 89, *Independent National Electoral Commission (INEC) v. Association of Senior Civil Servants of Nigeria and anor* [2007] LPELR-8882(CA) and *ACSN v. National Orientation Agency and ors* unreported Suit No. NIC/9M/2003 delivered on September 27, 2007. In *Premier Lotto Limited v. National Union of Lottery Agents and Employees & anor* (*supra*), this Court stressed that an employer cannot arrogate to itself the right to determine who can be a member of a union. In like manner, the claimant in the instant case has no right to ask whether deductions can be made from the wages of the workers (junior staff) without their permission or prior indication of their membership, the subject matter of this suit. To come to this Court as a claimant over this issue is nothing but interference in union matters. The obligation to make such deductions is already laid down by law and so there is no need for the claimant coming to ask that question.

47. As can thus be seen, interference in trade union matters by the employer even extends to the cases coming before the NICN. If it is not an employer being a busybody by filing suits that it should not, it is the parties making an employer a party to a suit in order to have a pliant litigant. We have at the NICN deprecated this. In *National Union of Hotels and Personal Services*

*Workers v. National Union of Air Transport Employees & anor*[94] (affirmed on appeal by the Court of Appeal in *NUHPSW v. NUATE & anor*[95]), for instance, the NICN held thus at paragraph 59:

> The appropriate party to seek relief (4) and the first limb of relief (5) is the Newrest ASL Nigeria Plc. The claimant knows this but chose to make Newrest ASL Nigeria Plc the 2nd defendant instead of the 2nd claimant just so that it can have a pliable defendant. I deprecated a similar behaviour in *Bethel Ezego & ors v. NUFBTE & anor* unreported Suit No. NICN/LA/221/2017, the judgment of which was delivered on 16th July 2018, where the 2nd defendant was sued as a defendant just so that the claimants can have a pliable defendant. Relief (4) and the first limb of relief (5) i.e. "an order of perpetual injunction restraining the 1st defendant through its officers, agents or privies from carrying out any industrial action against the 2nd defendant…" cannot accordingly be considered let alone granted. They fail and so are hereby dismissed.

48. It is not only the employer who sometimes seeks to be a policeman in the world of work. We have had instances of labour seeking to too. And so in *Errand Express Limited v. Maritime Workers Union of Nigeria*[96], the NICN held that "…a union has not been bequeathed the right or appointed to police the world of work…a union, consequently, is not and cannot act as the policeman of labour practices in the world of work".

49. Some of the concerns of the CEACR have been addressed in the cases that came before the NICN. For instance, in *The Hon. Attorney-General of Enugu State v. National Association of Government General Medical and Dental Practitioners (NAGGMDP)*[97], this Court noted that the concept of essential services has not been espoused under our labour jurisprudence beyond the statutory provisions on it. And so when the opportunity came in *Aero Contractors Co. of Nigeria Limited v. National Association of Aircraft*

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[94] Unreported Suit No. NICN/ABJ/207/2018, the judgment of which was delivered on 4 July 2019.

[95] [2022] LPELR-57972(CA).

[96] Unreported Suit No. NIC/LA/39/2011, the judgment of which was delivered on 26 March 2014.

[97] Unreported Suit No. NIC.EN/16/2010 the judgment of which was delivered on 20 June 2011.

*Pilots and Engineers (NAAPE)*[98], given the constitutional mandate of the NICN to apply relevant ratified Conventions, treaties, Recommendations and Protocols, and in spite of the Trade Disputes (Essential Services) Act 2004, the NICN applied ILO literature and held thus:

> …only members of the defendant unions engaged in *air traffic control* come within the ambit of those engaged in an essential service. Even those engaged in aircraft repairs and transport generally (as is the case of air transport) do not qualify as engaged in essential services. Evidence was not led before this Court as to who amongst the members of the defendant unions are in air traffic control, the only category of members of the defendant unions that are classified as being in essential service. All other workers in the aviation sector and hence members of the defendant unions do not so qualify and so have and can exercise their union right to strike; and I so find and hold. The argument of the claimant as to the devastating multiplier effect of the strike on it goes to no issue since "the possible long-term serious consequences for the national economy of a strike [does] not justify its prohibition". Even when the claimant cited the Supreme Court decision in *Union of Electricity Employees & anor v. Bureau of Public Enterprises*, the claimant failed to appreciate that electricity services qualify as essential services in the strict sense under both ILO and Nigerian labour jurisprudence.

