Discussion Notes

on "The Role of Industrial Courts and International Labour Standards in Promoting Good Governance to Support Economic and Social Development"[♣♣]

Protocols

1. I register, at the outset, my gratitude to the President of the National Industrial Court of Nigeria (NICN), **Honourable Justice B. B. Kanyip, Ph.D, FNIALS** for inviting me to discuss the lead paper just delivered by the President of the Industrial Court of Trinidad & Tobago, **Her Honour, Deborah Thomas-Felix** on the topic – **The Role of Industrial Courts and International Labour Standards in promoting Good Governance to support Economic and Social Development**. I do not take lightly the privilege of sharing this platform with Madam President and **Folabi Kuti SAN** (in whom I am well pleased). I equally thank the President of the Court of Appeal, **Honourable Justice Monica B. Dongban-Mensem** for graciously approving my participation in the 2022/2023 Legal Year Celebrations of the NICN: the Bastion of Labour Justice.

2. The Lead Speaker, Madam President has charted clear parameters on the subject matter of discourse with a well-researched, and equally well-delivered lead paper by identifying the varied but intertwined roles of industrial courts and international labour standards in promoting good governance to support economic and social development. The complementary roles of the International Labour Organisation (ILO) in setting these standards as well as promoting policies of decent and productive work under conditions of freedom, equity, security and dignity have equally been highlighted. Crucially, a lot has been said from comparative vantage points of the somewhat shared labour jurisprudence between the Caribbean Island of Trinidad & Tobago and Nigeria, and I will refrain from rehashing what has already been well articulated in the lead paper.

3. I preface my intervention (which condescends on one or two specifics relating to the NICN) with a reference to **a pathbreaking study by the World Bank titled – "Where is the Wealth of Nations?: Measuring Capital for the 21st Century"** – wherein **the rule of law and a good school system are identified as the "mainsprings of development**. **The study**

[♣♣] Being a Paper delivered by the Honourable President of the Industrial Court of Trinidad & Tobago, **Her Honour, Mrs. Deborah Thomas-Felix** at the 2022/2023 Legal Year Celebration of the National Industrial Court of Nigeria (NICN) held on Thursday, 6th October 2022 at Court 1, National Industrial Court of Nigeria Complex, Area 3, Garki, Abuja, FCT, Nigeria.

[♣] These Discussion Notes were prepared by **Peter Oyin Affen**, Justice, Court of Appeal, Nigeria (Lagos Division); Email: peteraffen@yahoo.com. The invaluable research input of **Folabi Kuti, SAN** is duly acknowledged. The standard caveats however apply.

demonstrates convincingly (in my view) that "human capital and the value of institutions (as measured by the rule of law) constitute the largest share of wealth in virtually all countries", and that "rich countries are largely rich because of the skills of their populations and the quality of institutions supporting economic activity".[1]

4. Against this backdrop, it can readily be seen that the courts of law (which are also courts of equity), and in particular the National Industrial Court of Nigeria (NICN), occupy pride of place in the scheme of institutions that undergird economic development in Nigeria. The engrafting of the NICN into the league of Superior Courts of Record by the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration Act), 2010 (which entered into force on 4th March 2011) and the attendant vesting of exclusive jurisdiction over the plenitude of labour/employment disputes (thereby divesting the Federal and State High Courts, inclusive of the High Court of the Federal Capital Territory, of the jurisdiction they hitherto exercised in respect of such matters) heralded renewed interest in the work of the NICN. This is quite understandable.

