



EXCLUSIVE JURISDICTION OF NATIONAL INDUSTRIAL COURT OF NIGERIA ON LABOUR-RELATED FUNDAMENTAL RIGHTS DISPUTES: ONYIRIUKA V. A.G. ENUGU STATE IN PERSPECTIVE

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Abstract

This paper, through doctrinal research methodology, appraises the Court of Appeal decision in Onyiriuka v. A.G. Enugu State wherein the court held that the National Industrial Court of Nigeria (NICN) does not have exclusive original jurisdiction over labour/employment related fundamental rights disputes. The paper argues that while furthering the course of justice is germane, the decision was reached per incuriam based on the provision of section 254C (1)(d) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 which vest exclusive original jurisdiction over such disputes on NICN. It examines the effect of this judgment on the jurisdiction and mandate of the NICN and found that same is capable of disrupting quick dispensation of labour related fundamental rights dispute. It concludes that, since the decision was reached per incuriam, the NICN should distinguish it rather than slavishly kowtow to judicial precedent obeisance.

Keywords: Constitution, Fundamental right, Justice, Exclusive jurisdiction, National Industrial Court of Nigeria

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1. INTRODUCTION

As humans relate, there is bound to be clash of interest which may result to conflict.¹ To ensure that disputes, whenever they occur, do not degenerate to catastrophic proportion, the

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government have established courts for the purpose of dispute settlement.² When a court is established, the statute that establishes the court, provides its jurisdiction and other appurtenances for effective and efficient adjudication.³ Once a subject matter is vested within the exclusive original jurisdiction (civil or criminal) of a court, the legal implication is that only that court can adjudicate over that dispute at first instance.⁴

The National Industrial Court of Nigeria (NICN) was established to settle labour and employment disputes.⁵ In 2010, after the NICN had been enmeshed in a prolonged jurisdictional debacle (as it was not regarded as a constitutional court), despite several legislative remedial efforts, the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (hereinafter simply referred to as 1999 CFRN (Third Alteration) Act, 2010) settled the debacle.⁶ Section 254A of the 1999 CFRN (Third Alteration) Act, 2010 gave constitutional recognition to the NICN, thereby superimposing it as one of the courts incorporated/mentioned in section 6(5) of the 1999 CFRN.

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¹ AO Ajetunmobi, *Alternative Dispute Resolution and Arbitration in Nigeria* (Lagos: Princeton & Associate Publishing Co. Ltd., 2017) 1-2.

² See section 6, 36(1) of the 1999 Constitution of the Federal Republic of Nigeria Cap. C23, Laws of the Federation of Nigeria 2004.

³ *Gafar v. Attorney General of Kwara State* (1989) A.N.L.R. 575; JOA Akintayo & DT Eyongndi, “The Supreme Court Decision in *Skye Bank Ltd. v. Victor Iwu*: Matters Arising” (2018) 9(3) *The Gravitas Review of Private and Business Law*, 100.

⁴ *Coca-cola Nig. Ltd. & Ors. v. Mrs. Titilayo Akinsanya* [2013] 8 NWLR (Part 1386) 255; *Local Government Service Commission, Ekiti State v Mr M A Jegede* [2013] LPELR- 21131 (CA); *Utih v. Onoyivwe* [1991] 1 NWLR (Pt. 166) 166; OVC Okene & GG Otuturu, “Toppling the Final Jurisdiction of the National Industrial Court: The Mischief in *Skye Bank Plc. v. Iwu*” in OD Amucheazi & B Atilola, (Ed) *The National Industrial Court of Nigeria and Progressive Development of Labour and Employment Law in Nigeria* (Lagos: Hybrid Consult 2019) 476; DS Orkar, ‘The Nigerian Child’s Right Act 2003 Cum the Cybercrimes Act 2015: Has the Jurisdiction of the National Industrial Court of Nigeria been Usurped?’ (2018) 9(14) *Sound Counsel* 20.

⁵ OD Amucheazi & PU Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure*, (Dubai: Top Design, 2013) 41-46;

⁶ DT Eyongndi & KON Onu, (2021) Legal Diagnosis of the National Industrial Court of Nigeria Rules, 2017 as a Catalyst of Egalitarian Labour Adjudication” 13(1) *Jimma University Journal of Law, Tanzania*, 47-65; EA Oji & OD Amucheazi, *Employment and Labour Law in Nigeria*, (Lagos: Mbeyi & Associates (Nig.) Ltd., 2015) 257, 260; Y Kilanse, O Nwanya & A Oluwasanmi_“The Exclusive Jurisdiction of the National Industrial Court in Labour and Employment Matters” <https://www.mondaq.com/nigeria/employment-and-hr/758306/the-exclusive-jurisdiction-of-the-national-industrial-court-in-labour-and-employment-matters> accessed 30 June, 2022 (3:46pm).

Eyongndi and Onu⁷ has rightly contended that under the 1999 CFRN (Third Alteration) Act 2010, the NICN ranks *pari pasu* with the Federal High Court (FHC) The High Court of the Federal Capital Territory, Abuja (HCFCTA) and the various State High Courts (SHC). Section 254C (1) of the 1999 CFRN (Third Alteration) Act, 2010 has conferred exclusive original civil jurisdiction on the NICN over a wide range of matters. One of the matters is any matter relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of the 1999 Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the NICN has jurisdiction to adjudicate.⁸ Meanwhile, section 46 of the 1999 CFRN stipulates that where any of the rights provided in Chapter IV thereof, is under threat or breach, being breached or has been breached, the victim can apply to a High Court within the state where the infraction is about to, is ongoing or has occurred for redress.⁹ The section donates exclusive original jurisdiction to a High Court to entertain an application for enforcement of fundamental human rights¹⁰ (EFHRs).

Recently, in *Onyiruika v. Attorney General, Enugu State*¹¹ the Court of Appeal (CA) was invited to interpret the circumference of section 245C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 *vis-à-vis* section 46(1) and (2) of the 1999 CFRN.¹² The question before the court was whether a labour related fundamental right dispute that arose in the course of employment can be adjudicated by the FHC or the NICN? The CA held that, pursuant to section

⁷ DT Eyongndi, & KON Onu, "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" (2019) 10 *Babcock University Socio-Legal Journal* 243-270.

⁸ Section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010.

⁹ See section 46(1) of the 1999 Constitution of the Federal Republic of Nigeria Cap. C23, Laws of the Federation of Nigeria, 2004.