50. On the whole, there has been generally an increased usage by the NICN of ILO literature as to the ratified Treaties, Conventions, Recommendations and Protocols applicable in Nigeria. A few additional cases illustrating this will suffice.

51. In *Tricycle Owners Association of Nigeria v. Federal Ministry of Labour and Employment & anor*[99], the question was whether the Ministry of Labour and Employment and its Minister can dissolve the executive council of the claimant, abridge the tenure of duly elected officers of the Central Working Committee (CWC) of the claimant association and appoint a caretaker committee for it. The NICN answered in the negative. The NICN first expressed its stance to the effect that it "has over time frowned on

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[98] [2014] 42 NLLR (Pt. 133) 664 NIC.

[99] Unreported Suit No. NICN/ABJ/216/2022, the judgment of which was delivered on 17 January 2023.

interference in trade union matters by especially employers". And then, applying the Freedom of Association and Protection to the Right to Organise Convention, 1948 (No. 87) — ILO Convention No. 87, which Nigeria ratified on 17 October 1960[100] and its ILO jurisprudence[101], held thus at paragraphs 46 to 49:

> [46] The ILO jurisprudence regarding Convention No. 87 dictates that Government stays clear of the running and administration of trade unions…
>
> [47] Accordingly, under Article 3 of Convention No. 87, trade unions are accorded a number of rights: to determine without any interference from government or the employer who their leaders will be, and this determination must be in accordance with the constitution of the trade union itself; to organise without interference their administration; and to organise without interference their activities and programmes…
>
> [48] The participation of high-ranking officials of the public administration in positions of trade union leadership can undermine the independence of the trade union organizations in question…The removal by Government of trade union leaders from office is a serious infringement of the free exercise of trade union rights…The setting up by government of a provisional consultative committee of a trade union confederation and refusal to recognise the executive committee which has been elected was held to constitute a breach of the principle that public authorities should refrain from any interference which would restrict the right workers' organizations to elect their representatives in full freedom and to organise their administration and activities…
>
> [49] So, having to dissolve the executive committee of, and set up a caretaker committee, for the claimant by the defendants is a clear violation of Convention No. 87, which Nigeria ratified and this Court is enjoined to apply. I so rule.

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[100] See see https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103259 as accessed on 23 April 2024.

[101] As per paragraphs 589, 590, 639, 641, 654, 660, 666 and 673 of *ILO's Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (International Labour Office: Geneva), 2018, 6th Edition.

52. The second case is *Yusuf Abdullahi Abdulkadir, Esq & ors v. Minister of Labour & Employment & ors*[102]. The question, amongst others, was whether the Registrar of Trade Unions can refuse the registration of Law Officers Association of Nigeria (LOAN) simply because there were other trade unions that members of LOAN could join. Once again, the NICN answered in the negative. Applying the Freedom of Association and Protection to the Right to Organise Convention, 1948 (No. 87) — ILO Convention No. 87 and its ILO jurisprudence shown in *Tricycle*, the NICN held thus:

> [120] …the generally accepted principle by ILO is trade union plurality. But if the workers or employers so wish, the decision being theirs, they can settle for trade union monopoly… And so statutory (including constitutional) provisions prohibiting the creation of more than one trade union for a given occupation or economic category…or a law which does not authorise the establishment of a second union in an enterprise…or require a singe union for each enterprise, trade or occupation…, the prevention of two enterprise trade unions coexisting…, all fail to comply with Article 2 of Convention No. 87.
>
> [121] So, "while it may generally be to the advantage of workers to avoid a multiplicity of trade union organizations, unification of the trade union movement imposed through state intervention by legislative means runs counter to the principle embodied in Articles 2 and 11 of Convention No. 87…" Additionally, "while it is generally to the advantage of workers and employers to avoid the proliferation of competing organizations, a monopoly situation imposed by law is at variance with the principle of free choice of workers' and employers' organizations"… "unity within trade union movement should not be imposed by the State through legislation because this would be contrary to the principles of freedom of association". Trade union unity voluntarily achieved should not be prohibited and should instead be respected by public authorities…
>
> [122] ILO feels strongly about trade union pluralism that…it is stated thus:
>
> > The Committee has suggested that a State should amend its legislation so as to make it clear that when a trade union already

[102] Unreported Suit No. NICN/AK/04/2022, the judgment of which was delivered on 16 May 2023.