5. The President of the NICN, Hon. Justice B. B. Kanyip has fittingly set the tone for today's discourse by tracing the Court's relationship with its counterpart in the Caribbean Island of Trinidad and Tobago to 2002 when Judges of the two courts exchanged visits. Beyond the courtesies, the NICN (as we have also had the benefit of first-hand account from the President's opening remarks) replicated a significant aspect of the rich labour jurisprudence of Trinidad and Tobago in its establishment statute. **In more specific terms, when the National Industrial Court Act (NICA) 2006 was being promulgated, the provision of s. 7(6) thereof was borrowed from s. 10 of the Industrial Relations Act Cap. 88:01, Laws of Trinidad and Tobago.** Section 7(6) NICA permits the NICN to apply international best practices in labour and industrial relations when adjudicating, but what is international best practice is a question of fact. It would seem that the emphasis on international best practice being a question of fact was deliberately made so since questions of facts are not ordinarily appealable except with leave of the appellate court. This was long before the 3rd Alteration to the Constitution, which is a gamechanger in many ways. As a judex of the Court of Appeal imbued with jurisdiction to grant or refuse leave to appeal decisions of the NICN on questions of fact or mixed law and fact, I would return anonto how the Court of Appeal supports the work of the NICN in the application

[1] "The Secrets of Intangible Wealth: Where is Wealth of Nations?: Measuring Capital for the 21st Century" – an opinion article by Ronald Bailey (Science Correspondent for Reason Magazine) – Wallstreet Journal, Sept. 29, 2007; also available at: http://reason.com/archives/2007/10/05/the-secrets-of-intangible-wealth.

of international labour standards. But first, a word or two about present-day labour adjudication.

6. Socio-economic development of any nation is often driven by the effectiveness/efficiency of its agencies and the overall enabling environment; and a well-functioning judicial system is indispensable to business activities and to society. In different words, a quick and efficient dispute resolution mechanism plays a significant role in the economic development of a country. **There is empirical evidence to support the relationship between foreign direct investment net inflows and three judicial institutions of property rights protection: judicial contract enforcement, judicial independence, and judicial impartiality.** Socio-economic development is boosted when individual rights are secured, or there is the assurance of enforcement of rights without such landmines as the grim prospects of long-gestating hearings, and/or the bulk of the court's decisions not made the subject of an untrammelled right of appeal (which is all too prone to capricious abuse)[2].

7. The Nigerian industrial relations environment is ordinarily influenced by the English Common Law. The learning within defined parameters before now was largely circumscribed within the prism of 'master-servant' relationship, with the master (the employer) being imbued with substantial powers to determine the relationship at any time; for good reason, bad reason or no reason at all. That was the main gamut of labour law. The Nigerian Labour Act (enacted in 1974) tends to reinforce this common law sentiment by employing the term **'employer-worker'** rather than **'employer-employee'.** To my mind "worker" denotes a mere factor in the production of goods and/or services.

International best practices in labour or industrial relations

8. Aside from engrafting the NICN into the league of Superior Courts of Record in Nigeria, the next most significant milestone recorded by the 3rd Alteration of the Constitution is investing the NICN with jurisdiction, notwithstanding anything to the contrary in the Constitution, to deal with "any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith".[3] Hitherto, s. 7(6) of NICA enjoined the Court to have regard to good or international best practice in labour or industrial relations, which is a question of fact that must be

[2] P. O. Affen, Judicialism in Nigeria: Gasping for Breath Under Our Watch [2017] Law and Policy Review, pp. 1 – 36.
[3] See 254 C (1) (f) & (2)) CFRN

specifically pleaded and proved. This innovation was severely constrained by s. 12 of the Constitution of the Federal Republic of Nigeria 1999 ("CFRN") under which only treaties and conventions that have been domesticated can have the force of law.[4] The 3rd Alteration of the Constitution however exempts the application by the NICN of ratified labour and employment related international conventions, treaties and protocols from the generality of s. 12 CFRN.