¹⁰ *Ibid.* Section 46(2).

¹¹ [2020] 11 NWLR (Pt. 1735) 383.

¹² It is observed that it has become a normal practice to see legal commentators as well as the courts (Court of Appeal and Supreme Court inclusive) when referring to the 1999 Constitution of the Federal Republic of Nigeria to appellate same as the "1999 Constitution of the Federal Republic of Nigeria (as amended)." This is done obviously with the intention to countenance the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 and others which had been effected after the enactment of the 1999 Constitution. This practice, aside being absurd, lacks any legal justification. After the various amendment of the 1999 Constitution with the latest being the Constitution of the Federal Republic of Nigeria (4th Third Alteration) Act, 2017, the various citations have not described the Constitution as "as amended." In fact, section 319 thereof provides that same shall be cited as the Constitution of the Federal Republic of Nigeria 1999. It is therefore clear that the "1999 Constitution (as amended)" is reference to a non-existent constitution since same is unknown to the Constitution. The American Constitution has been amended several times but one will hardly read any literature or judgment of any American Court referring to the American Constitution and adding the phrase "as amended." If the draftsmen had deemed it necessary by any stroke of imagination, they would have added the phrase "as amended" to the citation of the Constitution after the various amendments. It is fool hardy to add to the description of the Constitution anything not mentioned by it especially its description.

46 of the CFRN1999, any labour fundamental right disputes anchored on Chapter IV of the 1999 CFRN, particularly section 42 which was in dispute, the FHC has jurisdiction to entertain same. This decision was given notwithstanding the clear and unambiguous provisions of section 254C (1) (d) and 254D (1) of the 1999 CFRN (Third Alteration) Act, 2010 which provides that notwithstanding the exclusive original civil jurisdiction of the FHC, HCFCT and SHC vested by sections 251, 257 and 272 respectively, the NICN shall have and exercise original civil jurisdiction over any dispute pertaining to Chapter 1V of the 1999 CFRN which relates to any trade dispute, trade unionism, employment and ancillary matters which it has jurisdiction to adjudicate over.

This article (while recognising the fact that, by virtue of section 254C (6) of the 1999 CFRN (Third Alteration) Act, 2010 and the Supreme Court's decision in *Skye Bank Plc. v Victor Anaemem Iwu*,¹³ the CA is the final court to which civil appeals from the NICN lies) examines whether or not the decision was reached *per incuriam*. It raises and answer the question: whether the CA in the instant case misdirected itself in the light of the extant provisions of the 1999 CFRN. The paper examines the options that were and are still available to the CA in ensuring that its quest of furthering the cause of justice is achieved legally. The paper discusses the probable impacts of the decision on the exclusivity of the NICN jurisdiction, mandate and the intendment of the legislature encapsulated in section 234 of the 1999 CFRN.

The article is divided into four parts. Part one contains the introduction. Part two interrogates the exclusivity of the NICN original civil jurisdiction under the Trade Disputes Act (TDA) unto the of the 1999 CFRN (Third Alteration) Act, 2010. Part three contains brief facts of the case as well as a discussion of matters arising therefrom. Part four contains the conclusion and recommendations.

2. The 1999 CFRN (Third Alteration) Act, 2010 and the NICN Exclusive Jurisdiction

From the outset, it is imperative to note that jurisdiction is a subject of consequential prominence in adjudication and a term of comprehensive import embracing every kind of judicial action.¹⁴ Jurisdiction is the power of the court to entertain a matter presented before it by litigants and make a determination which is binding and enforceable by the parties who had presented the matter. Jurisdiction is to the court what blood is to the heart; while by wisdom,

¹³ *Skye Bank Plc. v. Victor Anaemem Iwu* [2017] 7 SC (Part 1) 1.

¹⁴ *Oloba v. Akereja* [1988] 3 NWLR (Pt. 84) 508.

kings rule and decree justice, by jurisdiction judges/justices exercise judicial power to determine causes and matters presented by litigants.¹⁵ Thus, it is consequent upon this that jurisdiction is described as a threshold issue, because it is at the threshold of the temple of justice.¹⁶ Jurisdiction is a radical and fundamental question of competence. Whereas the court lacks the requisite jurisdiction to entertain a matter, the proceedings are and remains a nullity however well-conducted and brilliantly decided they might have been.¹⁷ Thus, a defect on competence or jurisdiction of a court, is not intrinsic but extrinsic to adjudication.¹⁸ Based on its fundamental nature, once the issue of jurisdiction is raised, the court must put at abeyance further proceedings and decides it one way or the other.¹⁹ The issue of jurisdiction can be raised anyhow and at any time in the course of the proceedings even if it is at the Supreme Court (SC) for the first time.²⁰ Having regards to its pivotal nature, the issue of jurisdiction can be raised *suo motu* by the court and parties are thereafter given an opportunity to react to it before the court's determination of same.²¹

Hence, jurisdiction can be likened to be the blood that gives life to the survival of an action in a court of law, without which the action will be like an animal that has been drained of its blood. Consequently, such animal will cease to have life and any attempt to resuscitate it without infusing its drained blood would be an abortive exercise.²² In *Madukolu v Nkemdilim*,²³ the SC, in unambiguous terms, laid down the criteria that would be considered in adjudging that a court has the requisite jurisdiction to adjudicate a dispute that has been presented before it.²⁴ These criteria are that the matter must have been initiated through due process of law requiring the fulfilment of every condition precedent to the initiation of the proceedings by the initiator; the court is well composed in terms of number and qualification of the judge (s); and the subject

¹⁵ *Barclays Bank Ltd. v. Central Bank of Nigeria* (1976) 6 SC 175.

¹⁶ *Attorney General of Anambra State v. Attorney General of the Federation* [1993] 6 NWLR (Pt. 302) 692.

¹⁷ *Ezemo v. Oyakhire* [1985] 1 NWLR (Pt. 2) 195; *Adeleke v. Osun State House of Assembly* [2006] 16 NWLR (Pt. 1006) 608; *Oloriode v. Oyebi* (1984) SCNLR 390.

¹⁸ *Egharevba v. Eribothe* [2010] All FWLR (Pt. 530) 1213.

¹⁹ *Felix Onuora v Kaduna Refining and Petrochemical Co. Ltd* [2005] 6 NWLR (Part 921) 393.