> exists for same employees as those whom a new trade union seeking registration is organizing or is proposing to organize, or the fact that the existing union holds a bargaining certificate in respect of such class of employees, this cannot give rise to objections of sufficient substance to justify the registrar in refusing to register the new union.

> [123] So whether it is on the basis of the arguments of the claimants and the 3rd defendant, or the ILO jurisprudence just espoused on Convention No. 87, the 1st and 2nd defendants acted wrongly when they denied the registration of LOAN as a trade union…The power and jurisdiction (and hence obligation) of this Court under section 254C(1)(f) and (h), and (2) of the 1999 Constitution and section 7(6) of the National Industrial Court (NIC) Act 2006 to, when adjudicating, apply international best practices in labour and the Treaties, Conventions, Recommendations and Protocols on labour ratified by Nigeria, inures "notwithstanding…anything contained in this Constitution". And section 45 of the 1999 Constitution is one of such "anything contained in this Constitution" that must be read subject to section 254C(1)(f) and (h) of the 1999 Constitution.

53. A similar issue arose in the third case, *Non-Academic Staff Union of Educational & Associated Institutions (NASU) v. Comrade Niyi Akinnibi*[103]. The question, amongst others, was whether the National Association of Non-Teaching Staff of Nigerian Universities (NANTS) being coordinated and represented by the defendant can be registered as a trade union to represent the non-teaching staff of Nigerian Universities where there already exists a trade union such as the claimant. The NICN answered in the affirmative, reiterating the rationale advanced in *Yusuf Abdullahi Abdulkadir, Esq & ors v. Minister of Labour & Employment & ors*, which was based on the Freedom of Association and Protection to the Right to Organise Convention, 1948 (No. 87) — ILO Convention No. 87 and its ILO jurisprudence, and hence distinguishing *NASU v. O. A. Ajagbe & 2 ors*[104].

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[103] Unreported Suit No. NICN/ABJ/250/2022, the judgment of which was delivered on 30 May 2023.

[104] Unreported Suit No. NICN/LA/407/2017, the judgment of which was delivered on 14 February 2019.

54. And on 25 July 2023, *Academic Staff Union of Universities v. Minister of Labour and Employment & 3 ors*[105] was decided as the fourth case. The question posed to the Court was whether the Congress of University Academics (CONUA) and National Association of Medical and Dental Academics (NAMDAD) could be registered to co-exist alongside and carry out the same functions with the Academic Staff Union of Universities (ASUU) in the Universities in Nigeria. The NICN, adopting *in toto* its reasoning in *Non-Academic Staff Union of Educational & Associated Institutions (NASU) v. Comrade Niyi Akinnibi*, answered the question in the affirmative.

55. The last of the cases is *Alphacyn Nigeria Limited v. Registered Trustees of Prince and Princess Estate Residents Association & anor*[106]. The question that arose in the case was whether the NICN had jurisdiction over contracts *for* service, it already being acknowledged that it has over contracts *of* service. Initially on this question, the NICN, as had the Court of Appeal in *Engr. Jude Ononiwu (Trading under the name of Judeson Chemical and Engineering Co. Ltd) v. National Directorate of Employment & anor*[107], held that the NICN's jurisdiction was over contracts *of* service, and not over contracts *for* service. But after reviewing the existing literature, it is now the NICN's thinking, subject of course to what the Court of Appeal will say, that contracts for service can now be litigated in the NICN since the phrase "any labour" is expansive and expressive enough to accommodate contracts for service. We adopted this stance given new arguments as to the ambit of the phrase, "any labour" used in section 254C(1)(a) of the 1999 Constitution, which phrase is provided for differently from "employment" also used in same section, and the influence of ILO jurisprudence, mindful that cases like *Denca Services Ltd v. Mr Nnamdi Azunna*, which intuit that there has to be an employment relationship between the parties before the NICN can assume jurisdiction, can spell doom for the civil jurisdiction of the NICN.