9. **In this regard, the NICN is suigeneris: a testament to its crucial role in the scheme of Nigeria's socio-economic development.** It would seem that the jurisprudential underpinning behind the constitutional imprimatur to apply non-domesticated but ratified international conventions, treaties or protocols is that **injustice in the workplace is too high a price to pay for the drudgery that attends the legislative process of domestication**. As noted in the lead paper, "labourisnotamerecommodity"; "economic developmentisnotundertakenforitsownsake,buttoimprovethelivesofhuman beings"; and "internationallabourstandardsaretheretoensurethatitremainsfocused onimprovingthelifeanddignityofmenandwomen".[5] The NICN therefore stands in a vantage position to chart, develop and shape a consistent corpus of contemporary labour and industrial relations law and practice away from the general drift of pre-existing common law labour jurisprudence by bringing it into conformity with "international best practices" which are meant to serve as benchmark for determining what constitutes fair or unfair practice in the workplace. This is a task that demands ceaseless, if not relentless, updating of individual and institutional knowledge on evolving trends in the world of work globally. In applying international best practices, the court must not suffer itself to be unduly constrained or bogged down by a recourse to decided cases from the pre-3rd Alteration era in order not to destroy the utility of the innovations or frustrate the very object for which they were introduced.[6]

10. **There are two schools of thought on the court's approach to international best practice on labour and industrial relations. One school of thought has it that international conventions (whether ratified or not ratified) must be pleaded before they can be**

[4] The Supreme Court held in Abacha v Fawehinmi [1996] 9 NWLR (Pt 475) 710 that by virtue of s. 12(1) of the 1979 Constitution (presently s. 12(1) of the 1999 Constitution), an international treaty shall not have the force of law in our domestic jurisdiction except it is enacted into law by the National Assembly. It is therefore only by Act of Parliament that a treaty can become enforceable to the same extent as our domestic laws.

[5] In the Declaration of Philadelphia (1944), the international community recognized that "labour is not a commodity". Labour is not an inanimate product, like an apple or a television set that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake, but to improve the lives of human beings. International labour standards are there to ensure that it remains focused on improving the life and dignity of men and women.

[6] [see NasarawaStateSpecialistHospitalManagementBoard&Orsv.Mohammed[2018] LPELR-44551(CA)]

applied by the NIC pursuant to s. 7(6) NICA. The other school of thought, which emphasises the dichotomy between ratified and unratified treaties and conventions, posits that whilst non-ratified treaties and conventions must necessarily be pleaded and proved as evidence of international best practice before they can be acted upon, ratified treaties need not be so pleaded and proved. As it seems to me that s. 254C CFRN did not fetter the application of ratified conventions and treaties by the Court in any way, I respectfully cast my lot with the second school of thought.[7] The decision in **Sahara Energy Resources Ltd v Mrs Olawunmi Oyebola**[8] (referenced by the President of NICN in the opening remarks) is a 'posterchild' of the support the Court of Appeal lends to the NICN in the application of international best practices.

Speedy dispensation of justice

11. The old dispensation is best presented in **Obiuweubi v CBN,**[9] where it took 23 years to resolve the issue of jurisdiction between the Federal High Court and the State High Court over an employment dispute. In this league also belongs **Captain Amadi v NNPC**[10] (another employment matter) in which the Supreme Court handed down a scathing rebuke in expressing disenchantment with an interlocutory appeal that took 13 years to dispose of whilst trial in the substantive matter was yet to commence. But the 3rd

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[7] In this regard, I note that ILO Termination of Employment Convention (No. 158) of 1982 is one that has gained notoriety at the NICN. Employees seek to invoke Article 4 thereof which makes it imperative for employers to give 'valid reason' for terminating an employee, otherwise the termination would be wrongful. But because Convention 158 has not been ratified by Nigeria, it can only be applied as evidence of international best practice upon it being pleaded pursuant to s. 7(6) of the NIC Act 2006. But there are instances [notably: **Bello IbrahimvEcoBankPLC**–perKado,J.] where Convention 158 has been applied by the NICN notwithstanding that it was not pleaded and proved in the manner enjoined by s. 7(6) NICA.

