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Examination of the Territorial Jurisdiction of the National Industrial Court of Nigeria and the Service of Processes Outside the Jurisdiction of the Court

Samuel A. Adeniji*

Abstract

Sections 97, 98 and 99 of the Sheriffs and Civil Process Act (SCPA) requires that, originating processes to be served outside the issuing state, must be endorsed that, same is for service outside the issuing State or the Federal Capital Territory for their service to be valid. Giving the fact that, the National Industrial Court of Nigeria (NICN), just like the Federal High Court (FHC), has a nationwide jurisdiction, does the above requirement of the SCPA applies to the NICN? Does the failure to specifically mention the NICN in the definition section of the SCPA as courts is the NICN not excluded? Does the specialised nature of the NICN exclude it from the application of the SCPA as far as endorsement and service of originating processes is concerned? These issues, form the crux of this paper which adopts the doctrinal methodology to evaluate these issues by reviewing the Court of Appeal decision in Johnson v. Eze. It argues that, the NICN having a nationwide coverage with judicial divisions for administrative and adjudicatory efficiency, the requirement of the SCPA is inapplicable. Aside being a specialised court poised at efficient and timeous adjudication, the exclusion of the NICN in the definition section of the SCPA, although being of coordinate jurisdiction with other High Courts (HC), buttresses the inapplicability of the SCPA endorsement requirement. It argues that, the decision is a welcomed development; it will aid continuous efficiency of the NICN; insulate it from potential technicalities arising from the applicability of the requirement of the SCPA based on the sensitive subject matter it adjudicates upon.

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Keywords: Court, Federal high court, NICN, Nigeria, originating process

1. Introduction

By virtue of Item 57, Part 1 of the Second Schedule to the 1999 CFRN, subject to the proviso thereof, only the National Assembly has the legislative competence to make a law regulating the service and execution of court processes within and outside Nigeria as it is an item on the Exclusive Legislative List (ELL).[1] Pursuant to this, under the 1979 Constitution, The Sheriffs and Civil Process Act (SCPA)[2] was enacted as a federal legislation that regulate the issuing and service of court processes within and outside Nigeria.[3] Sections 97, 98 and 99 of the Act requires that, originating processes[4] to be served outside the issuing state, must be duly endorsed disclosing the fact that, such process (s), is meant for service outside the issuing State or the Federal Capital Territory. Unless this is done, the issuing and service of the process in defiant, will be declared invalid by the Court where same is challenged and this will

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[1] Exclusive Legislative List are matters that only the Federal Government of Nigeria can legislate upon.

[2] The Sheriffs and Civil Process Act Cap. LFN 2004.

[3] *Biem v. S.D.P* [2019] 12 NWLR (Pt. 1687) 377.

[4] Origination process is a court process that is used to commence proceedings in Court such as Writ of Summons, Originating Summons, Originating Motions/Applications and Petition. See David I. Efevwerhan *Principles of Civil Procedure in Nigeria* 2nd Ed. (Enugu: Snaap Press Nig. Ltd., 2013) 146-174.; Ernest Ojukwu and Chudi N Ojukwu, *Introduction to Civil Procedure*, 3rd Ed. (Abuja: Helen Roberts Ltd., 2009) 127-134.

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automatically rub the court of the requisite jurisdiction to be seised of the matter.[5] The SCPA is applicable to all Courts in Nigeria whether federal or State Courts.[6]

While the territorial jurisdiction of State Courts is limited to individual States, thereby justifying the applicability of the aforementioned provisions of the SCPA, federal Courts, (with the exception of the High Court of the Federal Capital Territory, Abuja which is an equivalent of a State High Court in terms of territorial jurisdiction), like the Federal High Court and the National Industrial Court of Nigeria, have single nationwide territorial jurisdiction. For the sake of administrative convenience and efficiency, these Courts, have various judicial and administrative jurisdictions spread across various States in Nigeria yet, they are one. What this means is that, processes issued in one judicial division in one State but meant for service in another State, are deemed to have been issued by the same Court and State hence, there is no difference between the state of issuance and service. Thus, the practice and procedure of a court is regulated by the Rules of Court. Hence, the NICN (Civil Procedure) Rules, 2017 regulate proceedings in the Court alongside other procedural provisions contained in the NIC Act, 2006. The NICN, is reputed as a specialised court with a mandate of speedy and efficient adjudication of labour and employment matters which must be insulated from substantive and procedural technicalities. It has been argued that, despite the territorial jurisdiction of the NICN and its status as a specialised court, the provisions of the SCPA, with regard to

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[5] [illegible] v. *INEC* [2018] 11 NWLR (Pt. 1629) 110.
[6] Section 2 Sheriffs and Civil Process Act, Cap. S6, LFN 2004.

endorsement of originating processes issued in one State to be served in another, are applicable just like in other High Court which are all courts of concurrent jurisdiction. This is so particularly when the point is noted that, the SCPA is a legislation that specifically deals with the issuance and service of court process within and outside Nigeria and its provisions, are superior to any other such as the NIC Act, 2006 and the NICN (Civil Procedure) Rules, 2017.

