



# ‘Employers Aware’! The “Finality” of Decisions of the National Industrial Court: A Review of *Skye Bank Plc v Anaemem Iwu*

Thought Leadership | by Chinemerem Ezenwa

October 2017



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## Introduction

The **National Industrial Court (NIC) Act, Cap. N115, LFN 2004** was enacted in 2006, repealing the **Trade Dispute Act (TDA), Cap. 432 LFN 1990** which originally established the NIC in 1976, and attempted to resolve the controversies surrounding the jurisdictional status of the Court. **Section 1(3) NIC Act** provides that the NIC shall be a superior court of record, having all the powers of a High Court, unless otherwise provided; the TDA had no equivalent provision. **Section 240 1999 Constitution** affirms the superior court status of NIC by ranking it equally with the High Courts, from whose decisions’ appeals lie to the Court of Appeal (CA). The **NIC Act (section 7)** and **1999 Constitution (section 254(c))** expanded the jurisdiction of the NIC, conferring additional adjudicatory powers from the initial trade dispute/collective agreement related matters in **section 20 TDA**.

However, by an unpardonable lapse of legislative judgment, the NIC was more or less made a court of *first and last resort*, with its decisions being largely intended to be unappealable. **Section 243(2) and (3), Constitution of the Federal Republic of Nigeria, (Third Alteration) Act, 2010**, states that there is only a limited right of appeal to the CA regarding the civil jurisdiction of the NIC. The provisions prescribes as follows: “(2) An appeal shall lie from the decision of the [NIC] of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the NIC has jurisdiction; and (3) An Appeal shall only lie from the decision of the NIC to the Court of Appeal as may be prescribed by an Act of the National Assembly.”

The implication of the above provisions amongst others, is that whilst appeals from the decision of the Federal and State High Courts lie with the CA as of right, an appeal from the decision of the NIC is limited to questions of fundamental human right as contained in **Chapter IV, 1999 Constitution**. In all other decisions, an aggrieved litigant can only appeal against the decision of NIC upon approval of the National Assembly (NA) or with the leave of the CA where the enabling Act or Law proposes an appeal.

In 2013, the CA in **Local Government Service Commission, Ekiti State v. Mr. M. A. Jegede (2013) LPELR- 21131, Kanyip, J.**, held that litigants have right of appeal in matters relating to fundamental rights as granted by **section 243(2) 1999 Constitution** and also held that litigants can appeal with leave of the CA on all other matters. In other words, the NIC is not a final court and that the decisions of the NIC are appealable to the CA.

Shortly after, **Oseji JCA** who delivered the lead judgement in **Coca Cola (Nig) Limited & 2 Ors vs. Akinsanya [2013] 18 NWLR (Pt.1386), 225** held that until the NA passes a law granting litigants right of appeal with leave, that right does not exist, that is, the right of appeal from decisions of the NIC to CA is limited to decisions of the NIC relating to fundamental rights.

These conflicting CA decisions regarding the interpretation of **sections 240 and 243 1999 Constitution** brought about confusion until Dr. Charles Mekwunye, appearing for the



appellant in **Skype Bank v Anaemem Iwu SC885/2014 (2017) LPELR – 42595 (SC)** lodged an appeal at the CA and thereafter applied for a reference to the Supreme Court (SC).

### **Skype Bank v Anaemem Iwu: The Facts & Decision**

The case emanated from the NIC (Lagos Division)'s decision, granting judgment in favour of the Respondent (Mr. Victor Anaemem Iwu) against the appellant (Mainstreet Bank Limited, which was acquired by, and merged with Skype Bank Plc, "SBPlc"). SBPlc displeased with the decision, appealed to the CA and referred the appeal to the SC seeking a resolution of the substantial question of law on the finality of the NIC's decisions before it can proceed to determine the appeal.

A five-man panel of the SC, in a majority decision (of four against one), held on 30<sup>th</sup> June 2017, that the CA **had exclusive**

**appellate jurisdiction to entertain all matters from the NIC.** The key issue to be determined as identified by **Nweze, JSC** at page 4 of the judgement was - "whether the Court of Appeal, as an appellate court created by the Constitution of the Federal Republic of Nigeria, has the jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals arising from decisions of the [NIC]."