[8] [2020] LPELR-51806(CA). Ogakwu, JCA held thusly: "Internationalbestpracticesinlabourorindustrialrelationsarealmostalways mirroredinthelightoftheconductoftheemployer;theactions(orinaction)oftheemployeeareseldomthesubjectofconsiderationsinceit istheactionoftheemployerwhichhasbeenfoundtobewrongful/unlawfulthathasbeenbroughttolightforthenecessarysalvetobe affordedtheemployee.Section254C(1)(f)and(h)and(2)ofthe1999ConstitutionempowersthelowerCourttoapplyinternationalbest practicesinlabour,andconventions,treaties,recommendationsandprotocolsratifiedbyNigeria…Iammindfulofthefactthatitmayappear thatinternationalbestpractices,likepublicpolicy,maybeanunrulyhorseandmightbedifficulttoapply…Withagoodmaninthesaddle, theunrulyhorsecanbekeptincontrol.Itcanjumpoverobstacles.Itcanleapthefencesputupbyfictionsandcomedownonthesideof justice…IftheJudgeofthelowerCourt,thatspecializedCourtinemploymentandlabourrelatedmatters,bethatintrepidmanofgreat learning,thentheapplicationofinternationalbestpracticeswouldnotbedifficult,abstruseorarcaneinitsapplicationandwouldalwaysend uponthesideofjustice".

[9] [2011] 7 NWLR (Pt. 1247) 465 SC per Rhodes-Vivour, JSC.

[10] (2000) 10 NWLR (Pt. 674) 76. Uwais (then CJN) in a regularly cited rebuke, remarked thus: "Thechequeredhistoryofthiscaseonce morebringstolightthedilatoryeffectofinterlocutoryappealonthesubstantivesuitbetweenparties.Theactioninthiscasewasbroughton the29thdayofApril,1987.Themotiononnoticetostrikeoutthecaseforwantofjurisdictionisdated15thdayofApril,1988;thatisabout ayearafterthesuitwasfiled.TherulingoftheHighCourtwasdeliveredonthe20thdayofJune,1988.Theappealagainsttherulingwas deliveredbytheCourtofAppealonthe16thdayofFebruary,1989.Thefinaljudgmentontheinterlocutoryappealisdeliveredtodaybythis court.Ithasthustakenthirteenyearsforthecasetoreachthisstage.Withthesuccessoftheplaintiff'sappealbeforeus,thecaseistobe sentbacktotheHighCourttobedetermined,hopefully,onitsmeritsafteradelayof13years.Surely,thiscouldhavebeenavoidedhadit beenthatthepointwastakeninthecourseoftheproceedingsinthesubstantiveclaimtoenableanyaggrievedpartytoappealonboththe issueofjurisdictionandthejudgmentonmeritintheproceedingsasthecasemightbe.Ibelievethatcounseloweit,asaduty,tothecourt tohelpreducetheperiodofdelayindeterminingcasesinourcourtsbyavoidingunnecessarypreliminaryobjectionsastheonehere;sothat theadage'justicedelayedisjusticedenied'mayceasetoapplytotheproceedingsinourcourts.Onthewhole,theappealsucceedsanditis herebyallowedwithN10,000.00coststotheappellantagainsttherespondent.ThecaseisherebyremittedtotheHighCourtofLagosState tobeheardbyanotherjudgeotherthanA.O.Silva.J."

Alteration to the Constitution Act heralded a new dawn, even as the Supreme Court's ex cathedra decision in **Skye Bank v Iwu**[11] firmly designates the Court of Appeal as the final court on labour and employment matters.