The above position, have ignited certain pertinent questions begging for answers such as, since the definition Section of the SCPA, which defines Courts, expressly omitted the NICN despite its existence as at the time of the enactment of the Act, can its provisions, be applicable to the NICN? Does the specialised nature of the NICN and the sensitivity of the nature of disputes adjudicated at the NICN not require its exclusion from the application of the SCPA as far as endorsement and service of originating processes is concerned? Technicalities that usually trail such procedural matters as the one contained under Sections 97, 98, and 99 of the SCPA if made applicable to the NICN, will it not hamper the efficiency and effectiveness of the NICN it its quest for speedy justice delivery? This issues, form the crux of this paper and are addressed by examining the decision of the Court of Appeal in *Francis O. John & Anor v. Comrade Emma Eze & Anor.*[7] The paper argues that, the difference in the territorial jurisdiction of the NICN, coupled with its specialised nature, makes it different from that of the various State High Court including the High Court of the Federal Capital Territory, Abuja hence, the provisions of the SCPA on endorsement to be made on

[7] [2021] 2 NWLR (Pt. 1759) 90.

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originating processes issued in one State but to be served in another, are inapplicable to the NICN. It is further argued that, if a contrary view is to be asserted, the potentiality of procedural technicalities with their negative ripples effects arising from the applicability of the aforementioned sections of the SCPA, will hamper the smooth administration of justice by the NICN particularly, when the sensitive nature of the subject matter it adjudicates upon is considered. The course of justice will be better served by the inapplicability of the SCPA to the NICN. It also argues that the decision is a welcome development as far as the issue of issuance and service of court processes filed at the NICN is involved when viewed against the backdrop of the ongoing innovations and digitalisation of the operations of the NICN all in a bid to ensure smooth and speedy adjudication of cases and justice delivery which the court is gaining repute for.

This article is divided into four sections. Section one contains the introduction. Section two examines practice and procedure at the NICN including its jurisdiction and novel innovations. Part three is a review of the decision in *Francis O. John & Anor v. Comrade Emma Eze & Anor.*[8] Part four contains the conclusion and recommendations.

2. The Jurisdiction, Practice and Procedure of the NICN

From colonial times, there had been a need to make provisions for an institutionalised medium for the settlement of trade/employment disputes. Thus, the colonial government the colonial government in 1941 promulgated the Trade Dispute (Arbitration and Inquiry) Ordinance

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[8] *Ibid.*

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meant to settle disputes within Lagos and its environs.[9] The Ordinance had the shortcomings of limited applicability and lack of a formal structure for settlement of trade dispute but introduced the British non-interventionist pattern of government settlement of trade disputes. However, *ad hoc* tribunals were set up to adjudicate over trade disputes as they occur.[10] Courts are created by statute with the sole aim of settling disputes between disputants so as to avoid the barbarism associated with resort to self-help.[11] Thus, the law establishing a court, provides the jurisdiction and other ancillary matters pertaining to the functionality of same. The NICN was created out of necessity which is to settle labour and employment disputes arising from employment relations.[12] Prior to its creation which marks the period preceding the Nigerian civil war, the government has maintained a non-interventionist posture after the British pattern as indicated above however, this changed after the Nigeria civil war which took place between 6th July 1967 to 15th July 1970.[13] The war had dealt a fatal blow on the economy of Nigeria and post war efforts were geared towards economic recovery and stabilisation. One of the platforms this recovery plan was to be launched was viable and stable industrial relations hence, the government could no longer afford to stay aloof and allow employer and employees settle trade disputes that have

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[9] The Trade Disputes (Arbitration and Inquiry) (Lagos) Ordinance 1941.
[10] David T. 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.
[11] Elizabeth A. Oji, and Offornze D. Amucheazi, *Employment and Labour Law in Nigeria* (Lagos, Mbeyi & Associates (Nig.) Ltd., 2015) 254.
[12] David T. Eyongndi, (n.)
[13] John O. A. Akintayo, and David T. 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*, 108-110.

arisen or brewing.[14] As a result, the NICN was created as a specialised court with the sole mandate of timeous resolution of labour and employment disputes.[15] The Federal Military Government promulgated two Decrees to regulate trade disputes settlement in Nigeria, they are the Trade Disputes (Emergency Provisions) Decree,[16] and the Trade Disputes (Emergency Provisions) Amendment Decree.[17] These Decrees prohibited strikes and lockouts and imposed a duty on both employees and employer to report to the Inspector General of Police, within fourteen of occurrence, any trade dispute. [18] The Industrial Arbitration Panel (IAP) was established under the later Decree to be seised of labour disputes. Following reforms, the Trade Disputes Decree No. 7 of 1976 was promulgated and Sections 19 and 20 thereof, created the National Industrial Court with exclusive Original Jurisdiction over labour matters.[19] The desire of the government to determine the workings of the NICN, led to the government not leaving any aspect of the life of the court to its officials including access to same. The Minister of Labour, Employment and Productivity had the exclusive power to activate the

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[14] David T. Eyongndi, and Kingsley O.N. Onu, (2019) 10 "The National Industrial Court Jurisdiction over Tortious Liability under Section 254C (1) (A) of the 1999 Constitution: Sieving Blood from Water" *Babcock University Socio-Legal Journal* 243-270.