²⁰ *SLB Consortium Ltd v. Nigerian National Petroleum Corporation* [2011] 9 NWLR (Pt. 1252) 317 at 338, Paras B-C.

²¹ *Adeyemi v. Opeyori* (1976) 1 NMLR 149.

²² See the dicta of Mohammed Bello JSC (of blessed memory) in *Chief Utuedo Utih & Ors. v. Jacob U. Onoyivwe & Ors.* [1991] 1 NWLR (Pt. 166) 166 at 200, Para. A.

²³ [1962] 2 SCNLR 341.

²⁴ *National Electoral Commission & Anor v. Izuogu* [1993] 2 NWLR (Pt. 275) 270.

matter of the case falls within the jurisdiction of the court.²⁵ These criteria are mutually inclusive.

A court jurisdiction could either be territorial, monetary or subject matter based.²⁶ The territorial jurisdiction of a court refers to the geographical area over which the court is competent to entertain disputes from.²⁷ For instance, SHC's jurisdiction is limited to the particular State where the court is situated which is activated either by the presence of the claimant, the subject matter or the dispute arose within the state while the FHC by its characteristic nature, has a nationwide single territorial jurisdiction.²⁸ The dichotomy between judicial power and jurisdiction is that, the former is the power that inhere on every court by virtue of the fact that it is a court;²⁹ while the latter is matter of statute expressly and specifically given to a court. The implication of this is that, every court has judicial power but jurisdiction is only as conferred by the statute that create the court, hence, whatever jurisdiction that is not expressly conferred on the court is deemed taken away and therefore not exercisable by that court.³⁰ Given the germane nature of jurisdiction, a court is generally expected to jealously protect its jurisdiction and abstain from jurisdictional gluttony; as to do otherwise may incur the chastisement of a superior court. Parties cannot by agreement either confer or takeaway jurisdiction of a court since it is strictly a matter of statute.³¹

The Trade Disputes (Emergency Provisions) Amendment Decree³² established the Industrial Arbitration Panel (IAP) as a permanent body for the settlement of trade disputes in Nigeria. Subsequently, the Military government promulgated the Trade Disputes Decree No. 7 of

²⁵ *AG Ogun State v. Coker* [2002] 17 NWLR (Pt. 796) 304.

²⁶ DT Eyangndi & SI Ilesanmi, "Territorial Jurisdiction of the National Industrial Court of Nigeria (NICN) and the requirement of Endorsing Originating Processes under the Sheriffs and Civil Process Act (SCPA) Determined" (2022) 9(1) *Journal of Comparative Law in Africa*, 162-177.

²⁷ AE Akeredolu, & DT Eyangndi, "Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?" (2019) 10 (1) *The Gravitas Review of Business and Property Law, University of Lagos* 1-16.

²⁸ *Central Bank of Nigeria v. Insterstella Communications Ltd. & 3 Ors* [2018] 7 NWLR (Pt. 1618) 294; *Central Bank of Nigeria v. Ekong* [2006] 13 NWLR (Pt. 998) 555; *Francis O. John & Anor v. Comrade Emma Eze & Anor.* [2021] 2 NWLR (Pt. 1759) 90.

²⁹ See section 6 of the 1999 CFRN which vest the judicial powers of the Federal Republic of Nigeria in the judiciary and by extension, the courts enumerated under section 6(5) thereof. See Eyangndi & Ilesanmi (Note 24) 169.

³⁰ *A.I.C. Ltd. v. NNPC* [2005] 11 NWLR (Pt. 937) 563.

³¹ *National Bank of Nigeria Ltd. & Anor v John Akinkunmi Shoyoye & Anor* (1977) 5 SC 181.

³² Amendment No. 2 of Decree No. 53 of 1969.

1976.³³ This Decree which metamorphosed to the Trade Disputes Act, (TDA), in its Section 20, established the National Industrial Court.³⁴ The court was conferred with adjudicatory power over matter relating to settlement of trade disputes, the interpretation of collective agreements and matter connected therewith.³⁵ The jurisdiction conferred on the NIC under the TDA although tagged exclusive, was subject to the supervisory jurisdiction of the Minister of Labour, Employment and Productivity who had the exclusive power of activating its jurisdiction through referral of disputes.³⁶ The only exception to the above was appeals/interpretation of the award of the IAP or collective agreement.³⁷

It would appear that, under the TDA, the NICN had original exclusive and final jurisdiction over labour matters subject to the appellate jurisdictions of the CA and SC on fundamental rights matters as well as that of the High Court pursuant to section 42 of the 1979 Constitution.³⁸ When the 1979 Constitution was enacted, section 6(5) that catalogued the superior courts of record omitted the NICN hence, same was regarded as an inferior tribunal without constitutional recognition.³⁹ The hitherto original exclusive civil jurisdiction of the NICN under the TDA was then considered as an affront on the jurisdiction of the FHC and SHC under the 1979 constitution. In a bid to rectify this lacuna and the jurisdictional deficit of the NICN under the 1979 constitution, the military government promulgated the Trade Disputes (Amendment) Decree No. 47 of 1992. The Degree elevated the NICN to the status of a Superior Court of Record (SCR).⁴⁰ The NICN had a sigh of relief which was short lived by the enactment of the 1999 Constitution which like its 1979 predecessor, omitted the NICN in its list of SCR.⁴¹ Once again, the exclusive jurisdiction of the NICN under the TDA and the Trade Disputes

³³JOA Akintayo & DT Eyongndi, “The Supreme Court of Nigeria Decision in *Skye Bank Ltd v Victor Iwu*: Matters Arising” (2018) 9(3) *The Gravitas Review of Business and Property Law* 112.

³⁴ DT Eyongndi, “The Powers, Functions and Role of the Minister of Labour and Productivity in the Settlement of Trade Disputes in Nigeria: An Analysis” (2016) 9 *Journal of Public Law and Constitutional Practice* 79.

³⁵ Section 20 Trade Dispute Act 2004.

³⁶ Rule 13 of the National Industrial Court Rules 1979; Offornze D Amucheazi & Paul U Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure* (Wildfire Publishing House, 2013) 46.

³⁷ *Incorporated Trustees of Independent Petroleum Association v. Alhaji Ali Abdulrahman Himma & Ors.* Suit No. FHC/ABJ/CS/313/2004 ruling delivered on 23 January 2004.