56. To conclude this discourse, I need to draw attention to the fact that I started this paper by urging on the need for constant engagement with the NICN by all the stakeholders given the evolving labour jurisprudence

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[105] Unreported Suit No. NICN/ABJ/336/2022, the judgment of which was delivered on 25 July 2023.

[106] Unreported Suit No. NICN/ABJ/57/2023, the ruling of which was delivered on 26 July 2023.

[107] Unreported Appeal No. CA/OW/32/2015, the ruling of which was delivered on 22 May 2015.

necessitated by the Third Alteration to the 1999 Constitution. Many have questioned why a new labour jurisprudence is evolving at the NICN. My answer: firstly, if the desire was to continue with the old labour law order, the Third Alteration Act 2010 would have been unnecessary. The Third Alteration to the 1999 Constitution, to use the words of His Lordship Sirajo, JCA in *National Union of Hotel & Personnel Services Workers (NUHPSW) v. Outsourcing Services Ltd*[108], is "a game changer". His Lordship would go further to elaborately state:

> …The Court takes judicial notice of countless labour-related animosities which may hamper industrial relations if left to fester, hence the enactment.
>
> …the contemplation of the drafters appears more in their preference for the lower Court, the National Industrial Court of Nigeria, to take a proactive stance in ensuring that the nation will not be left out in the reckoning of the comity of nations in the area of robustly flourishing labour practices and industrial relations.
>
> …The Court hereby reiterates that the clarion call is to the stakeholders in labour and industrial relations, to strive in order to conform with the international best practices as obtainable in the field.

57. Secondly, the new labour jurisprudence is necessitated by the fact that the general structure of labour law itself is today being questioned. There is disagreement as to the boundaries of labour law, and hence what is labour law itself. D'Antona[109], for instance, talks of the 'identity crisis of labour law' and gives the example of France where manuals have abandoned the traditional title 'labour law [*droit du travail*]' in preference for 'the law of employment [*droit de l'emploi*]', in order to underlie that the epicenter has moved from labour relations inside the firm or organization to the labour market generally, with its new problems of market access, job creation, sharing of labour time, 'employability', and connections between working conditions and social citizenship. In this sense, the problem becomes self-

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[108] [2023] LPELR-60683(CA).

[109] Massimo D'Antona – "Labour Law at the Century's End: An Identity Crisis?" in Joanne Conaghan, Richard Michael Fischl and Karl Klare (ed.) – *Labour Law in an Era of Globalisation: Transformative Practices and Possibilities* (Oxford University Press: Oxford), 2005 at pages 31 – 49.

evident in that the labour with which labour law has until now been concerned seems to be found less and less and, where it is found, exhibits characteristics not readily reconciled with the traditional model. Section 254C(1) of the 1999 Constitution, in using the words, “labour” and “employment”, etc in donating jurisdiction to the NICN has done us a great favour, for thereby all contrasting views as to the boundaries of law and what labour law itself is all about, are accommodated if the issue of jurisdiction were to arise.

58. And so central to the identity crisis of labour law is the extravagant individualism of the common law. There is the debate as to the choice between individuation of labour rights (employment law) or their collectivization (labour law). Sandra Fredman[110] couched the challenges of labour law in terms of conceptions of the notion of worker, the melting boundary between employment and unemployment with job insecurity elevated into a market asset, the threat posed by globalization in undercutting basic social rights yielding to the necessity to counterbalance the hegemony of free trade ideology, the growing inability of trade unions to cater for those out of work or even marginal workers, etc. All of this points to the importance of ensuring that labour law is facilitative of collective bargaining and social dialogue, rather than simply providing for individual rights. When, therefore, section 254C(1) of the 1999 Constitution donated to the NICN the power and jurisdiction to apply international labour standards, the Court has been properly placed to solve the disputes that would arise in the world of work, even if it is on a case by case basis.