[15] Offornze D. Amucheazi, and Paul U. Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure,* 2nd ed., (Ibadan, Kraft Books Ltd., 2019) 3.

[16] Trade Disputes (Emergency (Provisions Decree) Act 1968, No 21.

[17] Amendment No. 2 of Decree No. 53 of 1969.

[18] John O. A. Akintayo, and David T 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 110.

[19] Kanyip, B.B. *The National Industrial Court: Current Dispensation in the Resolution of Labour Disputes,* Being A Paper Presented at the Refresher Course for Judges and Kadis Organised by the National Judicial Institute (NJI) held at Abuja on 12th-16th March 2007.

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adjudicatory machinery of the court through referral of cases. [20] The parties could not, on their own accord, access the court as was held in *Incorporated Trustees of Independent Petroleum Association v. Alhaji Ali Abdulrahman Himma & Ors.*[21] The effect of this is that; the Court at that time, was tied to the apron string of the Minister who could unduly influence the functionality of the court.

The Trade Dispute Decree, under the dispensation of the 1979 Constitution, pursuant to section 274 thereof, became Trade Dispute Act since same was an existing law before the coming into force of the 1979 CFRN. However, when the 1979 Constitution was enacted, the National Industrial Court was not mentioned amongst the Superior Courts of Records (SCR) mentioned in section 6(5). This omission led to objections being raised about the constitutionality of the court. In fact, matters which had been exclusively reserved for settlement at the NICN, were being taken to the State High Court for adjudication.[22] This was because the exclusive original jurisdiction purportedly conferred on the NICN, was considered as an affront to the jurisdiction conferred on the State High Court under the 1979 Constitution which was considered as unlimited as seen in the cases of *Maritime Workers Union of Nigeria v.*

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[20] National Industrial Court Rules 1979, Rule 13.

[21] Suit No. FHC/ABJ/CS/313/2004 ruling delivered on 23 January 2004 (NICN) upon transfer from the FHC pursuant to section 22 of Federal High Court Act, Cap. F12 LFN 2004. Though this is a 2004 decision, the position of the law had not changed up until the time the decision was made by the NICN and the case was being litigated at the FHC before it was subsequently transferred to the NICN pursuant to the Federal High Court's power to transfer cases.

[22] Akintunde Emiola, *Nigerian Labour Law*, 4th ed., (Ogbomoso, Emiola Publishers Ltd., 2008) 481-483

Nigerian Labour Congress[23] and *Kalango v. Dokubo.*[24] To cure this anomaly, the Trade Dispute Act was amended by the Trade Dispute (Amendment) Decree No. 47 of 1992.[25] This Decree made the NICN a superior court of record, having exclusive jurisdiction over labour and employment disputes to the exclusion of all other courts of coordinate jurisdiction. During this period, this amendment proved to be some kind of respite but the situation soon changed when the same omission was repeated under the 1999 CFRN.[26] Aside the challenge on the constitutionality of the NIC, its jurisdiction under the TDA was narrow. Thus, in 2006, the NIC Act was enacted to cure the defects earlier mentioned however, the NIC Act could not satisfactorily achieve the desired result because, the NIC Act being subservient to the 1999 CFRN, the Act could not amend the provision of the CFRN. It will require an Act of constitutional dimension to amend the 1999 CFRN to declare the superior status and stature of the NIC. In fact the Supreme Court jettisoned the self-acclaimed constitutionality and superior court of record status of the NICN *vis-à-vis* others in In *National Union of Electricity Enterprises v. Bureau of Public Enterprises.*[27] Chukwuma-Eneh JSC (as he then was) stated that:

> It means therefore, that by Decree 47 of 1992 arrogating to the National Industrial Court a Superior Court of record as has been contended by the appellants does not by that token make the said National Industrial Court a Court of Superior record without due regard to amendment of the provisions

[23][2005] 4 NLLR (Pt. 10)270 at 282.
[24][2003] 15 WRN 32.
[25] Oji and Amucheazi (n 11) 256.
[26] *Western Steel Workers Ltd Case* [1987] 1 NWLR (Part 49) 284.
[27] [2010] 3 SCM 165 at 167.

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> of Sections 6(3) and (5) of the 1999 Constitution which has listed the only Superior Courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended, it remains a subordinate court to the High Court.