³⁸*ibid.*

³⁹ DO Ojere, “The High Courts’ Jurisdiction to hear and Determine Inter or Intra Union Dispute is not completely Ousted by the Trade Disputes Act as Amended and the NIC Act” (2007) 1(2) *Nigerian Journal of Labour and Industrial Relations* 56-72.

⁴⁰ F Agbaje, “The Legal and Constitutional Anatomy of the New Industrial Court Act (2006)” (2007) (1) *Nigerian Journal of Labour and Industrial Relations* 174.

⁴¹ GM Nwagbogu, “Repositioning the National Industrial Court for Industrial Relations Facelift” (2013) 7(2) *Nigerian Journal of Labour and Industrial Relations* 23-24.

(Amendment) Decree No. 47 of 1992 became extremely contentious in the light of section 1(3), 251, 257 and 272 of the 1999 Constitution pertaining to the FHC, SHC and HCFCT, Abuja.⁴² This exclusion seemed to give the probable suggestion that the NICN had become a court that is unknown to the constitution.

To address this quagmire, the National Industrial Court Act 2006 (NIC Act 2006) was enacted. Section 7 and 20 of the NIC Act vested the NICN with exclusive original civil jurisdiction over labour and employment disputes and ousted the jurisdiction of the SHC just like section 20 of the TDA.⁴³ However, just like section 20 of the TDA was held to be unconstitutional in relation to the SHC unlimited jurisdiction, sections 7 and 11 of the NIC Act suffers the same fate by virtue of section 1(3), 251(1), 257(1) and 272(1) of the 1999 CFRN with regards to the jurisdiction of the FHC, SHC, and the HCFCT, Abuja.⁴⁴ The rationale for the foregoing is that no law, other than the constitution itself, can curtail its provisions by sequestering the jurisdiction vested in any court created by the constitution.⁴⁵ It should be noted that while the unconstitutionality of the NICN under the TDA and NIC Act, 2006 subsisted, a difference between the NICN jurisdiction under the laws is that the NIC Act per sections 7 and 11, conferred wider jurisdiction on it than section 20 of the TDA.⁴⁶ It became imperative to address the constitutional brouhaha that the NICN has been submerged in frontally and definitely. Thus, in 2010, the National Assembly enacted the 1999 CFRN (Third Alteration) Act which amended the 1999 CFRN and included the NICN as one of the SCR in Nigeria.⁴⁷ Section 254C has vested in the NICN an expansive exclusive original civil jurisdiction over sundry labour and

⁴² OD Amucheazi & EA Oji, "The Status of the National Industrial Court under the 1999 Constitution" 2(3) *Nigerian Journal of Labour and Industrial Relations* 2-3; PO Idornigie, "The National Industrial Court of Nigeria" (2013) 7(2) *Nigerian Journal of Labour and Industrial Relations*, 1-20.

⁴³ Gbenga Ojo, "Legal Anatomy of the National Industrial Court Act 2006: The Need for Legislative Re-thinking" (2008) 2(2) *Nigerian Journal of Labour and Industrial Relations* 1-24.

⁴⁴ *Adisa v. Olayiwola* [2001] 10 NWLR (Pt. 674) 116. See also Amucheazi and Oji (Note 40) 29.

⁴⁵ *Attorney General, Oyo State v. Nigerian Labour Congress, Oyo State Chapter* [2003] 8 NWLR (Pt. 821) 1.

⁴⁶ INE Worugji, JA Archibong & E Alobo, "The NIC Act (2006) and the Jurisdictional Conflict in the Adjudicatory Settlement of Labour Disputes in Nigeria: An Unresolved Issue" (2007) 1(2) *Nigerian Journal of Labour and Industrial Relations* 26-29; B Aturu, "The National Industrial Court under the 1999 Constitution and the Resolution of Industrial Disputes" (2012) 7(1) *The Nigerian Business Law and Practice Journal*, 82-91.

⁴⁷ See section 254A (1) of the 1999 CFRN (Third Alteration) Act, 2010; Madaki A Izang, "The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010: Some Revolutionary Provisions" (2014) 8(2) *Nigerian Journal of Labour and Industrial Relations* 17-18; B Atilola, M Adetunji & M Dungeri, "Powers and Jurisdiction of the National Industrial Court of Nigeria under the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010: A Case for its Retention" (2012) 6(3) *Nigerian Journal of Labour and Industrial Relations* 5-9.

employment issues wider than what is contained under section 20 of the TDA and 7 and 11 of the NIC Act, 2006.⁴⁸

Thus, Akeredolu and Eyongndi⁴⁹ have opined that the exclusivity of the NICN original civil jurisdiction has now been constitutionally recognised beyond contestation. In fact, the opening phraseology of section 254C (1) of the 1999 CFRN (Third Alteration) Act, 2010 is “notwithstanding the provisions of sections 251(1), 257(1) and 272(1) of this constitution” which makes the section superior to these sections as far as the matter they pertain to is concerned. As from 2010, the NICN ranks equal to the FHC, SHC and HCFCAs, Abuja. Civil appeals from the decision of the NICN whether as of right or with the leave of the court lies to the CA whose decision is final.⁵⁰ This point was established by the SC in its decision in *Skye Bank Plc. v. Victor Iwu*⁵¹ wherein the court was called upon to reconcile the conflicting position taken by the CA in *Lagos State Sheraton Hotel v. Hotel & Personal Service Staff Association*,⁵² *Coca-Cola Nigeria Ltd v. Akinsanya*⁵³ on the one hand and *Local Government Service Commission, Ekiti State v. Mr M A Jegede*⁵⁴ and *Local Government Service Commission, Ekiti State v. Mr G O Asubiojo*.⁵⁵ At present, the jurisdiction of the NICN is no longer a subject of controversy but certainty and clarity.

3. Juxtaposing the FHC and SHC Jurisdiction over Chapter IV of the 1999 CFRN

A juxtaposition of the position of the law on the issue as it relates to the FHC and SHC is capable of shedding some light. It is apposite to note that under the 1979 Constitution of the Federal Republic of Nigeria, the High Court had an unlimited jurisdiction⁵⁶ which justified the filing of sundry matters before it, including but not limited to fundamental rights enforcement proceedings. Under the 1999 CFRN, the SHC no longer has nor exercise unlimited jurisdiction

⁴⁸ GG Otuturu, “Powers and Jurisdiction of the National Industrial Court in the Resolution of Labour Disputes in Nigeria” (2015) 9(1) *Nigerian Journal of Labour Law and Industrial Relations* 35; EA Oji & OD Amucheazi, *Employment and Labour Law in Nigeria* (Lagos: Mbeyi and Associates (Nig.) Ltd, 2015) 254-255.

