

**AN APPRAISAL OF THE APPLICABLE PRACTICE, PROCEDURES AND RULES
OF THE NATIONAL INDUSTRIAL COURT OF NIGERIA**

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Abstract

The National Industrial Court was established by the National Industrial Court Act 2006 and the third alteration 2010 of the Constitution of Federal Republic of Nigeria 1999. It was formerly known as Industrial Arbitration Panel (IAP). This paper discusses the Applicable Practice Procedure and Rules of the National Industrial Court of Nigeria. It also discusses the court's practice directions, explains the intervention of the court in criminal cases as guided by the Criminal Procedures Code, Penal Code and Evidence Act. It discusses the effects of non compliance with the Practice and Procedure of the Court, the article also delved into the Structure of the Court, its Operations, Division of the Court, the requirements for the appointment of judges of the Court. The article eventually concludes and makes recommendations that would be of immense benefits to the stakeholders in the administration of the National Industrial Court of Nigeria and the Judiciary.

Keywords: Practice, Procedure, Rules, National Industrial Court.

Introduction

Section 12 of the National Industrial Court Act 2006 provides as follows:

- “(1) *The jurisdiction vested in the Court shall, so far as practice and procedure are concerned, be exercised in the manner provided by this Act or any other enactment or by such rules and orders of court as may be made pursuant to this Act or, in the absence of any such provisions, in substantial conformity with the practice and procedure of the Court existing immediately before the commencement of this Act.*
- (2) *Subject to this Act and any rules made thereunder, the Court-*
- (a) *“May regulate its procedure and proceedings as it thinks fit; and*

(b) Shall be bound by the Evidence Act but may depart from it in the interest of justice”

The National Industrial Court Rules

The National Industrial Court Act 2006¹ empowers the President of the court to make rules regulating the civil procedure of the court. The President of the Court Honourable Justice Babatunde Adeniran Adejumo exercised the powers conferred on him by the Act made the National Industrial Court Rules 2007 which came into operation on 1st day of August, 2007.

Some laudable provisions in the National Industrial Court Rules 2007 include the provision of Order 5 which gives the court power to waive any of the rules in the interest of justice. This is

¹ Bimbo Atilola ed. 2008. Annotated Nigerian Labour Legislation, pp.173-174 of NICA 2006

commendable as it assists practitioners in case of unintended omissions in compliance with the rules. Also, Order 7 of the rules gives the court power to accept and regard publication of an originating process on the pages of newspapers and pasting it at the last known address of the respondent as good as personal service. Thus the practice of evading service of processes where personal service is required has been obviated. And where no provision is made in these Rules as to practice and procedure or where the provisions are inadequate, the court may adopt such procedure as will in its view do substantial justice to the parties.²

The National Industrial Court Practice Directions

In June 2012, the National Industrial Court, pursuant to Section 254F of the 1999 Constitution (as altered by the Third Alteration Act 2010) and section 36 of the National Industrial Court Act, 2006 issued a comprehensive Practice Direction to promote the administration of justice in the National Industrial Court. The practice direction known as “the National Industrial Court of Nigeria Practice Direction 2012” was made on the 15th day of June, 2012 and became effective from 1st day of July 2012.

The NIC Practice Direction 2012 made significant modifications to the NIC Rules 2007. Such modifications include;

- a. The filing of written statement on oath of all witnesses to be called by parties by Provision of a new Order 3 rule 4 (iv);
- b. Insertion of a new Order 3 Rule 5A which makes provision for commencing action at the National Industrial Court by Originating Summons for the interpretation of enactment, constitution, agreement or other written instrument which is to be accompanied by an affidavit setting out the facts relied upon, copies of the instrument sought to be construed (other than an enactment)

and other related documents and a written address containing the issues to be determined and succinct argument of the issues.

It must however be noted that a suit which raises substantial dispute of facts or where substantial dispute of facts is likely to be involved shall not be commenced by an originating summons, but by complaint as provided in Rule 4 of the Order.