While under a military government, the unsuspended part of the Constitution is supreme, next in the hierarchy of legislation is the decree of the Federal Military Government. Thus, Decree No. 47 of 1992 that bestow constitutionality and elevated the NICN to the status of a SCR prevailed under the military but ceased to do so under a civilian government.[28]

Thus, in 2010, in order to find a final solution to this issue, the National Assembly amended the 1999 CFRN by enacting the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010. This Act is regarded as a game changer as far as the NICN is concerned because it made significant contributions in solving the existing jurisdictional challenges that had trailed the NICN. The long title of the Act state that it is "An Act to alter the Constitution of the Federal Republic of Nigeria, 2004 for the establishment of the National Industrial Court under the Constitution." Section 2 thereof altered section 6(5) of the principal Act by adding to the list of SCR, the National Industrial Court. By section 254A (1) the National Industrial Court of Nigeria is established alongside other High Courts. By virtue of section 254D (1) for the purpose of exercising any jurisdiction conferred upon it by the Constitution or as

[28] Ameachi B. Chiafor, "Reflections on the Constitutionality of the Superior Court of Record Status and Exclusive Jurisdiction Clause of the NICN Act 2006" 1(3) *Nigerian Journal of Labour and Industrial Relations* (2007) 29.

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may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court. Thus, the Federal High Court, High Court of the Federal Capital Territory, Abuja and the various State High Courts, share coordinate jurisdiction with the NICN.

The NICN has both original and appellate jurisdiction. It exercises appellate jurisdiction from the decisions of the Industrial Arbitration Panel (IAP) and other labour tribunals and exercise original jurisdiction over matters under its exclusive original jurisdiction. The Court has and exercises both civil and criminal jurisdiction but the criminal jurisdiction unlike the civil, is not exclusive.[29] Appeals from the civil decisions of the NICN lie to the Court of Appeal either as of right or with the leave of the court.[30] Notwithstanding anything contrary in the principal Act, the decision of the Court of Appeal on any civil appeal arising from the decision of the NICN, shall be final and no further appeal shall lie to the Supreme Court.[31] The foregoing position has been judicially approved by the Supreme Court in its unanimous decision in *Skye Bank Ltd. v. Victor Iwu.*[32] In this case, the issue was whether aside fundamental

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[29] Section 245C (5) of the 1999 CFRN (Third Alteration) Act, 2010.

[30] Section 243 (2) and (3) of the 1999 CFRN (Third Alteration) Act, 2010.

[31] *Ibid* Section 243 (4). See also Victor O. Ayeni, "Criminal Jurisdiction of the National Industrial Court of Nigeria: Constitutional Watershed or Another Fly in the Ointment?" in Yemi Akinseye-George, Samuel Osamolu, and Akin O. Oluwadayisi, (eds) *Contemporary Issues on Labour Law, Employment and National Industrial Court Practice and Procedures Essays in Honour of Hon. Justice Babatunde Adeniran Adejumo,* (LawLords Publications 2014) 75; Alero E. Akeredolu, and David T. 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, University of Lagos* 1-16.

[32] [2017] 6SC (Pt. 1) 1.

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human rights disputes as contained in Chapter IV of the 1999 CFRN, appeals could lie from the decision of the NICN to the Court of Appeal or such decision on non- fundamental human rights disputes are final. The Supreme Court held that the decision of a court of first instance, cannot be final as that will be prejudicial to the rights of litigants and unnecessary make the court too powerful; that by virtue of section 241 and 242 of the 1999 CFRN and Section 243(3) of the 1999 CFRN (Third Alteration) Act, 2010, there are two types of appeals from the NICN to the Court of Appeal. There is appeal as of right and appeal with the leave of either the NICN or the Court of Appeal. Thus, in these two appeals, any decision, rendered by the Court of Appeal, by virtue of section 243(4) of the 1999 CFRN (Third Alteration) Act, 2010, same is final and conclusive without further appeal to the Supreme Court. what the Supreme Court has done is in accordance with the stated provisions of the of the 1999 CFRN (Third Alteration) Act, 2010, declare and uphold the Court of Appeal as the final Court on labour and employment matters in Nigeria.[33]

At present, the jurisdiction of the NICN contained in section 7 of the NIC Act, 2006, has been expanded under section 254C (1) of the 1999 CFRN (Third Alteration) Act, 2010. The NICN under the 1999 CFRN (Third Alteration) Act, 2010, has the power to entertain suits bothering on unfair

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[33]Bimbo Atilola, Michael Adetunji and Michael Dugberi, "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" (2011) 5(3) *Labour Law Review*, 4.

labour practices, international labour standard[34]; International Labour Organisation (ILO) Conventions, Recommendations which Nigeria has ratified but yet to be domesticated in accordance with section 12 of the 1999 CFRN.[35] It can also entertain disputes bothering on sexual harassment and intimidation from the workplace.[36] The Court has the power to apply both law and equity in determining any dispute before it and in the event of any conflict, doctrines of equity shall take precedent over law. While the Evidence Act regulates admissibility of evidence in Nigerian Courts, the NICN is not bound to strictly abide by the provisions of the Act particularly where undue hardship or the cause of justice will be negatively affected if strict compliance is adhered.[37]