12. A well-functioning judicial system is indispensable to business activities and to the society as a whole. For most court users and business people in Nigeria, the length of the trial process is the most prominent obstacle to access to justice.[12] Judicial efficiency measured by trial length and/or how quickly matters are resolved in court is one of the essential factors in the effectiveness of the justice system. The NICN, despite having to deal with a heavy volume of cases submitted for adjudication by litigants does so with record speed. I have heard of cases concluded within six months to one year of filing. In his Welcome Address (on Wednesday 5/10/22), the President reeled out impressive statistics of cases concluded in the last Legal Year. What must always be borne in mind when dealing with labour and employment matters is: **"Betterabaddecisionquickly than goodonetoolate".**[13]

Adequacyvelnonofcompensabledamagesindeservingcases

13. The Common Law orthodoxy is that the quantum of damages for wrongful termination of employment was payment in lieu of notice.[14] Avant-garde sentiments like securing a measure of damages that reflects present day commercial realities, bear no place within strict common law prescriptions. The narrowly confined thickets of the common law employment relationship have come to be summarized thus: 'an employer can hire, and fire', 'where there has been wrongful/unlawful termination or dismissal, the measure of damages is payment of what the employee would have earned over the period of notice'. Once upon a time, this approach exemplified the judicial trend up to the highest court in the land. When a few matters dared extend their arguments beyond the common law stipulations, the Supreme Court, rationalising that this was a settled matter, frowned at such 'mis-adventures'. On at least one such occasion, the Supreme Court issued counsel

[11] [2017] 16 NWLR (Pt 1590) 24, (2017) 6 SC (PT. 1) 1

[12] The United Nations Office on Drugs and Crime (UNODC) reported that in a survey conducted in Lagos and Bornu States, court users and business people identified the length of the trial process, the financial means required to cover lawyers' fees and the complexity of the process as the most significant obstacles to access to justice. According to the Report, an overwhelming majority of court users in Lagos and Bornu States considered the length of the trial process (delay) as the most important obstacle to using the courts. See UNODC AssessmentoftheIntegrityandCapacityoftheJusticeSysteminThreeNigerianStates,TechnicalAssessmentReport,Vienna,January 2006.

[13] B. B. Kanyip, "LabourLaw", in N. Tobi, UwaisThroughTheCases(Snaap Press Ltd, Enugu: 2006) 459 at 462.

[14] See Oaks Pension Ltd v Olayinka (2017) LPELR-43207(CA) and Coca-cola Nigeria Ltd & 2 Ors v Titilayo Akinsanya CA/L/661/2016 delivered on 17/11/17 (unreported).

a stern warning against attempts to push the frontier beyond the seemingly settled position.[15]

14. But the illogic of insisting on payment in lieu is palpable. In **Nartey-Tokoli v Volta Aluminium Co (1990),**[16] the Supreme Court of Ghana cited with approval the case of **Hemans v GNTC (1978)**[17] which held that **'if compensation for lawful termination is one month's pay after the employee had been forewarned, then it should appear preposterous to award the same one month's salary where the termination has been held to be unlawful'**.

16. Fast forward to the present day, s. 254C CFRN coupled with a community reading of select provisions of the National Industrial Court Act 2006 (NICA) (specifically, ss. 7(6), 13, 14 and 19 thereof) heralded a new wave of judicial thinking on the measure of damages. The latitude to depart, within set parameters, from the orthodoxy of common law restrictive prescriptions on quantum of damages was affirmed in **Sahara Energy Resources Limited v Mrs Olawunmi Oyebola**[18] where Ogakwu, JCA held: "The importance of this novel provision [i.e. s. 254C(1)(f) CFRN and s. 7(6) NICA] in my differential view the National Industrial Court, in considering the quantum of damages, is to do so in accordance with good or international best practices in labour or industrial relations, which shall be a question of fact". The resultant effect is that there has been a renewed interest in all things labour and the world of work. Workers are no longer treated as (a) mere factor in the production of goods and/or services, which promotes industrial harmony and gives boost to socio-economic development.

