



Tortious Claims Conundrum; The Nigerian Court of Appeal Pronouncements on the Jurisdiction of the National Industrial Court of Nigeria



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Introduction

The Third Alteration to the 1999 Constitution of the Federal Republic of Nigeria, elevated the status of the National Industrial Court of Nigeria (**NICN**) to that of a superior court of record and conferred it with exclusive jurisdiction over labour, employment, and industrial relation matters.

The jurisdiction of the NICN is expressly set out in section 254C of the Constitution. The aspect of the NICN's jurisdiction that is relevant to the subject of this article is the provision in section 254C(1)(a) of the Constitution. This section provides as follows –

“254C (1) 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;

In interpreting the above provision, two schools of thought appear to have emerged from judicial decisions regarding the NICN's jurisdiction over tortious claims relating to employment or labour related matters.

While some decisions indicate that the expression **“relating to or connected with any labour, employment, ... and matters incidental thereto”** give the NICN an expansive jurisdiction covering tortious claims, others have employed a more restrictive approach, limiting the jurisdiction of the NICN to strict employment or labour related matters without recourse to tortious claims.

This article considers the decisions of the Court of Appeal on this subject and proposes a practical approach to the interpretation of the expression **“relating to or connected with any labour, employment, ... and matters incidental thereto”** in the context of Section 254C of the Constitution.

The Courts' interpretation of the phrase “relating to or connected with any labour, employment, ... and matters incidental thereto”

In interpreting the phrase **“relating to or connected with any labour, employment, ... and matters incidental thereto”** the courts appear to readily accept that the NICN's jurisdiction is broad enough to accommodate any dispute, provided that such dispute is related to employment or labour¹. The point of divergence typically arises in relation to whether a claim qualifies as one related to employment or is so far removed from employment or labour to be considered as an employment dispute. Unfortunately, the Court of Appeal has not provided much guidance on the parameters for determining when a claim can be said to be *related to* employment or labour and in the case of tortious disputes, the Court of Appeal has taken divergent approaches.

When adopting a restrictive approach, the Court of Appeal has held that the phrase **relating to or connected with any labour, employment... and matters incidental thereto”** is not wide enough to accommodate claims in torts such as defamation. In other cases, the Court of Appeal has

¹ See **Nwagbo & Ors v National Intelligence Agency** (2018) LPELR-46201(CA) (“the jurisdiction of the National Industrial Court is not limited to disputes between employer and employee only; it extends to any dispute related to labour and industrial relations”). See also **Nasarawa State Specialist Hospital Management Board & Ors v. Mohammed** (2018) LPELR-44551(CA) (“the phrases “relating to” “connected with” “incidental thereto” and “connected therewith” show that the jurisdiction in Section 254C(1) embraces all matters touching on employment”).

adopted an expansive approach by extending the scope of the phrase to all issues arising from employment and labour disputes, irrespective of the nature of the claims or reliefs sought in the suit.

The Restrictive Approach

A model case for the restrictive approach is **Akpan v. Unical**². In that case, the Court of Appeal considered, among others, whether a claim for defamation that occurred in the course of employment was within the jurisdiction of the NICN. At the trial court, the Appellant had also sought certain reliefs regarding his appointment and promotion. The alleged defamation was the publication in various media, of the demotion of the appellant from his rank as a 'Senior Lecturer' of the respondent to the rank of 'Lecturer 1'. The Court of Appeal ultimately held that the NICN lacked jurisdiction to entertain the Appellant's claim for defamation. According to the Court of Appeal:

"The National Industrial Court is a Court of limited jurisdiction in terms of subject matter, as clearly spelt out in Section 254C of the 1999 Constitution, as amended. Its jurisdiction is limited to matters closely related to labour and employment matters. The National Industrial Court cannot entertain any matter outside its constitutionally prescribed subject matter area. A claim cannot be considered as ancillary to the main claim when it is completely removed from the subject matter of the main claim... A careful examination of the provisions of Section 254C of the 1999 Constitution, as amended will not reveal that its powers extend to entertaining a claim in tort, at all. A claim in tort cannot be considered as being ancillary to a claim for wrongful dismissal when brought before a Court which has its jurisdiction limited by statute... A claim for defamation stands on its own. The learned trial Judge therefore rightly declined jurisdiction over the Appellant's claim for defamation".

Another good example of a case featuring the restrictive approach is the more recent decision of the Court of Appeal in **Ecobank (Nig) Ltd v. Idris**³. In that case, the respondent instituted an action at the state high court for damages for defamation of character while in the employment of the Appellant bank. The respondent alleged that the remarks complained of were made in the course of his employment and he resigned thereafter. The question before the Court of Appeal was which of the courts; NICN or the State High Court was vested with jurisdiction over the claim? The Court took the view that a case which borders on defamation of character does not fall within the purview of Section 254C of the Constitution, merely because the defamatory remarks were made in the course of the respondent's employment. In holding that the high court and not the NICN had jurisdiction, the Court noted that:

*"There is thus no similarity of purpose in a claim for damages for defamation and claims relating to labour and employment matters. In the same vein, a thing is "incidental" to another when that thing is dependent upon or appertains to something else."*⁴

The foregoing decisions promote a restrictive interpretation of Section 254C(1)(a) of the Constitution, even at the cost of splitting one cause of action into multiple suits. Following the reasoning in both decisions, a claim for reliefs on the basis of a defamatory publication in a workplace (whether it is the main or ancillary claim) would have to be severed from a claim for wrongful dismissal, workplace discrimination, etc., even if the events giving rise to the suits are inextricably bound together.