The NICN (Civil Procedure) Rules 2017 regulates practice and procedure at the Court. The Rules is geared towards establishing an enduring, equitable, just, fair, speedy and efficient fast-track case management system for all civil matters within the jurisdiction of the Court.[38] The Rules enjoins the Court to promote amicable settlement of disputes brought before it as a first option and is therefore allowed to maintain and manage an Alternative Dispute Resolution (ADR) Centre. Litigants can directly access the ADR Centre of the Court or a judge

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[34]Bimbo Atilola and Ayodele Morocco-Clarke, "National Industrial Court and Jurisdiction over International Labour treaties under the Third Alteration Act" (2011) 5(4) *Nigerian Journal of Labour and Industrial Relations* 5:4:5

[35]Israel N. E. Worugji, and Nheoma E. Worugji, "The National Industrial Court of Nigeria Swimming with the Tides in Ebere Onyekachi Aloysius v. Diamond Bank" (2020) 11(3) *The Gravitas Review of Business and Property Law* 1-17.

[36]*Pastor (Mrs.) Abimbola Patricia Yakubiu v Financial Reporting Council of Nigeria & Anor.* Suit No. NICN/LA/673/2013 Judgment delivered on the 24th day of November 2016; *Ejike Maduka v. Microsoft Nigeria Ltd. & 3 Ors.* [2014] 41 NLLR (Pt. 125) 67.

[37] Section 12 of the National Industrial Court Act, 2016

[38] Order 1 Rule 4, National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

hearing a matter, can refer same there for settlement in consultation with the parties.

The Rules contains several innovative provisions which include but not limited to trial on records.[39] This is a procedure where the litigants agree to have their disputes determined based on their documentary evidence frontloaded before the court and dispense with the rigours of oral advocacy through examination-in-chief, cross examination and re-examination. This is usually adopted for matters that are non-contentious. The Rules also makes provision for electronic filing of court processes;[40] Order 25 of the Rules makes provision for the placement of certain cases on the fast-track lane of adjudication at the Court; Order 5 empowers the Court to jettison technicalities in the course of adjudication in the interest of justice; and Order 19 empowers the Court make an order arresting an absconding party so as not to frustrate any proceeding before the Court. Indeed, from the foregoing, one can safely state that, the NICN has come through a tumultuous route and has emerged as a Superior Court of Record having survived all the challenges it has gone through.

The enhanced jurisdiction of the NICN under the 1999 CFRN (Third Alteration) Act, 2010 has empowered the Court towards a revolutionary expedition in Nigeria's labour jurisprudence as it has jettisoned some anachronistic hitherto considered trite common law principles. For

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[39] Order 38 Rule 33 (1) (2) and (3) of the National Industrial Court of Nigeria (Civil Procedure) Rules 2017; David T. Eyongndi, "Attainment of Speedy Justice Delivery through the National Industrial Court Trial on Records Procedure: Prospects and Challenges" (2020) 6 *Nigerian Bar Association Section on Legal Practice Law Journal* 163-176.

[40] Order 6A Rule 1(2) NIC Rules, 2017.

instance, at common law, the master is at liberty to terminate the employment of his employee for no reason or any reason (good or bad).[41] The Court of Appeal in *Odeh v. Asaba Textile Mills Plc.*[42] gave judicial amplification to the foregoing position when it held that "the employer can retire the employee without assigning any reason for doing so. A master can terminate the employment of his servant at any time and for any reason or for no reason at all provided the termination is in accordance with the terms of their contract." This position has been assimilated into Nigeria's labour jurisprudence due to her British colonial apron string and has exposed to many a worker to unbearable and unreasonable hardship by making security of employment a mirage.[43] However, since 2010, the NICN has risen to the occasion and have dealt an irrecoverably devastating blow to this common law position.[44] In *Petroleum and Natural Gas Staff Association of Nigeria v. Schumberger Anadrill Nigeria Ltd*[45] the NICN held that while the employer has the right pursuant to the requirement of freedom of contract, to terminate the employment of an employee yet, it cannot be for no reason or any reason howsoever but for good cause. In fact, Adejumo JNIC held as follows:

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[41] *Chukwuma v. Shell Petroleum Development Corporation* [1993] 4 NWLR (Pt. 289) 512.
[42][2004] All FWLR (Pt. 242) 2163.
[43] Femi Aborisade, *Determination of Contract of Employment in Nigeria, South Africa and Zimbabwe,* (Ibadan, Humanista Consult Ltd. & Centre for Labour Studies, 2015) 127.
[44] See also *Nasco Foods Nigeria Ltd. v Food, Beverage & Tobacco Senior Staff Association* Suit No. NIC/6/2003 Judgment delivered on 16/7/2009.
[45] Suit No. NIC/9/2004 delivered 18/9/2007.