Judicial Pragmatism vs. Legal Accuracy – s. 12 NICA

17. Labour Law (which is an offshoot of the uneven bargaining power between employers and employees) admits of a great deal of paternalism. Power relations in the workplace bring into sharp focus the inequality of bargaining positions. In no other department of the justice delivery is this inequality more pronounced than in Labour Justice. Thus, the role of a specialised industrial court (such as NICN) does not consist in merely enforcing

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15 In Kunle Osisanya v Afribank [2007] 6 NWLR (Pt. 1031) 565 at 587, Ogbuagu JSC warned: "I wish to say with the greatest respect and humility, that if in future, any learned counsel who is aware or ought to know about these firmly established laws on Master and Servant relationship (especially where the contract of employment is in writing) and who brings this type of frivolous appeal up to this Court, may, expose himself, to the Court, awarding costs personally against such counsel.… The damages will be the amount he would have earned if his employment were properly and validly determined. Nigerian Produce Marketing Board v. Adewunmi (1972) 11 S.C. 111 at 117 and International Drilling Co. v. Ajijola (1976) 2 S.C. 115 at 119–120 decided by this Court decades ago.'

16 [1990] LRC 579

17 [1978] 1 GLR 4 at 10

18 [2020] LPELR-51806(CA)

contractual rights. The Indian Supreme Court underscored the essence of Industrial Courts thus:

> The Industrial Courts are to adjudicate on the disputes between employers and their workmen, etc. and in the course of such adjudication they must determine the 'rights' and 'wrong' of the claim made, and in so doing they are undoubtedly free to apply the principles of justice, equity and good conscience, keeping in view the further principle that their jurisdiction is invoked not for the enforcement of mere contractual rights but for preventing labour practices regarded as unfair and for restoring industrial peace on the basis of collective bargaining. The process does not cease to be judicial by reason of that elasticity or by reason of the application of the principles of justice, equity and good conscience.[19]

18. Consider a typical employment-related litigation against a government agency alleging wrongful termination and non-payment of salary for instance, where a government employee seeks to tender his pay slip which is produced by a computer or a computer printout. Under the Evidence Act 2011, he has two hurdles to cross if the original is either lost or misplaced: (i) a certificate of authentication pursuant to s. 84(4); and (ii) a certified true copy under s. 90(1)(c). There are decisions to the effect that the language of s. 88(e) renders inadmissible the original of a public document,[20] in which case only a CTC can be used. Pray, how does the claimant (employee) surmount these hurdles since only his adversary (employer) can issue the certificate of authentication and CTC?

19. Therein lies the beauty of **s. 12(2)(b) NICA** which provides – **"Subject to this Act and any rules made thereunder; the Court shall be bound by the Evidence Act but may depart from it in the interest of justice"** – even though not everyone appreciates its appeal.[21] It is salutary that the legal propriety of s. 12 (2) NICA has been affirmed by the Court of Appeal in **Mr. Victor Adegboye v United Bank for Africa.**[22] Overall, in an age when advocacy for substantive justice over technical justice is at an all-time high, the judex should be endowed with greater latitude in applying adjectival rules of Evidence. The lead paper quotes the ILO thus:

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[19] See NTFMillsLtdv.The2ndPunjabTribunal, AIR 1957 SC 329, which was applied in MrKurtSeverinsenv.EmergingMarkets TelecommunicationServicesLimited[2012] 27 NLLR (Pt. 78) 374 NIC

[20] See, for instance, Anatagu v Iweka II [1995] 8 NWLR (PT 415) 547; Onochie v Odogwu (2006) 1 JNSC 410 at 448; Bayo v Njidda [2004] 8 NWLR (Pt. 876) 544.

[21] See, for instance SEC v Abilo Uboboso (unreported, Appeal No. CA/A/388/2013, delivered on 21/12/16),the Court of Appeal held that s. 12(2)(b) of the NIC Act 2006 cannot withstand s. 256 of the Evidence Act 2011 because it is earlier in time than the Evidence Act. With great respect, this decision clearly overlooks s. 4(2)(b) of the Interpretation Act, Cap. I23, LFN 2004 to the effect that where an enactment is repealed and another enactment is substituted for it, then any reference to the repealed enactment shall, after the substituted enactment comes into force, be construed as a reference to the substituted enactment.