- c. The Practice Direction has also introduced written addresses which shall accompany motions and preliminary objections to be adopted by parties at the hearing of such application.
- d. Insertion of a new Order 9 sub-rule 1 (d) to accommodate written statement on oath of all witnesses listed to be called by the Defendant.
- e. Prescribed time for filing such written addresses;
- f. Insertion of new Order 9 Rules 3 and 4. These rules make provisions for what a party contesting an originating summon must do, this include not later than 14 days or any time prescribed, file a counter affidavit thereto, which shall be accompanied by, other relevant document(s), if any, a written address countering the argument advanced by the applicant. By Rule 4, the applicant may file a written reply on point of law within 7 days of the service of the Respondent’s counter affidavit (if any) and written address.
- g. Replacement of the existing Order 11 Rule 1 with a new Order 11 Rule 1. This Order covers the procedures for making applications to the NIC and the procedures the other party who intend to oppose such application are to comply with.
- h. Replacement of the Proviso to Order 25 Rule 4 of the NICR, 2007 with the following new Proviso: “provided that any party who

² See order 15 of the NIC Rules 2007

defaults in performing an act within the time authorized by the court or under these rules, shall pay to the court an additional ₦ 50.00 (Fifty Naira) for each day of such default within the first 30 days of such default, an additional ₦ 100.00 for each day for the next 30 days of default and thereafter an additional ₦ 200 for each day of such default at the time of compliance.”

- i. Upward review of filing fees Payable by the recovery of specific sum in appendix 1 (1) of NICR, 2007 with a new table.

The modifications made in the Practice Direction 2012 are commendable as it will no doubt accelerate the hearing of cases in the National Industrial Court especially with the introduction of substituted services.

However the filling fees and penalty prescribed for late filing of process are rather on the high side in view of the fact that many of the claimants approaching the court for redress are workers who may have been dismissed from employment and are therefore not in a position to pay exorbitant filing fees. To ensure such workers or indigent claimants are not denied access to justice due to impecuniosity, the National Industrial Court should waive the payment of filling fees in deserving cases.

Criminal Cases

The Provisions of the Criminal Procedure Act (CPA), Criminal Procedure Code (CPC), Criminal Code, Penal Code and the Evidence Act are to apply with respect to the practice and procedure of the court in criminal cases brought before it.

Effect of non compliance with the Practice and Procedure of the Court

The National Industrial Court (NIC) as it stands today is governed by the NIC Act 2006 and the NIC Rules 2007. The question of the dispensation of justice at the NIC may well center on the extent to which form is or is not an issue. Indeed, a comparison of the Rules of Court under the

old dispensation (the 1979 NIC Rules) with those under the new dispensation (the NIC Rules 2007) can conveniently be treated. For instance, a cardinal principle under the old Rules (which may also be true of the new Rules) was that although the court was not bound by form, it was not formless either.

The specialized nature of resolving labour disputes demands that the process be guided by certain ideals. In this regard, speed, flexibility, a certain measure of informality, etc are prerequisites. Consequently, Order 1 Rule 1(3) of the NIC Rules 2007, for instance, provides that –

“These Rules shall apply to all proceedings including part-heard causes and matters in respect of steps to be further taken in such causes and matters for the attainment of a just, efficient and speedy dispensation of justice”.

Very often, the informality and flexibility, and the participation of non-lawyers, which is demanded in the resolution of labour disputes finds expression in the slogan, „keep the law out of industrial relations?.

A guiding principle in the adjudication of labour disputes in the NIC was that although the court is not bound by form, it is nevertheless not formless. This point is evident from section 37(3) of the Trade Disputes Act (TDA) Cap. 432 LFN 1990, which provides that the NIC-

- (a) May regulate its procedures and proceedings as it thinks fit, and shall not be bound to act in any formal manner; and
- (b) Shall not be bound by any rules of evidence, but may inform itself on any matter in such manner as it thinks just.

And by Rule 4 of the 1979 NIC Rules, the court may direct the departure from the Rules in any way when this is required in the interest of justice.

Incidentally, section 37 of the TDA is a subsisting Provision given that it is not caught by the repealing Provisions of sections 53 and 54 of the NIC Act 2006, but it must be read in a manner as to bring it in conformity with the Provisions of the NIC Act. In this regard, section 12(2) of the NIC Act becomes apposite. This section provides that –*Subject to this Act and any rules made thereunder this section, the Court –may regulate its procedures and proceedings as it thinks fit; and shall be bound by the Evidence Act but may depart from it in the interest of justice.*

Similar to Rule 4 of the old Rules, Order 5, Rules 1 and 3 provide that failure to comply with any of the Rules may be treated as an irregularity and the Court may give any direction as it thinks fit and the Court may direct a departure from the Rules where the interest of justice so requires.