> The respondent also argued that it has the right to terminate the employment of any of its employee (sic) for reason or no reason at all. While we do not have any problem with this at all, the point may be made that globally it is no longer fashionable in industrial relations law and practice to terminate an employment relationship without adducing any reason for such a termination. The problem we however have here is, when a reason is given for the termination, whether the affected staff cannot contest the reason. It is our opinion that when an employer terminates an employment and gives a reason for such termination, the employee has a right to contest the reason.[46]

Based on the above decision, Kola-Olalere J, in *Mr. Ebere Onyekachi Aloysius v. Diamond Bank Plc.*[47] held that the termination of Employment Convention, 1982 (No. 158) and Recommendation No. 166 regulate termination of employment at the initiative of the employer and the NICN is empowered to apply same despite the provisions of section 12 of the 1999 CFRN. Article 4 thereof provides that the employment of an employee shall not be terminated unless there is a valid reason for such termination connected with his capacity or conduct or based on the operational requirements of the undertaking, establishment or service. Thus, any reason outside these, will be discountenanced and such termination will be declared wrongful and can attract award of punitive damages.

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[46] See also *Nasco Foods Nigeria Ltd. v Food, Beverage & Tobacco Senior Staff Association* Suit No. NIC/6/2003 Judgment delivered on 16/7/2009.
[47] [2015] 58 NLLR (Pt. 199) 92.

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Also, while the remedy of reinstatement is only available in statutorily flavoured employment, the NICN have transmogrified this position by deciding that under certain limited permissible situations, reinstatement will be ordered in master servant employment. In *Mix and Bake Flour Mills Industries Ltd. v. FBTSSA*[48] the Court held that an employer who terminated the employment of its employee due to their trade union activities, is bound to have the termination declared as unlawful and wrongful. The reason is that such termination is a blatant and violent infraction of the provisions of the section 9(6) (ii) of the Labour Act and section 43 (1) (b) of the Trade Disputes Act 2004 which prohibits termination of employment on the basis of trade union activity. Where such occurs, an order of reinstatement as opposed to award of damages, shall be made. It is crystal clear that the NICN has introduced paradigm shifts in the sphere of labour and employment relations in Nigeria pursuant to its constitutional stature under the 1999 CFRN (Third Alteration) Act, 2010.

3. Analysis of *Francis John & Anor. v. Comrade Emma Eze & Anor.*

This section of the paper, clinically reviews the Court of Appeal decision in *Francis O. John & Anor v. Comrade Emma Eze & Anor.*[49] The brief facts of the decision are given, the issues decided and the effect of the journal on the functionality of the NICN as a specialised court is examined. The brief facts of the case are that, the 1st Respondent and the 1st Appellant contested in the election organised for the office of the

[48] [2004] 1 NLLR (Pt. 2) 247.
[49] [2021] 2 NWLR (Pt. 1759) 90.

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President of the 2nd Appellant by its National Delegates Conference which held in Abuja. At the end of the election, the 1st Appellant was declared the winner of the election. The 1st Respondent was not satisfied in the outcome of the election and therefore sent a petition to the electoral panel constituted by the 2nd Appellant's National Delegates Conference. The panel heard the petition and ruled that same was lacking in merit hence, dismissed it. Being dissatisfied with the decision of the panel, he filed an action at the NICN Calabar Judicial Division against the 2nd Respondent and the Appellants as defendants seeking both declarative and injunctive reliefs. The originating processes he filed, showed that the cause of action arose in Abuja while the Appellants and the 2nd Respondent resides and carry on business in Lagos.

On being served with the processes, the Appellants entered conditional appearance and filed a motion on notice for the striking out of the suit for want of jurisdiction. Upon being served with the originating processes, the Appellants, entered appearance on protest and filed a motion on notice seeking to strike out the suit for want of jurisdiction on the grounds that the Claimant/Respondent had not complied with the internal dispute settlement mechanism of the 2nd Appellant and the originating processes were not endorsed in accordance with the requirement of section 97, 98 and 99 of the SCPA since they were issued in one State to be served in another. The Constitution of the 2nd Appellant stipulates that all internal disputes among its members should be resolved by an internal procedure in which the National Delegates Conference is final. The trial court, after hearing arguments from the

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parties, delivered its ruling on the 25th day of January, 2018 wherein it held that the 2nd Respondent being dissatisfied with the election, had exhausted all internal dispute settlement mechanism of the 2nd Appellant before filing his action in court to seek a review of the decision of the electoral panel. The court also held that it treats the Federal Republic of Nigeria as one State for service of its processes and that sections 97 and 99 of the SCPA are applicable to it only in respect of originating processes to be served outside Nigeria. By this, the trial court meant that, it has a single national territorial jurisdiction all over Nigeria and the court, therefore, dismissed the objection of the Appellants' application for lacking in merit.