59. Hon. Justice Sirajo’s “clarion call…to the stakeholders in labour and industrial relations, to strive in order to conform with the international best practices”[111], has been reechoed by His Lordship Hon. Justice Ogunwumiju, JSC in *Ovivie & ors v. Delta Steel Co. Ltd*[112] where the complaint related to the re-structuring exercise of 1995 that affected the appellants and other staff of the respondent company. In his concurring judgment, His Lordship had this to say:

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[110] Sandra Fredman – “The Ideology of New Labour Law” in Catherine Barnard, Simon Deakin and Gillian S. Morris (ed.) – *The Future of Labour Law* (Oxford and Portland Oregon), 2004 at pages 18 – 19.

[111] *National Union of Hotel & Personnel Services Workers (NUHPSW) v. Outsourcing Services Ltd* (*supra*).

[112] [2023] LPELR-60460(SC).

> Generally, the common means by which employment relationship is brought to an end is by termination. However, in times of economic downturn, excess manpower, or due to technological or structural reasons, employers of labour may be compelled to adopt measures that will enable them to remain in business. One of such measures is the declaration of some positions in the business organization as redundant and consequently reducing the number of employees on the grounds of redundancy. The aftermath of the adoption of redundancy as an option for reducing the number of employees is often complicated, in that, whilst the affected employees would lose their means of livelihood, employers are at risk of industrial actions by the disengaged employees. *It is therefore in the best interest of employers to follow the letters of the law and international best practices* (where applicable) in the disengagement of their employees based on redundancy (the emphasis is mine).

60. And so we see here His Lordship living ahead of his time. For a cause of action that arose in 1995, His Lordship is by law expected to only apply the law as at the time the cause of action arose[113]. The Third Alteration to the 1999 Constitution came into effect only in 2011. The question of following international best practice is thus not an issue for the case. So, when His Lordship urged employers to follow international best practice, His Lordship was only looking ahead in offering employers the advice. The Third Alteration to the 1999 was thus not passed for nothing. If the Lawmakers had wanted that the old order be retained, they will not have promulgated it into law. The Third Alteration to the 1999 Constitution was meant to change the face of labour jurisprudence in the country. It is time we all acknowledged this fact.

61. Labour, like other stakeholders, must thus key in to the new labour jurisprudence. Labour must note and adapt to the changes in the forms of work. Labour must ask the question that Boaventura de Sousa Santos asked i.e. whether it is possible to have a "civilizing alternative, where everything is connected to everything else: work and the environment; work and the educational system; work and feminism; work and collective social and

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[113] *Isaac Obiuweubi v. CBN* [2011] LPELR-2185(SC); [2011] 7 NWLR (Pt.1247) 465; [2011] 3 SCNJ 166; [2011] All FWLR (Pt. 575) 208.

cultural needs; work and the welfare state; work and the elderly, etc"? In other words, can workers' demands be so all inclusive that they do not leave out anything affecting the life of the workers and the unemployed?[114]

62. As I draw the curtains, I leave you with this quote from Boaventura de Sousa Santos:

> …rediscovery of labour resides in the recognition of the polymorphism of labour, that is, the idea that the flexibility of work designs and labour processes does not necessarily entail the precariousness of the labour relation. A regular full-time job for an indeterminable period of time was the ideal type of labour that has guided the workers' movement since the nineteenth century. However, such an ideal type has some sort of equivalent in reality only in the core countries, and only during the brief period of fordism. To the extent that the so-called atypical forms of labour proliferate and the state promotes the flexibilization of the wage relations, this ideal-type is getting farther and farther away from the reality of labour relations. The atypical forms of labour have been used by global capital as a means of transforming labour into a criterion of exclusion, which happens whenever the wages do not allow workers to rise above the poverty line. In such cases, recognizing labour polymorphism, far from being a democratic exercise, foreshadows an act of contractual fascism. In this domain, the cosmopolitan agenda assumes two forms. On the one hand, the recognition of the different types of labour is democratic only in so far as it creates for each type a minimal threshold of inclusion. That is to say, labour polymorphism is acceptable only to the extent that labour remains a criterion of inclusion. On the other hand, professional training must be incorporated in the wage relation no matter what the type and duration of the job[115].

63. I thank you all for listening.

[114] Boaventura de Sousa Santos – *Toward a New Legal Common Sense* (Butterworths LexisNexis), 2002, 2nd Edition at page 481.

[115] *Ibid*, at pages 483 – 484.