⁴⁹ AE Akeredolu, & DT Eyongndi, “Jurisdiction of the National Industrial Court under the Nigerian Constitution Third Alteration Act and Selected Statutes: Any Usurpation?” (2019) 10 (1) *The Gravitas Review of Business and Property Law* 1-16.

⁵⁰ See section 253 of the 1999 CFRN.

⁵¹ [2017] 7 SC (Part 1) 1.

⁵² *Lagos State Sheraton Hotel v. Hotel & Personal Service Staff Association* [2014] 14 NWLR (Part 1426) 45.

⁵³ *Coca-Cola Nigeria Ltd v. Akinsanya* [2013] 8 NWLR (Part 1386) 255; S Erugo, *Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice* 2nd Ed, (Lagos: Princeton Publishing Co. Ltd., 2019) 384-385.

⁵⁴ [2013] LPELR- 21131 (CA).

⁵⁵ *Ekiti State v. Mr G O Asubiojo*. [2013] LPELR- 20403 (CA).

⁵⁶ See section 236(1) of the 1979 Constitution of the Federal Republic of Nigeria.

as section 272(1) (just like section 251(1) pertaining to the FHC) bestows jurisdiction on the SHC court “subject to the provisions of the constitution.” In fact, in *Tukur v. Governor of Gongola State*,⁵⁷ on the extent of jurisdiction of the SHC and FHC on fundamental human rights disputes to be litigated pursuant to section 42(1) of the 1979 (now 46(1) of the 1999 CFRN), the SC per Obaseki JSC (of blessed memory) noted that the SHC has unlimited jurisdiction over matters it can entertain, the FHC has a limited jurisdiction to the effect that only the matters within its exclusive jurisdiction, can the FHC entertain fundamental right enforcement application unlike the SHC that has an expansive jurisdictional latitude and altitude.⁵⁸ However, the law lord noted that pursuant to section 42(2) of the 1979 CFRN, both courts would and have concurrent jurisdiction over fundamental human rights enforcement applications.⁵⁹ The position of the SC above threw legal practitioners and their clients who seek to enforce their fundamental human rights into a quandary of confusion as to which court between the FHC and SHC to bring their application.⁶⁰ It is apposite to note that the jurisdiction of the two courts under the 1999 CFRN is totally different, as section 272(1) has removed the unlimited jurisdiction its predecessor conferred on it SHC while section 251(1) has expanded the jurisdiction of the FHC.⁶¹

Although, unlike the 1979 CFRN, section 318(1) of the 1999 CFRN does not define High Court used in section 46(1), there is no iota of doubt that it carries the meaning giving to it by section 277(1) of the 1979 CFRN which is FHC or the SHC. In fact, Order 1, Rule 2 of the Fundamental Human Rights (Enforcement Procedure) Rules, 2009 provides that reference to court for enforcement proceedings means the FHC and SHC. Hence, in *Adetona v. Igele General Enterprises Ltd.*,⁶² the SC held that the FHC and SHC has and exercises concurrent jurisdiction over disputes arising or pertaining to Chapter IV of the 1999 CFRN by virtue of section 46(1) thereof.⁶³ The concurrency of the jurisdiction of the FHC and the SHC on chapter IV of the 1999 CFRN has been given judicial approval by the CA in an avalanche of decisions. In *Mr.*

⁵⁷ (1989) ANLR 575.

⁵⁸ FF Odibei, *Cases and Materials on Human Rights Law* (Port-Harcourt: Pearl Publishers, 2011) 241-250.

⁵⁹ F Falana, *Fundamental Rights Enforcement in Nigeria* 2nd Ed., (Lagos: Legaltex Publishing Co. Ltd., 2010) 29.

⁶⁰ *Pharmabase (Nig.) Ltd v. Olatokunbo* [2020] 10 NWLR (Pt. 1732) 379 at 399-400, Paras. G-B; *Kalu v. State* [1998] 13 NWLR (Pt. 583) 531; *F. M. C. T. V. Eze* [2006] 2 NWLR (Pt. 964) 221.

⁶¹ E Odikpo, *Enforcement of Fundamental Human Rights in Nigeria* (Lagos: Princeton & Associates Publishing Co. Ltd., 2020) 139.

⁶² [2011] 7 NWLR (Pt. 1247) 535 at 564, Paras. A-E.

⁶³ *Minister of Internal Affairs v. Shugaba* (1982) 3 NCLR 915.

Gaul Ihenacho & Ors. v. Nigeria Police Force & Ors.,⁶⁴ where the CA was invited to interpret the jurisdictional circumference of the FHC and SHC in relations to section 46 of the 1999 CFRN, it unanimously held that both courts have and exercises concurrent jurisdiction over EFHRs.

Unfortunately, the CA in *Nweke v. Nweke*,⁶⁵ per Pemu JCA, while acceding to the fact that the FHC and SHC exercises concurrent jurisdiction over EFHRs pursuant to section 46 of the 1999 CFRN, relied on the obiter dictum of Tanko Mohammed JSC (as he then was) in *Adetona v. Igele General Enterprises Ltd*⁶⁶ wherein he erroneously misapprehended the ratio in *Tukur v. Governor of Gongola State*⁶⁷ in coming to the conclusion that the decision had circumscribed the jurisdiction of the FHC to only matters under its exclusive original civil jurisdiction.⁶⁸ This absurdity is antithetical to the conclusion drawn by the SC in *Gafar v. The Government of Kwara State*⁶⁹ the claim before the court and not the storyline as contain in the pleadings is to be the determinant of which court (i.e. FHC and SHC) has jurisdiction. The subsequent SC decision in *Jack v. University of Agriculture, Makurdi*⁷⁰ buttresses the above unblemished legal conclusion. The bottom line is that, once the principal relief is enforcement of fundamental human rights, the FHC and SHC have concurrent jurisdiction otherwise, the jurisdiction of the SHC is circumscribed by the exclusionary provisions of section 251(1).⁷¹

In *Habu v. Nigerian Union of Teachers*,⁷² a matter that concerns alleged breach of the right of freedom of association of the Appellants by the Respondents whom had check-off dues deducted from their salaries despite relinquishing their membership of the Respondent. The Respondent's objection that the High Court of Taraba State lacked jurisdiction to adjudicate over the dispute pursuant to sections 47 of the TDA, 2004 and 5(3) of the Labour Act, 2004, which was upheld by the trial court was overturned by the CA. The CA held that a person has the right to enforce his fundamental right irrespective of where the complaint arises and the SHC

⁶⁴ [2017] 12 NWLR (Pt. 1580) 424.