Being dissatisfied with the well-considered ruling, filed a notice of appeal dated and filed on the 16th day of April, 2019 containing five grounds of appeal. The Appellants filed their brief of argument and formulated three issues for the determination of the court which includes whether the provisions of section 97 and 99 of the SCPA are applicable to proceedings before the NICN; whether the commencement of the suit at the Calabar judicial division of the trial court does not amount to forum shopping; and whether the suit is not incompetent by the failure of the claimant/Respondent to exhaust the internal dispute settlement mechanism of the 2nd Appellant? It is apposite to note that, in this paper, we are only concerned with the issue one and shall confine our discussion strictly to it.

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a. **Arguments of the Appellants:** With respect to issue one, the Appellants argued that the decision of the trial court that sections 97 and 99 of the SCPA are not applicable to proceedings before it, is an affront to the 1999 CFRN particularly Item 57 of Part 1 of the Second Schedule which donates powers to the National Assembly to legislate on the appointment, duties, powers of sheriffs, the enforcement of judgments and orders, the service and execution of civil processes of the courts throughout Nigeria. it further contends that section 254D of the 1999 CFRN (Third Alteration) Act, 2010, has placed the NICN on the same pedestal as all the High Courts established under the same Constitution as such, the NICN is bound to apply the provisions of the SCPA. Although Section 254F of the 1999 CFRN (Third Alteration) Act, 2010 as well as Section 36 of the NIC Act, 2006, empowers the President of the NICN to make Rules for the regulation of the practice and procedure at the NICN (pursuant to which the 2017 NICN Rules were made), the power so given to the President of the NICN, do not include the power to make rules pertaining to matters under the legislative province of the National Assembly. Reliance was placed on *Federal Republic of Nigeria v. Dariye.*[50] In any case, the SCPA aside being a specific legislation, it is superior to the 2017 NICN Civil Procedure Rules and therefore takes precedent on the hierarchy of legislation hence, its provisions, cannot be used to restrict or circumvent that of the SCPA. The fact that sections 97 and 98 of the SCPA are couched in mandatory term, do not give the trial court any opportunity to abdicate from applying same under whatever guise.

[50] (2011) LPELR- 4151.

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b. **Arguments of the Respondents:** In response, the 1st Respondent contended that the provisions of Section 97, 98 and 99 of the SCPA are inapplicable to the NICN because, the definition section of the SCPA, in defining courts, specifically mentioned the courts its provisions are to apply to and having expressly not mentioned the NICN, same is expressly excluded from applying the Act. He argued that on the hierarchy of legislation, the NIC Act, 2006, stands on equal footing with the SCPA which has empowered the President of the NICN to make Rules and such Rules (i.e. the 2017 NICN Civil Procedure Rules), are valid. Besides, section 21 (i) and (ii) of the NIC Act has established the single nationwide jurisdiction of the NICN. Hence, the powers conferred on the President by section 36 (1) and (2) of the NIC Act, covers making of Rules on issuance of originating processes, service and execution of judgments and orders, conditions precedent before any of these acts is done and the procedure to be followed after. He also contend that the NICN Rules, is a subsidiary legislation pursuant to section 254F of the 1999 CFRN (Third Alteration) Act, 2010 and carries the force of law just as the Constitution itself. Thus, it continues the tone set by the section 36 of the NIC Act which dispenses the applicability of sections 97, 98, and 99 of the SCPA to the NICN placing reliance on *NNPC v. Famfa Oil Ltd.*[51] He further contended that the Supreme Court decisions in *Owners of M. V. Arabella v. NAIC*[52] and *Izeze v. INEC*[53] relied upon

[51] [2012] 17 NWLR (Pt. 1328) 148.
[52] [2008] 17 NWLR (Pt. 1097) 182.
[53] [2018] 11 NWLR (Pt. 1629) 110.

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by the Appellants are misconceived and inapplicable as the Supreme Court in them, did not consider the peculiar provisions of Section 21 and 36 of the NIC Act, 2006 and therefore, these decisions cannot be authority on the point being canvassed. He rather placed reliance on the decision in *Biem v. Social Democratic Party*[54] where it was held that, originating process issued by the Federal High Court in one territorial jurisdiction (within Nigeria) cannot be considered to be for service outside jurisdiction and therefore required to be endorsed for service outside a state and marked accordingly as a concurrent writ and neither would it be necessary to seek leave of court.

c. **Decision of the Court:** The Court found that, there are myriads of cases where the Supreme Court has pronounced on the applicability of sections 97, 98, and 99 of the SCPA. One of such cases is *Owners of M. V. Arabella v. NAIC*[55] wherein it held that, the SCPA, makes appointment for sheriffs, the enforcement of judgments and orders, and the service and execution of civil processes of the courts throughout Nigeria. Section 2 which defines courts to mean a High Court and Magistrate Court hence, the provisions of section 97 thereof, are applicable to all High Courts, including the Federal High Court. In *Central Bank of Nigeria v. Interstella Communication Ltd.*[56] it was held that the provisions of the SCPA are mandatory and applicable to the Federal High Court on the ground that same is an Act of the National Assembly while the Federal High Court (Civil

[54] [2020] 2 NWLR (Pt. 1708) 379.
[55] [2008] 17 NWLR (Pt. 1097) 182.
[56] [2018] 7 NWLR (Pt. 1618) 294.