The SC per **Nweze, JSC** held at pages 74 - 75 that: "(a) The Lower Court, that is the Court of Appeal has the jurisdiction, to the exclusion of any other Court in Nigeria, to **hear and determine all appeals** arising from the decisions of the trial Court, that is, the

[NIC];

(b) No constitutional provisions expressly divested the said Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the trial Court, the [NIC]; and

(c) As a corollary, the jurisdiction of the Court to hear and determine civil appeals from the decisions of the [NIC] is not limited, only, to fundamental human rights matters."

The SC decided that in line with **section 36 1999 Constitution**, it is a basic constitutional right to be able to appeal the decision of a trial court or tribunal.



### **A Case of Interpretative Musical Chairs?**

**Section 243(4) 1999 Constitution** unequivocally made the CA the final Court in respect of any civil appeal from the decision of the NIC, stating: "Without prejudice to the provisions of section 254C (5) of this Act, the decision of the [CA] in respect of any appeal arising from any civil jurisdiction of the [NIC] shall be final."

The right to appeal a judicial decision is not only one of the fundamental principles of fair judicial practice but it is also an internationally recognized right in judicial proceedings. Making the NIC a court of last resort would be inimical to the interest of workers

which it seeks to protect. It is also uncontestedly necessary for judicial errors to be reviewed at a higher level especially in an adversarial system of justice such as ours.

### **Conclusion**

The misperception regarding the powers of the NIC was a case of interpretational errors of **1999 Constitution**. One finds it somewhat strange to interpret **section 243(3) 1999 Constitution** to mean that the CA cannot determine appeals from the NIC on issues other than fundamental human rights, in the absence of approval by the NA, but

that was the popular view, pre **Skype Bank**. But for **Skype Bank**, the NA would have needed to enlarge the appellate jurisdiction of the NIC pursuant to **section 243(3) 1999 Constitution**.

Another argument and one which influenced the SC in **Skype Bank** was the seeming conflict between **sections 240**

and **243(2)-(3) 1999 Constitution** (both conferring and limiting CA's appellate jurisdiction). A literal interpretation of **section 243 (2) & (3)** limits and divest the CA's appellate jurisdiction. However, **Wali, JSC** in **AG Ekiti State & Ors v Adewumi & Anor [2002] 1 SC 41, at 51** said that "in seeking to interpret a particular section of statute one does not take the section in isolation but one approaches the question of the footing that the section is part of a greater whole." This point was reiterated by **Nweze, JSC** while delivering judgment in the **Skype Bank** case, taking a holistic interpretation of **section 243** in light of the absurdities, and construing the Constitution as a whole with its provisions.

In the past, State High Courts handled labour and industrial disputes and proceedings took years before they were resolved prompting the introduction of the NIC. However, the benefits deriving from a faster employment or related or industrial dispute adjudication was widely believed to have been whittled by the restrictions on appeal from decisions of the NIC. **Skye Bank** would moderate this, thereby obviating anomalies associated with trial decisions not being subject to appellate review, unless within the narrow compass of fundamental human rights. In a sense, restriction of right of appeal itself on a dispute that parties consider very significant could also be regarded as a breach of litigants' fundamental human rights!

My view is that **Skye Bank** is likely to encourage parties to be more 'reasonable' in seeking amicable, non-contentious resolution of their disputes, especially employer-employee disputes. Parties are likely to weigh the costs and benefits of long drawn out appeals vis a vis other options, prior to resorting to litigation. In this respect, employers are likely to benefit more, since they are usually the defendants in matters before the NIC; less litigation removes distractions and enables them focus on their business, including 'efficient' use of resources that would have been expended on litigation.

Employers would be well advised to review their HR policies and practices to narrow the scope for potential disputes. And where these are imminent, to undertake robust dispute management strategy, including settlement options in order to avoid the business, especially reputational risks attendant on litigation. Definitely, **Skye Bank** is a watermark decision on employee and labour disputes in Nigeria, and the Supreme Court is to be

commended for its pragmatic and purposive interpretation in reaching the momentous decision.

Lastly, I align with the view that **section 254, 1999 Constitution** needs to be reviewed as the matters which fall under the ambits of the criminal jurisdiction of the NIC arguably do not have a direct link to labour or industrial relations and constitute an intangible part of the numerous civil jurisdictions conferred on the NIC.

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