At the commencement of the NIC Rules 2007, an attempt was made in *Oyo State Govt. v. Alhaji Bashir Apapa & ors* to test the extent to which the Provisions of the 2007 Rules must be strictly adhered to. In that case, the argument raised by the respondents was that the matter was commenced by way of originating summons instead of by way of a complaint as enjoined by the 2007 Rules. The ruling of the court on the issue is worth reproducing here for it throws light on the issue of how far the court can insist on the strict adherence to form. According to the court –

The respondents argued that the originating summons filed by the applicants is grossly incompetent having not been initiated by due process of law in that the applicant

commenced this action by way of originating summons instead of a complaint and so violated Order 3 Rule 1 of the NIC Rules 2007.

The court however rejected the argument of the respondents and goes ahead to state as follows:

By this argument, the respondents have elevated procedural due process to the status of substantive law. The rule which holds that jurisdiction is defeated if a cause of action is not initiated by due process is essentially used within the context of substantive law, not procedural law. Where the law makers feel strongly about certain aspects of procedural law, the tendency is to elevate these aspects to the status of substantive law as where Part 1 of the TDA. That deals with the procedure for settling trade disputes, elevates that procedure to the status of substantive law.

Where this is the case, failure to observe the laid procedure would be fatal to the competency of the case to be heard by the court. The respondents accordingly canvassed two strands of arguments in this regard. The first, and which was the main plank of their argument, was that the new NIC Rules 2007 were not followed by the applicant in initiating the present action. What the respondent wants us to believe is that procedural due process, in this context, is so weighty that if not followed, it can make an otherwise good cause of action incompetent. In other words, the respondents want us to keep faith with Maitland's celebrated remark, to wit: „The forms of action we have buried, but they still rule us from their graves? (Forms of Action, at p. 296). The modern tendency, as argued by the

applicant, and which we agree with, is not to be slavish to the forms of action. The infractions contained in the processes of the applicant are all curable; they are not so weighty as to require striking out this matter as argued by the respondents. In any event, the originating summons filed by the applicant has attached the documents that the applicant seeks to rely on. This means that the respondents are not in any way put at a disadvantage as to the case they are expected to meet. The applicant's originating processes do not in any way entrap the respondents in this suit. We consequently do not agree with the respondents on this score.

Also, in *Showunmi and Ors v. Allied Biscuits Co. Ltd and Ors*, the NIC reiterated this position when it stated that – The argument of the respondents that coming by way of an originating summons is wrong and so fatal to the claimants' cause of action fails to take into account that this court is concerned with justice not

technicality. That defect, if at all it qualifies as one, is curable and so cannot be fatal to a good cause of action. We, therefore, reject the argument of the respondents in that regard.

The point must, however, be noted that irrespective of this liberal posture of the court, the court will not depart from its previous decisions except for germane and compelling reasons. The rationale is that despite the flexibility in that court's procedure, the rules evolved in deciding matters before it have to be certain, definite, consistent and ascertainable if stakeholders in the Nigerian industrial relations field are to order their affairs in accordance with the law.

The Structure of the Court

At the helm of affairs of the Court is the President. Section 1(2) (a) of the National Industrial Court Act, 2006, provides that the court shall consist of the President of the court who shall have overall control and supervision of the administration of the Court. Section 2(5) provides that if the office of the President of the court is vacant, or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and assumed the functions of that office or until the person holding the office has resumed those functions, the President (of the Federal Republic of Nigeria) shall appoint the most senior Judge of the court having the qualification to be appointed as President of the court as provided under subsection (3) of this section to perform those functions. Section 1(2)(b) provides that the Court shall consist of not less than twelve Judges. So, in the Judicial Cadre of the court are the President and the Judges.

There are five departments that have been created for administrative purposes³. They function under the direct supervision of the Chief Registrar of the Court. Statutorily, the Chief Registrar is seised of

custody of the records of the court and exercise such other functions as are assigned to him/her by the Rules of Court and the President who has overall control and supervision and administration of the court. The departments of the court are as follows: Personnel; Litigation; Finance and Accounts; Procurement and Stores; and Library.