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Procedure) Rules is a subsidiary legislation, a byelaw inferior to an Act of the National Assembly.[57] The Court also noted that, despite these authorities, in *Biem v. Social Democratic Party*[58] it was held that the principal legislation that deals with issuance and service of court processes is the SCPA but this is solely to the State High Courts and High Court of the Federal Capital Territory (FCT), Abuja because their territorial jurisdictions are circumscribed by the territory each state occupies as well as the FCT. Thus, the service of any issued by the Federal High Court can be carried out under the SCPA, if such service is to be executed outside the territory of Nigeria. to that extent, an originating summons which was issued and to be served within the territory of Nigeria cannot be regarded as service outside jurisdiction and therefore does not require the leave of court and or be endorsed as a concurrent writ in view of Section 19 (1) of the Federal High Court Act and Order 6 Rule 31 of the Federal High Court (Civil Procedure) Rules 2009. In like manner, the court noted that the Supreme Court in 2019 held in *Omajali v. David*[59] that for the purpose of service of court processes be they originating processes or not, the Federal High Court has and exercises jurisdiction throughout the country and a party does not require leave for such process to be served within Nigeria. with the foregoing, the court, concluded on the issue that, the Supreme Court having settle the issue of the applicability of the provisions of the SCPA to the Federal High Court

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[57] *Izeze v. Independent National Electoral Commission* [2018] 11 NWLR (Pt. 1629) 110.
[58] [2020] 2 NWLR (Pt. 1708) 379.
[59] [2019] 17 NWLR (Pt. 1702) 438 at 453-459.

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which shares similar characteristics with the NICN, the learned trial judge was therefore on the right footing when he concluded that:

> From the foregoing, it is obvious that in the eye of the National Industrial Court of Nigeria, the federation known as Nigeria is one state and that any state other than Nigeria is foreign country. Therefore, the application of sections 97 and 99 of the Sheriffs and Civil Process Act is only applicable to this honourable court only to the extent that the service of the originating process is outside Nigeria, and I so hold.

The Court therefore resolved the issue against the Appellants.[60] This decision, is profound and a welcome development. The judgment is not only right in law but accords with common sense. Federal courts like the Federal High Court, NICN, Court of Appeal and Supreme Court is one despite located in various States. The Rules regulating practice and procedure in each of these court is the same in all their various judicial divisions. The dividing of these court (with the exception of the Supreme Court) into various judicial divisions does not negate from their singleness but is only meant to make way for easy access and administration of justice. The effect of tying the NICN to the apron string of sections 97, 98, and 99 of the SCPA is inimical to its specialised nature. The NICN deals with labour and employment issues which by their nature, deserves to be settled expeditiously. If the NICN or the FHC, (although of the same status with the State High Court) are made amenable to the requirement of section 97, 08, and 99 of the SCPA, aside

[60] *Francis O. John & Anor. v. Comrade Emma Eze & Anor.* [2021] 2 NWLR (Pt. 1759) 90 at 109, Para. E.

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that such is discordant with common sense, it will lead to avoidable delay resulting from the opening of the floodgate of technicalities associated with such requirements.

In fact, one may wonder, what is the utilitarian value of the said sections 97, 98 and 99 of the SCPA to the administration of justice? Will it matter that a process not so endorsed is nevertheless, served? A situation where a trade dispute is at the verge of disrupting the economy and an objection is taking for noncompliance with the SCPA on endorsement of the General Form of Complaint, followed by series of interlocutory appeals that may take considerable time to settle, will cause untold hardship. Situations like this, must be guided against and the decision of the court, meets this need. The peculiarities of the NICN require that it be insulated from possible shackles of technicalities a practice which is generally associated with litigation.

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4. Conclusion and Recommendations

Extrapolating from the above analysis, it is trite that the NICN have had a tedious evolutionary journey with queries on its constitutional status and stature however, the 1999 CFRN (Third Alteration) Act, 2010, finally put to rest, the turmoil. While the SCPA, is a federal legislation that regulates issuance and service of court processes in Nigeria, its provisions requiring that, originating processes filed in a court in one state but to be served in another, must be endorsed disclosing this fact, are inapplicable to the NICN because of some reasons. These reasons include the fact that the NICN has a single nationwide territorial jurisdiction and the definition section of the Act, which defines court,

expressly omitted the NICN hence, *expressio unius est exclusio alterius*. Aside this fundamental justification, as a specialised court which deals with sensitive matters that require expeditious settlement, the potential of the relevant provisions of the SCPA herein discussed to be unscrupulously used to advance technical justice as opposed to substantial justice which the court is reputed for, supports the non-applicability of the sections 97, 98, and 99 of the SCPA. Given that the Court of Appeal is the final Court on matters emanating from the NICN, the decision is a welcomed development.

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