⁶⁵ (2018) JELR 38892 (CA).

⁶⁶[2011] 7 NWLR (Pt. 1247)535 at 564, Paras. A-E.

⁶⁷ (1989) A.N.L.R. 575.

⁶⁸ In *Afro Continental Nigeria Ltd. v. Ayantuyi* [1995] 9 NWLR (Pt. 420) 411. The SC Per Iguh JSC (As he then was) warned that an *obiter dictum* of the SC in not binding on it or indeed on lower courts although they have considerable force and therefore not to be treated with levity.

⁶⁹ *Gafar v. The Government of Kwara State* (2007) JELR 48108 (SC).

⁷⁰ *Jack v. University of Agriculture, Makurdi* [2004] 5 NWLR (Pt. 865) 208.

⁷¹ *Federal Ministry of Commerce & Tourism v. Benedict Eze* (2005) JELR 45274 (CA).

⁷² *Habu v. Nigerian Union of Teachers* (2005) JELR 54261 (CA).

is competent to adjudicate over same by virtue of section 46 of the 1999 CFRN. The reasoning of the court can be easily justified as the decision was rendered during a dispensation when it could not be said that the NICN had exclusive original jurisdiction over such matters. As at the material time, not even the controversial NIC Act, 2006 had been enacted let alone the 1999 CFRN (Third Alteration) Act, 2010. It will therefore be overzealousness to impugn the decision on the basis of the subsisting position of the law.

4. *Onyiruika v. Attorney General, Enugu State Stated*

The brief facts of this case are that the Appellant was an employee of the Enugu State government. Her employment was subsequently terminated on the ground that she is not from Enugu State. Aggrieved by this, she instituted an action vide an originating summons at the FHC, Enugu for the enforcement of her fundamental human right. She contended that the termination of her employment on the ground that she is not from Enugu State is a violation of her right to freedom from discrimination enshrined in section 42 of the 1999 CFRN. She urged the court to declare that as a citizen of Nigeria, she is entitled to work in any part of Nigeria in either the public or private sector. She claimed damages and monetary compensation against the respondent for violation of her right to freedom from discrimination, agony and loss of income by virtue of the purported disengagement.

The respondent in opposing the application, moved the court to strike same out for want of jurisdiction. The ground of the objection was that the cause of action bordered on disengagement from employment, which cannot be brought under the Fundamental Rights (Enforcement Procedure) Rules, 2009 (hereinafter simply referred to as FREP Rules, 2009); that the cause of action falls under the exclusive original civil jurisdiction of the NICN. The trial court, in its judgment, held that the appellant ought to have filed the action at the NICN which has exclusive original jurisdiction over same. It declined jurisdiction and struck out the matter. Being aggrieved, the appellant appealed to the CA.

In deciding the appeal, the CA held that jurisdiction is fundamental in adjudication. It came to the conclusion that by virtue of section 46(1) and (2) of the 1999 CFRN, the FHC has original jurisdiction to hear and determine any application made before it pursuant to section 42(1) and (2) of the 1999 CFRN which is part and parcel of Chapter IV of the 1999 CFRN.⁷³ Since the applicant's claim is hinged on Chapter IV of the 1999 CFRN, it can be enforced via the FREP

⁷³ *Onyiruika v. Attorney General, Enugu State* [2020] 11 NWLR (Pt. 1735) 383 at 405-405, F-D.

Rules, 2009. According to the CA, the important point to be considered by the court is that the applicant claim to enforce his/her fundamental human right through the FREP Rules, 2009 is founded on the constitutionally guaranteed rights under Chapter IV of the 1999 CFRN.⁷⁴ Thus, once the main claim is anchored on breach of any of the rights mentioned in Chapter IV of the 1999 CFRN, an ancillary claim thereof will not rob the FHC, SHC or the HCFCT of jurisdiction.⁷⁵ The CA found that the crux and crucible of the Appellant's claim is anchored on section 46 (1) and (2) of the 1999 CFRN which is aimed at protecting her fundamental rights from discrimination on the basis of her place of birth/origin or ethnicity. By this, the CA came to the conclusion that the provisions of section 254C (d) of the 1999 CFRN (Third Alteration) Act, 2010 that vest the NICN with exclusive original jurisdiction over labour and employment related fundamental rights dispute does not sequester the jurisdiction of the Federal High Court, High Court of the Federal Capital Territory, Abuja and the various State High Courts to be seised of causes and matters anchored on Chapter IV of the 1999 CFRN pursuant to section 46 thereof.

4.1 Periscoping the Court's Decision and Matters Arising

To say the least, the above reasoning and conclusion of the CA is not a correct representation of the state of the law. Periscoping the decision of the CA above within the ambience of section 254C (1) (d) of the 1999 CFRN (Third Alteration) and in the light of Order 1, Rule 2 of the FREP Rules, 2009. At this juncture, it is pertinent to note the provision of section 254C (1) which is that "notwithstanding the provisions of sections 251, 257, 272 or anything contained in the Constitution, and in addition to such other jurisdiction that may be conferred upon it by an Act of the National Assembly. The NICN shall have and exercise exclusive jurisdiction to the exclusion of any other court in civil causes and matters." One of such matters is the one relating to or connected with any dispute over the interpretation of Chapter IV of the 1999 CFRN as it relates to any employment, labour, trade unionism, employer's association, industrial relations or any other matter over which the NICN has jurisdiction. While the CA seems to have adopted the 'claim theory' as opposed to "subject matter theory"⁷⁶ as the basis

⁷⁴ *Ibid.* F-D.

⁷⁵ *Ibid.* Para. H and A-D.

⁷⁶ The claim theory is to the effect that, once any section of Chapter IV of the 1999 CFRN is threatened, being breach or breached, once the Applicant application shows that same is mainly anchored on enforcement of the breach, any High Court (i.e. FHC, HCFCT, NICN or SHC) is competent to entertain the application. The nature of the claim (enforcement of fundamental human rights) confers jurisdiction. While the subject matter theory provides that where

for coming to the conclusion that the FHC has jurisdiction over the dispute, it did so without averting its mind judicially and judiciously to certain germane issues. The claim theory or basis for determining jurisdiction for enforcement of fundamental human rights causes deployed between the FHC and SHC as seen from avalanche of decision is inappropriate to extend same to the NICN for at least two reasons.

