

## THE EFFECT OF THE AMENDMENT OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (THIRD ALTERATION) ACT 2010 ON LABOUR MATTERS

With the promulgation of Decree No. 24 1999, the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as the 1999 Constitution) became the grundnorm from which all other Laws derive validity. Section 315 of the 1999 Constitution gave recognition to pre 1999 legislation as existing Law to the extent that they are not in conflict with the provisions of the said Constitution. It is against this backdrop that the validity or otherwise of the **Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004** was subjected to stringent tests before the law Courts.

In **Ekong v Oside [2005] 9NWLR (Pt 929) 102**; the validity of **Section 1A of the Trade Disputes Act as amended by Decree No. 47 of 1992 (now section 2 of the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004)** was called into question. The Court of Appeal held at **page 114 paragraph D** thus:

*“on the strength of Section 1A of the Trade Disputes Act as amended by Decree No. 47 of 1992, as amended, my learned brother, Tobi JCA (as he then was), in the case of N.U.R.T.W v Ogbodo (1998) 2NWLR (Pt 537) 189 at page 200 paragraph A, stated inter alia:*

*“In my humble view, the High Court of a State has no jurisdiction to hear any inter or intra union dispute within the meaning of Section 1A of the Trade Disputes Act as amended by Decree No. 47 of 1992”*

The Court further held at **page 115 paragraphs D-F** thus:

*“On my part, I will prefer to regard the Jurisdiction conferred on the High Court of the Federal Capital Territory by section 257 of the Constitution as general but limited. That section is made subject to the provisions of some sections of the same Constitution such as section 251 and any other provisions of the Constitution. Any other provision of the Constitution may, in my view include section 315 of the Constitution which saves the Decrees/Act that created the National Industrial Court and conferred jurisdiction on it. It is difficult therefore, to read unconstitutionality in the statute that created the National Industrial Court and the jurisdiction it has been conferred with especially by Decree No. 47 of 1992”*

The Supreme Court in the case of **Oloruntoba-Ojo v Dopamu [2008] 7 NWLR (Pt 1085) 1 SC** was presented with the opportunity to air its views on the issue of the Jurisdiction of the National Industrial Court vis-à-vis that of the Federal High Court. The Supreme Court at **page 30 paragraphs B-C** held thus:

***“to construe the interpretation clause of section 47 Cap 432, 1999, Laws of the Federation as conferring the National Industrial Court the jurisdiction to adjudicate on all manner of disputes concerning employment matters could do a great violence to the provisions of section 251 (1)(q), (r) and (s) of the Constitution. It cannot be overlooked that Cap 432 being an existing law within the meaning of section 315 of the 1999 Constitution cannot be given an effect which overrides the clear provisions of section 251 (1)(q), (r) and (s) of the 1999 Constitution. Any provision of any existing law which is in conflict with the provisions of the 1999 Constitution must be pronounced void to the extent of such inconsistency.”***

See also the case of **Oloruntoba-Oju v Abdul-Raheem [2009] 13 NWLR (Pt 1157) 83 S.C.**

On 4<sup>th</sup> March, 2011, **The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010**, came into effect and thereby laid to rest, the controversy surrounding the status and Jurisdiction of the National Industrial Court.

By virtue of the **Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010**, the National Industrial Court was established via **Section 254A (1)**.

The Jurisdiction of the said National Industrial Court is expressed in **Section 254C of the Constitution** as amended as follows:

***‘1. The Constitution of the Federal Republic of Nigeria Cap C23, Laws of the Federation of Nigeria, 2004 (in this Act referred to as “the Principal Act”) is altered as set out under this Act.***

***Section 6 of the Principal Act is altered in subsection (5) by inserting immediately after the existing paragraph (c) a new paragraph “(cc)” –***

***“(cc) the National Industrial Court”***

***3. Section 84(4) of the Principal Act is altered by inserting immediately after the words “Judge of the Federal High Court” in line 4, the words “President of the National Industrial Court, Judge of the National Industrial Court”.***

***6. Chapter VII, Part 1 of the Principal Act is altered by inserting immediately after section 254 a new sub-heading “(cc)” and sections “254A-254F” –***

***“CC- The National Industrial Court;***

**254A – (1) There shall be a National Industrial Court of Nigeria.**

...

**254B-(1)....'**

Having established the National Industrial Court by virtue of Section 254A – 1 aforementioned, **Section 254C** vests Jurisdiction on the National Industrial Court. Thus, **Section 254C (1)** provides as follows:

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

- (a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;***
- (b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees’ Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;***
- (c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters connected therewith or related thereto;***
- (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine;***
- (e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;***
- (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;***
- (g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;***
- (h) relating to, connected with or pertaining to the application or interpretation of international labour standards;***

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

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

*(i) collective agreement;*

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

*(iii) award or judgment of the Court;*

*(iv) term of settlement of any trade dispute;*

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

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

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

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

*(1) .....*

By the provisions of **Section 254C (1) of the Constitution** therefore, the National Industrial Court is vested with Jurisdiction, to the exclusion of every other Court, to adjudicate over trade disputes and/or claims arising from or connected with contracts of employment. Specifically, **Section 254C (1) (j) (viii)** of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 states that:

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

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

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

The current position of the law therefore is that the National Industrial Court has Jurisdiction to entertain all matters relating to labour.

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