

EFFECT OF INDUSTRIAL DISPUTES RESOLUTION ON INVEST

“EFFECT OF INDUSTRIAL DISPUTES RESOLUTION ON INVESTMENT IN AFRICA”

BEING PAPER

DELIVERED AT LAGOON RESTURANT

ORGANISED BY:
NATIONAL CONFLIT MEDIATION GROUP

ON 12TH NOVEMBER, 2009

BY

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INTRODUCTION

In presenting a paper of this nature in an environment full of erudite and articulate sound and astute legal juganuts versatile minds, eminent audience, one should not be unmindful of the pedigree of the audience one is coming to address.

Though I am the President of the National Industrial Court, that notwithstanding whatever views and opinions expressed in this paper are wholly mine. They do not represent the decisions rulings, thinking or judgment of the court. In consequence, I am absolutely responsible as an individual for all the comments contained in this paper and I adopt same as mine.

When I received the invitation to present this paper, initially I felt uncomfortable because of the heavy workload. I have on me and secondly, I do not know what qualifies me to be invited as paper discussant in an occasion like this. On a second thought, I considered

myself that I have no choice than to whole heartedly accept the offer. The reason for my second thought could not be far fetched. The topic of today’s paper is “Effect of Industrial Disputes Resolution on Investment in Africa”

Many people in Nigeria including some of our friends at the bar do not know or understand what NIC means or stands for. Some have not taken the pains of searching for the Act establishing the court talkless of sighting the Rules of Court. The few that have heard about the court are having the view that the court is still operating under the Trade Disputes Act as amended and the Rules of Court made under.

This is a unique opportunity for us all to rub minds and be better informed about what NIC stands for, what it does and how it does it. It is my hope that within the next few minutes this may be accomplished, for us to be able to follow the trend of events at the NIC, it becomes necessary to go a little bit into the historical background of the NIC under the Trade Disputes Act of 1972 as amended. This will give us the privilege of understanding the journey the court has gone through before attaining its present height.

TRADE DISPUTES RESOLUTION MECHANISM UNDER THE TDA

Part 1 of the Trade Disputes Act of 1976 (TDA) which is headed a “procedure for settling Trade Disputes” was originally meant to regulate trade disputes simpliciter. It consists of sections 1 – 18. Trade Dispute is defined in the Act as “any dispute between employees and workers or workers and workers which is connected with the employment or non – employment or the terms of employment and physical conditions or work of any person”

The position of the NIC has always been that the processes enumerated under Sections 1 – 18 of TDA must be followed religiously before the jurisdiction of the Court can be activated. That is why in certain cases the N.I.C declined to hear intra – inter-union disputes as a Court of first instance and has been insisting that the processes enumerated under Part 1 of the TDA be followed. It is however, pending issues whether under NIC inter and intra – union disputes need to go through the

processes of Part 1 of the TDA before the NIC can hear them.

Under Section 3 of the TDA if there is an agreed means for settlement of a dispute apart from the Act, the parties to the dispute shall first attempt to settle it by that means. If that attempt fails, the parties shall within seven days of the date on which the dispute arises or is first apprehended meet under a mediator, mutually agreed upon between the parties, with a view to an amicable settlement of the dispute. If the dispute is not settled within 14 days of the date on which a mediator is appointed, the dispute shall be reported to the Minister in writing. The Minister here is the Hon. Minister of Employment labour & Productivity.

The Minister has the powers under Section 6 to ensure that the processes enumerated under Section 3 and 4 of the TDA have been complied with. If the dispute remains unsettled within the period stipulated by the Minister, he will appoint a conciliator for the purpose of effecting a settlement of the dispute. If a settlement of the dispute is reached within 7 days of his appointment the conciliator shall report the fact to the minister and forward to him a memorandum of the terms of the settlement. If a settlement of the dispute is not reached within 7 days of his appointment, the matter is then referred by the Minister to the Industrial Arbitration Panel for settlement within 14 days of receipt of the conciliator's report.

An Arbitration Panel is obliged to make its award within 21 days of its Constitution or such longer period as the Minister may in any particular case allow. On receipt of a copy of the award, the Minister shall cause it to be given to the parties or their representatives. The award is then published in the manner deemed fit by the Minister. If there are no objections the award is then confirmed. If notice of objection is given to the Minister, the dispute is then referred to the NIC. The provision of law has been altered by section 7(5) of NICA, 2006. Under this section the parties has the right to apply directly to the Court.

One may therefore ask, are there no conflict between this provisions of the law? The answer is that section 53 of NICA provides that other provisions of the Trade Disputes Act shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of the Act.

The Minister has the power to constitute a board of inquiry under Section 32 and 33 of the TDA. This is another mechanism for the resolution of trade dispute. Under Section 32(1), of the TDA, the board is statutorily expected to only inquire into the causes and circumstances of the trade dispute in question and report to the Minister. But the role of the Minister in the ultimate resolution of dispute under the above provisions of the TDA is very significant and weighty.