[22] Unreported, Appeal No. CA/IL/20/2021 delivered 14/4/22 –per Amadi, JCA.

> "As the number of individual disputes arising from day-to-day workers' grievances or complaints continues to grow in many parts of the world, labour courts are an important part of dispute prevention and resolution systems and play a critical role in ensuring access to justice and contributing to equity in industrial relations. Access to labour justice cannot be understood only as the formal access to labour courts and right to have a claim examined by an impartial judge, but also as access to a fair procedural regulation, which enables real conditions of equality before the Judiciary".

20. It has even been suggested that we should **"keep the law out of industrial relations"**.[23] Thus, in dispensing labour justice, the court's attitude should be informed by pragmatism rather than a quest for legal accuracy. I will venture to advocate that a statutory enablement such as that contained in s. 12 NICA should be replicated in the establishment statutes of other superior courts of record, especially of first instance.

Leave to appeal

21. I close my intervention by highlighting the Court of Appeal's complementary role on the work of the NICN in relation to the grant or refusal of leave to appeal judgments rendered by the NICN on questions of mixed law and fact. The celebrated case of **SKYE BANK v IWU supra** donates the proposition that there is no constitutional provision divesting the Court of Appeal of jurisdiction to hear appeals from the NICN. In the words of the Supreme Court:

> "All decisions of the trial court [i.e. National Industrial Court] are appealable to the Lower Court [i.e. Court of Appeal]: as of right in criminal matters, [Section 254C(5) and (6)], and Fundamental rights cases [Section 243 (2)]; and with the leave of the Lower Court, in all other civil matters where the trial Court has exercised its jurisdiction, Sections 240 read conjunctively with Section 243 (1) and (4)."

19. **Skye Bank v Iwu supra** equally underscored the finality of decisions of the Court of Appeal in labour and employment matters. This places a heavy burden on the Court of Appeal –not only in the determination of final appeals but also in grappling with applications for leave to appeal. It is hardly necessary to state that leave should not be granted mechanically or as a matter of course or routine slavishly following the filing of an application, or merely because the adverse party did not indicate any opposition. Experience however reveals that leave to appeal is granted all too readily, which defeats

[23] See IT Smith - Industrial Law (Butterworths: London, 1996), 6th ed., p. 21: This statement was made in the context that if there is a discipline where the influence and participation of non-lawyers is higher, it is industrial relations law and practice.

the very object for which the Constitution draws a distinction between appeals as of right on the one hand, and appeals with leave on the other hand. The Court of Appeal (Lagos Division) dismissed an application for leave to appeal in **James Owulade v Nigerian Agip Oil Company Limited**[24] for want of the concurrent requirements of disclosing "good and substantial reasons for failure to appeal within the prescribed period" and "grounds of appeal which prima facie show good cause why the appeal should be heard".

20. The growing tendency to project every ground of appeal against the decision of the NICN as one bordering on alleged breach of fundamental right (fair hearing) in order to sidestep the necessity to seek leave to appeal can only be checkmated by the eternal vigilance of the Court. Except for the most egregious violations of inveterate tenets of judging, the specialist knowledge of judges manning specialised courts who bring industrially informed perspectives to bear in the resolution of disputes often engage the attention of, and serve as invaluable reference for, appellate judges who are [or should be] understandably reluctant to interfere with their decisions.

21. This is an appropriate juncture to apply the brakes. The takeaway is that the proper exercise by the NICN of its extraordinary jurisdiction to invoke ratified but non-domesticated conventions and treaties – all of which falls within the umbrella internationallabourstandardsinlabouremploymentandindustrialrelationsmatters'– is a veritable means by which the work of the court promotes good governance that underpin socio-economic development. As my teacher, ProfessorAdemolaPopoola once said: **'Sometimes we say something, sometimes we say nothing, but there is never a time we say everything'.** Please permit me to thank you all for your kind attention, and extend to everyone here and further afield the very best wishes for the New Legal Year.

[24] (2022) LPELR-57573(CA)