1. Personnel Department

Under the Personnel department are the following sections: Appointment/Promotions/Disciplinary Section, Establishment/Pensions Section; Training and Development Section; Industrial Relations Section and Welfare Section. The functions of the Personnel Department include recruitment, selection and placement of personnel in the court; career and performance management; reward and compensation; training and development; industrial relations; preparation of personnel budget; retirement, disengagement and pension processes. The actual staff strength of the court is 345 comprising 30 management staff; 75 middle level (senior) staff and 240 junior staff. The cadre of officers in the National Industrial Court includes the Registrar, Assistants Registrar, Administrative Officers, Accountants, Librarian, Medical Officers, Pharmacists, Stores Officer, Executive Officers, Engineers, Technical Officers, Laboratory Technologist, Estate Officers, Clerical Officers and Typists. Presently, the judicial officers of the court comprise the President and Judges. Section 1(2) (b) of the National Industrial Court Act, 2006, provides that the court shall consist of not less than twelve Judges.

To make the court more effective, it is necessary not to limit the number of Judges to the minimum of 12 prescribed by the Act but to appoint additional Judges to the Court to cover all the 36 states of the Federation as well as the Federal Capital Territory in order to meet up with the demands and workload of the court in the first instance and to bring the court closer to potential litigants thereby making the court

³ Source: <http://nicn.gov.ng/depts.php>

accessible to all irrespective of class and/or position.

2. **Litigation Department**

The Litigation Department is made up of the Registry, Bailiff, Dispatch, Receiving Desk, Pending Cases, Achieves and Appeals Sections. The functions of the Litigation Department include processing of all documents filed in court by litigants, service of these processes on parties to each case, preparation of court processes and filing of same in the relevant/appropriate files for the judges' attention and necessary action, administration of oaths on litigants and witnesses in court, processing of appeals, preparation of records of proceedings and copies of judgment, etc. Any person or a representative of a trade union or employers' organization who has a cause of action relating to labour, including trade union matters or industrial relations, can file it in court for determination.

3. **Finance and Accounts**

The Finance and Accounts department is made up of nine sections namely Funds; Central Pay Office; Recurrent Expenditure; Capital Expenditure, Checking; Salary; Sub-Account; Bank Reconciliation and Final Account Sections. The Department processes the monthly recurrent expenditure allocations received from the National Judicial Council to the various sub-heads of the vote book, ensures that the Court Account on capital expenditure with the Central Bank of Nigeria is credited with quarterly allocations, conducts checks and balances on all payment documents, prepares monthly salaries for payment to staff through their banks, verifies contract bills, claims and other payment documents; raises payment vouchers and issues cheques accordingly; renders monthly returns of the bank reconciliation, transcripts, returns of expenditure, revenue, returns and other information required by the office of the Accountant General of the Federation, Auditor General of the Federation and the National Judicial Council.

4. **Procurement and Store Department**

The Procurement and Stores Department is made up of three sections namely Procurement Section, Stores Section and Maintenance Section. The functions of the Department include acquisition of stores/supplies, handling and storage of stores/supplies, issue of stores, progression of stores issued, periodic verification of stock balances, maintenance of stock and conduct of market surveys.

5. **Library Services**

The Library is one of the five departments of the National Industrial Court. It exists to provide information support and other ancillary services towards the administration of Justice.

Operations of the National Industrial Court

Operation of the National Industrial Court

The Court combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialized courts. The Judges of the Court have considerable knowledge and experience in the law bound by the Evidence Act in all civil matters. In exercising its criminal jurisdiction, the Court applies the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and Evidence Act in the determination of criminal matters brought before it. Procedure before the court is regulated by the constitution of the Federal Republic of Nigeria 1999 (as amended) National Industrial Court Act, 2006 and the National Industrial Court Rules, 2007, the Trades Disputes Act, 1990 (as, amended).

Divisions of the Court

By section 21, the NIC shall have and exercise jurisdiction throughout the Federation and for that purpose, the whole of the Federation shall be divided by the President of the Court into such number of Judicial Divisions as he may, from time to

time, by instrument published in the Federal Gazette decide. Currently, the court sits mainly in 8 functional Judicial Divisions consisting of Abuja, Lagos, Enugu, Kano, Maiduguri, Jos, Ibadan and Calabar.