Section 277(1) of the 1979 CFRN which defined high court (HC) for the purpose of Chapter IV under that constitution (which is the same under the 1999 CFRN), state that HC means the FHC and SHC. Thus, it is understandable to hold that both the FHC and SHC have and exercises concurrent jurisdiction over Chapter IV under both constitutions once the principal claim is enforcement of FRs. In fact, to buttress this and give clarity and precision, the FREP Rules 2009 states that, a reference to court means the FHC and SHC. However, the foregoing cannot be validly stretched and extended to the NICN under the 1999 CFRN (Third Alteration) Act, 2010. The status and stature of the NICN under the Third Alteration Act, emasculates the jurisdiction of the FHC and SHC with regards to any jurisdiction conferred on it. Subject matter or jurisdictional items (i.e. matters enumerated under S. 254C) as opposed to claim is what determines the jurisdiction of the NICN under the 1999 CFRN. The section envisages that the jurisdiction of the NICN is so exclusive to the extent that notwithstanding sections 251, 257 and 272 or “anything contained in this constitution” which necessarily includes section 46 thereof, the NICN has and exercises exclusive original civil jurisdiction over all matters mentioned in section 245C especially subsection (d) thereof. Thus, the CA cannot abrogate this sublime and express provision through adoption of claim theory determinant of jurisdiction of court for enforcement of fundamental right.

It is worthy to note that sections, 251, 257, 272 and 46 of the 1999 CFRN, precede section 254C (1) (d) and are considered to have been repealed by necessary implication. What is being canvassed is that, where two provisions within a statute conflict, the later as opposed to earlier in time supersedes.⁷⁷ Eyongndi and Adeyemi⁷⁸ commenting on the foregoing state that the

there is an alleged breach of any provision of Chapter IV, only the court in which that particular rights (section of Chapter IV) has been vested in exclusively has the jurisdiction to entertain the enforcement application and the fact that it touches on Chapter IV does not make its adjudication open to any of the high courts.

⁷⁷ *Jombo United Co. Ltd. v. Leadway Assurance Co. Ltd.* (2016) LPELR-40831 (SC).

⁷⁸ DT Eyongndi & O Adeyemi “Jurisdiction over Nigeria’s Maritime Labour Disputes: Interrogating the Court of Appeal Decision in *The Vessel Mt Sam Purpose & Anor. v. Amarjeet Singh Bains & 6 Ors.*” (2022) 3(1) *South Asian Law Review*, 58-75.

rationale for this position is that the subsequent provision was made with full knowledge of the former and must take precedence. It is without doubt that section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 came into existence after the other provisions, and would therefore prevail in the event of any conflict. In fact, the exclusive jurisdiction of the FHC under section 251 does not mention any court, unlike that of the NICN. Thus, it is therefore untenable to agree with the conclusion reached by the CA in the case under review.

Furthermore, it is obvious that the CA was determined to advance the course of justice, howbeit, through the unenviable approach of ‘the end justifies the means.’ Hence, it did not advert its mind to the intendment of the legislature with regards to the need to urgently settle matters enumerated under Section 254C of the 1999 CFRN (Third Alteration) Act, 2010. Section 254C (6) of the Third Alteration Act 2010 provides that civil appeals from the decision of the NICN shall terminate at the CA. This provision has been given judicial approval by the SC in *Skye Bank Plc. v. Victor Anaemem Iwu*.⁷⁹ The conclusion to be drawn from the foregoing is that, given the volatile nature of the matters specified under section 254C, it is expedient that they be resolved expeditiously. Hence, the determination of the CA is final notwithstanding the SC appellate jurisdiction over the CA. Now, with the decision taken by the CA in the instant case under review, an unfortunate exception seems to have been created. Where the FHC or its counterpart, seised jurisdiction over any matter mentioned under section 254C (1) (d) of the Third Alteration Act, appeals therefrom will no longer terminate at the CA, but will go all the way to the SC contrary to the intendment of the legislature. This situation, of course, creates an avoidable uncertainty in the state of the law which should not be allowed to subsist.

It is trite law that the office of a judge is *jus dicere* and not *jus dare* (i.e. the judge is to state the law and not give the law). Hence, in interpreting a statute, words that are clear and unambiguous must be given their ordinary grammatical meaning, unless to do so would lead to absurdity.⁸⁰

By this token, a judge or court cannot take upon itself the sacred duty of altering a statute which

⁷⁹ [2017] 7 SC (Part 1) 1.

⁸⁰ *Stanbic IBTC Holding Plc. v. Financial Reporting Council of Nigeria & Ors.* [2020] 5 NWLR (Pt.1716) 91 at 141, Paras. A-B, 141-142, Paras. H-A; *Contecna International Ltd. v. Churchgate Nig. Ltd.* [2010] 18 NWLR (Pt. 1225) 346; Tridal, C.J. in *Sussex Peerage Case* (1844) II cl. & Fin. 85 at 143; *R v. Bangaza* (1949) 2 K.B. 481; *Chief Obafemi Awolowo v. Alhaji Shehu Shagari* (1979) FNLR Vol. 2 p. 60 at 82; *Adegbenro v. Akintola* (1962) 1 All E.R. 465; *Okumagbe v. Egbe* (1965) 1 All N.L.R. 62, *Idehen v. Idehen* [1991] 6 NWLR (Pt. 198) 382; *IBWA v. Imano* [1988] 2 NWLR (Pt. 85) 633 at 668; JO Asein, *Introduction to Nigerian Legal System*, 3rd Ed., (Abuja: Books and Gavel Ltd., 2021)72-74; ON Ogbu, *Modern Nigerian Legal System*, 3rd Ed., (Enugu: SNAAP Press Ltd., 2013) 180-183; F Adaramola, *Jurisprudence*, 4th Ed. (Durban: LexiNexis, 2008) 240-241;

is primarily reserved and within the exclusive preserve of the legislature.⁸¹ It is abundantly clear that section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010 which the CA interpreted in the light of section 46 is precise, direct, unambiguous and therefore, ought to have been given its common grammatical meaning.⁸² In fact, if the mischief behind the enactment (assuming the mischief rule is called in aid here)⁸³ of the section (i.e. section 254C (1) (d) of the Third Alteration Act) is examined, one will come to the irresistible and plausible conclusion that, the legislature had intended to take the matters mentioned therein from the hullabaloo and cacophony that has accompanied the determination of the question, between the FHC and the SHC, who has jurisdiction over Chapter IV of the 1999 CFRN.