Another instance where the Court of Appeal has adopted a restrictive approach in interpreting Section 254C of the Constitution is in relation to the tort of malicious prosecution. In **UBA & Ors v. Oladejo**⁵ the Court had to determine whether a claim for malicious prosecution was within the jurisdiction of the NICN. The Respondent had commenced the action for malicious prosecution at the high court and obtained judgment in his favour. On appeal, the appellant contended that it was the NICN and

² (2016) LPELR-41242(CA).

³ (2021) LPELR-52806(CA).

⁴ Pp. 18 – 19.

⁵ (2021) LPELR-55320(CA).

not the high court that had jurisdiction to entertain the respondent's suit. The Court of Appeal rejected this contention and held that:

A painstaking perusal of the provisions of Section 254 (c) (1) of the 1999 Constitution of the Federal Republic of Nigeria, seems to me that the provisions confer on the National Industrial Court jurisdiction over trade union, and labour matters, employment law rules. It does not pertain to criminal matters or tort... [section 254(c)(1) of the Constitution] does not pertain to malicious prosecution, assault, detinue or any liability in tort. The infringement of the right of a person in his workplace is not enough to confer jurisdiction on the National Industrial Court except where there is employment issue. The case of the Respondent, being one for malicious prosecution, has nothing to do with Respondent's condition of employment or contract of employment. The High Court of a State is the appropriate forum seised with the jurisdiction to entertain the action".⁶

One immediate comment in relation to the court's holding above is that the suggestion that the NICN does not have jurisdiction over criminal matters contradicts section 254C(5) of the Constitution which confers the NICN with jurisdiction over labour related criminal matters.

Another relevant case is **Olushola & Anor v. Andrew**⁷, where the Court of Appeal held that the tort of malicious prosecution "falls outside the narrow or limited jurisdiction of the [NICN] donated by Section 254 C of the said Constitution".

From the cases above, it does not seem to matter whether the claims in question were tort claims alone (as in the cases of **Ecobank (Nig) Ltd v. Idris** and **UBA & Ors v. Oladejo**) or were made together with other employment related claims (as in the case of **Akpan v. Unical**)

The foregoing decisions stand in stark contrast to decisions embodying the expansive approach.

The Expansive approach

A good example of a case which applied the expansive approach is **Mhwun v. Ehigiegba**⁸. In that case, the respondent instituted a case at the high court against the appellant, a registered trade union, seeking damages for the publication of a libellous letter written by the appellant's agent. The appellant challenged the jurisdiction of the high court on the basis that NICN has exclusive jurisdiction to entertain the respondent's claims, same having arisen from the workplace and being related to labour and employment. The high court refused to decline jurisdiction. On appeal, the Court of Appeal, set aside the decision of the high court and held that the NICN has jurisdiction to hear the respondent's defamatory claim because same arose from the workplace and was related to labour and employment.

According to the Court of Appeal:

"It is important to note that Section 254(1)(a) of the Nigerian Constitution, 1999 confers an expansive jurisdiction on the Court to adjudicate on any matter arising from the workplace. ...The idea behind this provision is to remove any limitations or obstacles on the categories of claims or reliefs which the Court can entertain arising from workplace or employment issues. ...It is now settled principle of interpretation of statutes that the law maker does not use any words in vain. The argument here is that the repetitive use of the words; "connected with", "related to", "pertaining to", "arising from", "incidental thereto", or "connected therewith" used in Section 254(1)(a) of the Nigerian Constitution, 1999 as Amended were not used in vain as the law makers must have meant their use to emphasize and reiterate the wide jurisdiction of the National Industrial Court over all issues arising from employment and labour disputes regardless of the nature of the claims or reliefs in the suit..."

⁶ Pp 14 – 16, paras F – D.

⁷ (2021) LPELR-56017(CA).

⁸ (2018) LPELR-44972(CA).

*In determining which Court should have the jurisdiction to hear the matter, it will require a careful examination of the factual situation giving rise to the claim as contained in the claimant's pleadings. **Where the factual situation on which the claim is anchored is one that is based on an employment dispute or matters arising from the workplace, then such a claim falls squarely within the ambit of Section 254(1)(a) of the Constitution, regardless of the reliefs claimed...*** (Emphasis ours)

Applying the above principles to the factual situation in **Mhwun v. Ehigiegba** (supra), the Court of Appeal held further that:

“A careful examination of the factual situation giving rise to the claim of the Respondent as Claimant will readily show that the issue of libel, which Respondent now alleges against the Appellant, who is a Registered Trade Union is a matter, which occurred in the workplace as envisaged by Section 254(1)(a) of the 1999 Constitution of Nigeria (as Amended). Here is a situation in which the Appellant, a Registered Trade Union, hired the services of Counsel to write a Letter complaining about the activities of Professor Austin Obasoham, said to have been dismissed as CMD of the UBTH and was said to still be in charge of the administration of the hospital by proxy. The acting CMD in the said letter was said to be a stooge of the former CMD and has not stopped being a willing and ready instrument in the hands of the former CMD in their voyage of fraudulent enrichment of themselves, whilst running an inept and mal-administration of the Hospital. If this is not a classic case of an alleged defamatory claim arising from a purely labour and employment relationship arising from the workplace and relating to or connected with any labour, employment dispute as envisaged by Section 254(1)(a) of the Constitution of Nigeria, 1999 as Amended, this Court therefore wonders what else will be. The Appeal therefore succeeds per force”

There are other cases where the courts have adopted an expansive approach, although not in the context of tortious claims. In these cases, although the complainant's claims were not strict labour or employment issues, the court held that section 254C(1) of the Constitution was wide enough to accommodate the claims and confer jurisdiction on the NICN.⁹

A good example is **Nwagbo & Ors v. National Intelligence Agency**¹⁰, which involved a claim for non-payment of death benefits of a deceased employee. In the case, the trial court (NIC) declined jurisdiction to hear the appellant's claims before it on the basis that the claims were for the determination of the priority of rights between the deceased's next of kin and his children and that the NIC only deals with “the employee and the employer until his death”. The Court of Appeal however rejected this position, took a liberal view of the provisions of Section 254(C) of the Constitution and held thus:

“It is very important to emphasize also that the words ‘relating to or connected with’ used to state the jurisdiction of the National Industrial Court in Section 254(C) (k) of the Constitution of the Federal Republic of Nigeria, 1999, as amended are very clear in both intent and meaning, and as such ought to be interpreted to be inclusive rather than exclusive;...It is clear from the provisions of Section 254 C of the constitution that the jurisdiction of the National Industrial Court is not limited to disputes between employer and employee only; it extends to any dispute related to labour and industrial relations. The rationale is indeed that disputes in industrial actions need not in all cases arise from between employer and employee alone, but as rightly submitted for the appellants, may involve the minister of labour and labour unions; and that being so, it does not matter whether the employee is alive or dead...”

⁹ **Omang v. Nsa** (2021) 10 NWLR (Pt 1783) 55; **Nwagbo & Ors v National Intelligence Agency** (supra).

¹⁰ (2018) LPELR-46201(CA).

Reconciling the divergent approaches

Considering the divergent approaches taken by the Court of Appeal on the issue of the jurisdiction of the NICN over claims in tort, the question that arises is which of the two approaches represents the position of the law? To answer this question, one must consider two things. First, the fact that by virtue of section 243(4) of the Constitution, the Court of Appeal is the final appellate authority in respect of appeals arising from the civil jurisdiction of the NICN¹¹ (including claims in tort). Second, by virtue of the principle of *stare decisis*, where there are conflicting decisions of a superior court, a subordinate court is not entitled to cherry pick the conflicting decisions but is bound to follow the later decisions of the superior court¹². This means that it is the later decisions of the Court of Appeal on the subject of the jurisdiction of the NICN over claims in tort that represent the current state of law. The cases of **Ecobank (Nig) Ltd v. Idris** (supra) and **Olushola & Anor v. Andrew** (supra) which embody the restrictive approach – i.e. the NICN lacks jurisdiction over claims in tort – having been delivered after the case of **Mhwun v. Ehigiegba** (supra) which embodies the expansive approach, represent the current state of the law.

Conclusion

Considering that the Court of Appeal is the final appellate authority over decisions of the NICN on civil matters, there is a need for clarity on the extent of the jurisdiction of the NICN over claims in tort and claims outside of strict labour and employment issues where such claims are closely linked with labour matters.

For one thing, the Court of Appeal ought to set down what the parameters are for determining when a claim or relief is related to, connected with or incidental to labour or employment. In providing this guidance, the Court of Appeal will have to undertake a comprehensive review of all its conflicting decisions on the subject and take a definitive position having regard to the broad language of section 254C of the Constitution.

This may entail an analysis as to whether the tort-based claim or relief is inextricably linked or reasonably connected with labour or employment. One way the courts can conduct this analysis is by adopting a **'but for'** test – whether the tort complained of would have arisen but for the connection of the tort to an employment relationship, a workplace or a labour related activity or incident? Where the answer to this inquiry is in the negative, then the NICN must be deemed to have jurisdiction over the tort claim.

¹¹ **Skye Bank v. Iwu** (2017) 6 SC (Part1) 1.

¹² **Oji & Anor v. Ndukwe & Ors** (2019) LPELR-48226(CA).

Contact Details



Joke Aliu
Co-Managing Partner

M +234 803 573 9417
E Joke.Aliu@aluko-oyebode.com



Tochukwu Anaenugwu
Senior Associate

M +234 906 298 1749
E Tochukwu.Anaenugwu@aluko-oyebode.com



Okiemute Ohwahwa
Associate

M +234 906 290 9327
E Okiemute.Ohwahwa@aluko-oyebode.com

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