Appointment of Judges

The judges of the court including the President of the court are appointed like the Federal High Court judges⁴. The President of the court is appointed by the President of the Federal Republic of Nigeria on the recommendation of the National Judicial Council (NJC), subject to the confirmation of the senate, other judges are appointed by the President on the recommendation of the NJC. The tenure, status and remuneration of these judges including the President are the same as the Federal High Court Judges as provided in the 1999 Constitution. These however, are further legislative reaffirmation of the status of the NIC as a superior court of record.

This to a great extent is a departure from the law under the Trade Dispute Act where the judges are appointed based on ministerial discretion for a given term of years. Under the Trade Disputer Act, the Judges are simply persons of good standing being to the knowledge of the minister, well acquainted with employment conditions in Nigeria and one of whom must to the satisfaction of the minister have a competent knowledge of economics, industry and trade. It is only the president of the court who must be a lawyer of not less than ten years standing or a Judge of the High Court and appointed by the President. These judges hold office for a renewable term of four years provided they are not over 65 years of age.⁵ The subsequent integration of the President and the Judges of the court into the mainstream Judicial Service of Nigeria with prospects of advancement and possible elevation to the appellate bench of the judiciary is a bold

step which will enhance the efficiency and status of the NIC. This is a great departure from what obtains under the TDA where they were sidelined with no prospect of advancement or growth.

To be appointed the President of the court under the NIC Act, the person must be qualified to practice law in Nigeria and has been so qualified for a period of not less than ten years and experienced in Labour Law⁶. The other Judges may be lawyers or other university graduates of not less than ten years standing and must have considerable knowledge and experience in labour law and industrial relations.⁷ That the judges must in addition have considerable knowledge and experience in labour law and practice of industrial relations and employment condition in Nigeria is also commendable⁸

In the same vein, the provision for the appointment of experienced graduate who are non lawyers but have considerable knowledge and experience in labour law and practice of industrial relations and employment condition in Nigeria is commendable in view of the diverse labour issues which may require people having competence and experiences in other disciplines. These qualifications seem to satisfy and meet the need for a labour court rather than court of general jurisdiction. There is no doubt that by their background and expertise.

This Provision conforms to the practice in other jurisdiction. For instance, in Britain the Industrial Tribunals have among its members lay experts sitting with leally qualified chairperson. Agomo⁹ maintained that the composition of the court comprising of qualified legal practitioners and lay members is commendable and must be sustained. The quality, experience and expertise of members must be maintained

⁴ S. 2(1) & (2) of the NIC Act, See also, S250 of the 1999 constitution

⁵ Sections, 29 & 30 of the TDA

⁶ Section 2(3) of the NIC Act

⁷ Section 2 (4) (a) & (b) of the NIC Act

⁸ Section 2(3),(4)(a) & (b) of the NIC Act

⁹Agomo, C.K. "The Report on the Evaluation of the Performance of the Industrial Arbitration Panel and National Industrial Court, October 1992.

so that the NIC, like its British counterpart will continue to function as a court of law which is industrially informed; it is only so that it can continue to contribute meaningfully to the development of labour law and industrial relations practice of Nigeria.

Conclusion

The third alteration of the constitution of Federal Republic of Nigeria as it affects the establishment of National Industrial Court of Nigeria is a turning point in the judicial process of the country. The opportunity it avails litigants in contract of employment cannot be overemphasized

Many unresolved labour crises between employers and employees which had hitherto being suffering several adjournments are now being handled by specialized courts established for the purpose. The issue of technicality being brought by some counsel to cause delay in adjudicating labour matter was discountenanced with in *Showunmi v Allied Biscuits Co Ltd (Supra)* which is also a turning point in labour matter.

Recommendations

There is need to create more National Industrial Courts in Nigeria. There is need to create more Judicial Divisions of the Court at least one in each state of the Federation. For example we only have the courts in Lagos and Ibadan in the entire South West. This is inadequate for the population in the South West. It also leads to litigants and their counsel travelling long distance before justice could be accessed. It also makes the litigants pay more to access justice.

The rules of courts also need to be amended to address the issue of joinder of parties and so on. Training and retraining of staff should also be embarked upon in the interest of the system and the litigants. Some categories of workers especially low

level employees should be exempted from paying filing fees in the court.

It is however important that judges of the court take full control of proceedings before the court and prevents lawyers and litigants from frustrating the course of justice by the trial of labour cases and resolution of industrial disputes. The court should as much as possible reserve certain preliminary objections filed by the Defendants particularly in actions commenced by originating summons should be taken together with the substantive suits.

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