For there to be industrial harmony, the labour/trade disputes resolution mechanism put in place by law must be applied in a manner that will guarantee their certainty, reliability, dependability and consistency. The Court should as well endeavour to deliver justice in consonance with these attributes. The process of TDA is to ensure that attempt is made to settle the dispute through the process of mediation, conciliation and Tribunal before the matter are referred to National Industrial Court as Appellate Court.

A brief History of the National Industrial Court (NIC)

It is necessary to give a brief history of the National Industrial Court, established by the Trade Disputes Decree No.7 of 1976, which later became the Trade Disputes Act (TDA) Cap T8 Laws of the Federation of Nigeria, 2004. Section 20 of the said Act provides that:

There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as "the Court") which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.

Under the Act, the membership of the Court is comprised of the President of the Court and four other members (in the Act referred to as "ordinary members") all of whom shall be persons of good standing, to the knowledge of the Minister of Labour, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have a competent knowledge of economics, industry and trade.

Prior to the establishment of the Act in 1976, in particular, prior to 1968, industrial relations law and practice was modelled on the non-interventionist and voluntary model of the British approach. The statutory machinery for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Inquiry) Act. That Act, which was first enacted in 1941, gave power to the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where negotiation had broken down. It had two notable feature which, in fact, might be regarded as drawbacks. First, it lied in the absolute discretion of the parties to decide whether or not they would avail themselves of the machinery provided.

The Minister could not compel them to accept his intervention. Thus, he could only appoint a conciliator upon the application of one of the parties. While he needed the consent of both parties to set up an arbitration tribunal.

Secondly, there were no permanent institutions laid down before which the disputing parties could go for the settlement of their labour disputes.

Instead, an ad hoc body, an arbitration panel had to be set up for a particular dispute and once it gave its decisions it became *functus officio*.

The year 1968 witnessed the beginning of the Civil War in Nigeria. It was therefore expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. So, the Trade Disputes (Emergency Provisions) Act No.21 of 1968 was enacted. It suspended the Trade Disputes (Arbitration and Inquiry) Act and gave to the Minister of Labour compulsory power of intervention in trade disputes while retaining the usual methods of conciliation, formal inquiry and arbitration. The requirement for consent of the parties before the Minister could act was abrogated so that he could resort to these methods without the consent of the parties to the disputes. The 1968 Act created a time table from the time that employers and workers became aware that a dispute existed to the time that a dispute was notified to the Minister and, within the discretionary powers conferred on him by the Act, to decide on what sort of action to take.

It is pertinent at this juncture to make some observations on the National Industrial Court under the TDA as amended by the Trade Disputes (Amendment) Act 1992 (Decree No.47 of 1992).

First of all, as a product of an interventionist policy in both the economic and labour spheres, the NIC was generally structured in a regimented and compartmentalized labour disputes resolution regime with circumscribed ministerial discretion. For instance, only in a few cases could the jurisdiction of the NIC be activated by the disputants themselves without recourse to the Minister of Labour. In the majority of cases, the jurisdiction of the NIC was activated only upon a referral from the Minister of Labour. Indeed, in the words of Rule 13 of the National Industrial Court Rules, Cap T8 Laws of the Federation of Nigeria, 2004, a trade dispute “shall be commenced by reference from the Minister”.

African economy being a developing economy must ensure that necessary machineries are put in place to minimize industrial disputes and to engendered economic growth.

Africa economy has in recent times witnessed a lot of industrial dispute in virtually all its aspects.

For instance, the oil sector, educational section and the medical sector, Aviation sectors of the African economy had witness series of industrial disputes collimating in loss of investment and a major hindrance to development in African.

For instance, in Nigeria the issue of kidnapping of foreigner in the Niger Delta and the demand for ransom has greatly hindered investment

Section 37(1)(b)

See cases of senior Staff Association of Statutory Corporation and Government Owned Companies, Nigerian Ports Authority Branch and others v. Senior Staff Association of Statutory Corporations of Government Owned Companies, unreported suit No. NIC/8A. 2001 decided on July 3, 2001: *Marine Workers Union of Nigeria and Ors v. NLC and as* (2005) 4 NLLR (Pt. 10) 270

Section 3 (2) TDA

Section 5 (1), (2) TDA

Section 8 (1) TDA

Section 4 (1), (2) TDA

Section 13 (1) TDA

See Chioma Kanu Agomo – “Nigeria”, in *Labour Law and Industrial Relations in the International Encyclopedia of Law* (Prof. Dr. Blanpain – ed), 2000 at pp. 38 - 39

See Section 3, Cap 201, Laws of the Federation of Nigeria and Lagos, 1958.

Section 4(2), Trade Disputes (Arbitration and Enquiry Act) 1958.

See Sections 2- 7