While the good intention of the CA which is to further the cause of justice can be easily decipher, achieving this through a somewhat unwholesome means contaminate the same. Given the fundamental nature of human rights and the necessity to protect same from every degree of infraction, the FHC, having come to the right conclusion that it lacked jurisdiction over the matter (which finding the CA disagreed with),⁸⁴ ought to have transferred the matter to the NICN, pursuant to section 22 of the Federal High Court Act,⁸⁵ instead of striking it out like it did.⁸⁶ In Fact, section 24(3) of NIC Act empowers other court to transfer matters to it where they do not have jurisdiction instead of striking same out.⁸⁷ Having failed to do so resulting to an appeal, the CA instead of convoluting the state of the law, should have assumed jurisdiction as though the matter had been instituted before it as a court of first instance and determine same. Section 15 of the CA Act⁸⁸ empowers the CA to do so. If the CA prefer remitting the matter for rehearing, it ought to have ordered same should be transferred to the NICN instead of the FHC like it did, considering the resultant effects as already pointed out above.

It is worthy to note that the CA in its subsequent decision in *Biokpo v. NDLEA & Ors.*⁸⁹ held that section 46(1) of the 1999 CFRN, by literal interpretation, empowers a High Court in any state where

⁸¹ *Modibo v. Usman* [2020] 3 NWLR (Pt. 1712) 470 at 523, Paras. C-D; *Abacha v. Federal Republic of Nigeria* [2014] 6 NWLR (Pt. 1402) 43; *Onah v. Atanda* [2000] 5 NWLR (Pt. 656) 244.

⁸² *Independent National Electoral Commission v. Yusuf & Ors.* [2020] 4 NWLR (Pt. 1714) 374; *Kraus Thompson Organisation v. NIPSS* [2004] 17 NWLR (Pt. 901).

⁸³ *G. C. M. Ltd. v. Travellers Palace Hotel* [2019] 6 NWLR (Pt. 1669) 507.

⁸⁴ *Onyiruika v. Attorney General, Enugu State* [2020] 11 NWLR (Pt. 1735) 383 at 402-303, Paras. B-H, A-F.

⁸⁵ Federal High Court Act Cap. F12, LFN 2004.

⁸⁶ *Maigana v. Industrial Training Fund* [2021] 8 NWLR (Pt. 1777) 1 at 227-28, Paras. E-F, 29, Paras. A-F.

⁸⁷ *Mokelu v. Federal Commissioner for Works & Housing* (1976) 1 NMLR 329; *AMC v. NPA* [1987] 1 NWLR (Pt. 51) 475; *Maigana v. Industrial Training Fund* [2021] 8 NWLR (Pt. 1777) 1 at 29-30, Paras. F-A, 38, Paras. A-G.

⁸⁸ Court of Appeal Act, Cap. C36, LFN 2004.

⁸⁹ (2021) LPELR-56250(CA).

there is alleged breach of any provision of Chapter IV of the Constitution to adjudicate over an application brought for its enforcement. It also held that applying the literal rule of interpretation to section 254C (1) (d) of the Third Alteration, the NICN has the vires to entertain labour related fundamental human rights disputes specified in the section. The implication is that only the matters expressly mentioned in the section can the NICN entertain a human right enforcement application thereon hence, a fundamental right issue, which does not have any coloration of the listed areas of jurisdiction of the NICN, can only be instituted at a competent HC. While this decision has reaffirmed the nature of fundamental human rights disputes which the NICN has jurisdiction over, it does not deal with the exclusivity of the NICN jurisdiction as encapsulated in section 254C(1) (d). The CA did not make a detour from its position in the case under review. Thus, it seems that while the CA recognises the jurisdiction of the NICN to entertain limited labour related fundamental rights disputes as clearly provided by the Constitution, its jurisdiction has been construed not to be exclusive. This conclusion of course, is farther from the truth.

5. Conclusion and Recommendations

The 1999 CFRN (Third Alteration) Act, 2010 has in clear and unambiguous words vested the NICN with jurisdiction over labour and employment related fundamental human right disputes as specified under Chapter IV of the Constitution. The nature of this jurisdiction, is exclusive and not concurrent with the FHC or SHC when implementation of section 46 of the Constitution is concerned. The decision of the CA in the instant case is to the effect that, notwithstanding the clear provisions of section 254C (1) (d) of the 1999 CFRN (Third Alteration) Act, 2010, section 46 of the Constitution has conferred concurrent jurisdiction on the NICN, FHC and SHC. The decision, from all indication, was reached *per incuriam* and as such, should not enjoy the adhesive privilege of *stare decisis*/judicial precedent and same can be distinguished.⁹⁰ The decision is a violent infringement of the exclusive jurisdiction of the NICN and portend negative consequences if same is allowed to subsist. The trial FHC having failed to transfer the matter to the NICN pursuant to section 22 of the FHC Act, the CA pursuant to section 15 of the CA Act, should have either ordered the transfer of the case to the NICN for hearing or assumed jurisdiction as a trial court and determine the matter. If any of these right options were explored,

⁹⁰ *Stare decisis* is the doctrine that requires lower courts on the judicial hierarchy to follow the decision of superior/higher court thus, the decision of the Supreme Court on an issue, is binding on all courts beneath it. See *Atolagbe v. Awuni* (1997) 9 NWLR (Pt. 522) 536; *Osakwe v. Federal College of Education, Asaba* (2010) SCNJ 529, 546; *Sambawa Farms Ltd & Anor v. Bank of Agriculture Ltd.* (2015) LPELR-25939(CA).

the present jurisdictional quagmire birthed by the CA decision would have been prevented. The NICN has had a tedious, tumultuous and extremely long walk to freedom and should therefore be allowed to savour the freedom without any trepidation.

Given the foregoing, if the opportunity presents itself, the CA should overturn its decision herein reviewed as same is not *in tandem* with the extant provisions of the Constitution and capable of engineering unwelcomed outcomes. Also, the NICN should not bind itself by the decision but should distinguish same since the decision was reached *per incuriam* and therefore does not enjoy the privilege of *stare decisis*.