

THE CONSTITUTIONAL JURISDICTION OF THE NATIONAL INDUSTRIAL COURT: THE UNSETTLED EXCLUSIVENESS QUESTION

BY

PHILIP E. OAMEN AND TIJANI A. ABDULHAKEEM

Abstract:

This paper examines the jurisdictional problem occasioned by the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration Act, 2010) (**the “Third Alteration Act”**) amidst the existing controversy surrounding the exclusive Jurisdiction of the National Industrial Court (NIC). The NIC was established pursuant to the **Trade Dispute Decree No. 7 of 1976 (TDD)**. Since 1976, there had been myriad of controversies as to whether the NIC was indeed a Superior Court of Record as the TDD purported it to be. Controversies also trailed the exclusivity of the Jurisdiction, with respect to causes and matters conferred on the NIC by the TDD.

The Nigerian Federal Legislature, however, recently laid the above mentioned controversies to rest by amending the Constitution of the Federal Republic of Nigeria, 1999 (**the “1999 Constitution”**) vide the Third Alteration Act, which amendment was assented to by the President on 04 March 2011. Interestingly, **Section 2 of the Third Alteration Act** amended **section 6 of the 1999 Constitution**. By this amendment, the NIC was constitutionally upgraded to the status of a Superior Court of Record. Again, **Section 254C(1) of the Third Alteration Act** now vests exclusive jurisdiction on the NIC with respect to causes and matters stated thereunder. This, ordinarily, should have been a salutary move by the National Assembly in settling the long over-flogged jurisdictional

contention. Alas, this is not to be as the Third Alteration Act has yet germinated another problem or otherwise compounded the earlier problem relating to the exclusive jurisdiction of the NIC.

The arising problem is as inherent in section 251(1) of the 1999 Constitution. **Section 251(1) of the 1999 Constitution** vests exclusive Jurisdiction on the Federal High Court (**FHC**) with respect to matters stated thereunder. Emphatically, the section commences with:

“Notwithstanding anything to the contrary 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 Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters”.

Similarly, **section 254C (1) of the Third Alteration Act** also begins with:

“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”.

The constitutional question agitating concerned legal minds is, which, as between the FHC and the NIC, would assume jurisdiction in matters touching on the jurisdictional purviews of both the FHC and NIC. For example, where the contract of employment of an employee of a federal government agency is terminated which of the courts, FHC or NIC, will assume jurisdiction over such matter? Which of the “notwithstanding clauses” in sections 251(1) of the 1999 Constitution and 254C(1) of the Third Alteration Act would prevail since the termination is both an

administrative or executive action by a federal government agency as well as a labour/employment related matter? This is the issue addressed in this paper.

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Introduction

The National Industrial Court (NIC)¹ was established in 1976 by the **Trade Dispute Decree No. 7 of 1976 (TDD)**. The TDD was later amended by the **Trade Dispute (Amendment) Decree No. 47 of 1992² (the “TDA”)**. The crux of the TDA was the purported elevation of the NIC to the status of a Superior Court of Record, contrary to the clear provisions³ of the Constitution of the Federal Republic of Nigeria, 1999 (**the “1999 Constitution”**) which excluded the NIC from its list of Superior Courts of Record. Many writers⁴ had criticized and questioned the legality and constitutionality of the status bestowed on the NIC by the TDA.

Section 21 of the TDA was also a subject of controversy as the section purportedly gave the NIC exclusive jurisdiction over certain matters. For the avoidance of doubt, **section 21 (1)** provides:

“The court shall, to the exclusion of any other court, have jurisdiction:

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¹ Renamed “the National Industrial Court of Nigeria” by section 254A of the Third Alteration Act

² Now Trade Dispute Act (TDA) Cap T8, Volume 14, Laws of the Federation of Nigeria, 2010

³ See section 6(5) of the 1999 Constitution

⁴ See for instance O.D. Ejere *“Further Reflections On the Constitutionality of the National Industrial Court (NIC) Act, 2006”*, Labour Law Review

- (a) *To make award for the purpose of settling trade dispute and;*
- (b) *To determine the question as to the interpretation of:*
 - (i) *Any collective agreement;*
 - (ii) *The award made by an arbitral tribunal or by the court under part 1 of the Act;*
 - (iii) *The terms of settlement of any trade dispute as recorded in any memorandum under section 8 of this Act”.*

The National Industrial Court Act (NICA) 2006⁵ did not only maintain the Superior Court of Record and the exclusive Jurisdiction clauses of the TDA, but also expanded the scope of the exclusive Jurisdiction of the NIC, thus fueling the afore-said controversies relating to the court. It is in a bid to lay to rest the accumulated controversies surrounding the status and exclusive Jurisdiction of the NIC that the National Assembly enacted the Constitution of the Federal Republic of Nigeria, 1999 (Third Alteration Act, 2010) (**the “Third Alteration Act”**). **Section 2 of the Third Alteration Act** amended **section 6 of the 1999 Constitution**. By this amendment, the NIC was constitutionally upgraded to the status of a Superior Court of Record. On a related note, **Section 254C(1) of the Third Alteration Act** has not only expand the Jurisdiction of the NIC but it has also now constitutionally vested exclusive Jurisdiction on the NIC with respect to causes and matters stated thereunder.⁶ This act of the National Assembly, ordinarily, should have been a salutary legislative move in resolving the much over-stretched controversies as regards the exclusiveness of the NIC’s Jurisdiction. But again, this is not to be as the

⁵ See sections 7 and 11 of the NICA

⁶ See B. Atilola and M. Dugeri, *“National Industrial Court of Nigeria and Proposed Alternative Dispute Resolution Centre: A Road Map”* Labour Law Review, Vol. 6, No. 1, March, 2012, Pgs. 1-62, Particularly at Pg. 10

Third Alteration Act has further introduced another problem of a likely jurisdictional collision between the NIC and Federal High Court (FHC) vis -a- vis the exclusive nature of the Jurisdiction of the two courts.

Question

The problem, herein identified, pinches on the jurisdictional combat that may arise in the likely event of a collision in the jurisdictional purviews of both the FHC and the NIC. By the provisions of section 254C(1) of the Third Alteration Act, an inherent jurisdictional question becomes very probable and imminent, as to which, as between the FHC and the NIC, would assume Jurisdiction in matters touching on the exclusive jurisdictional purviews of both the FHC and the NIC, given that both exclusive jurisdictions are constitutionally flavoured. Explicitly, **section 251(1)(r) of the 1999 Constitution** vests exclusive Jurisdiction on the FHC with respect to “any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of his agencies”. Curiously, the section starts with:

“Notwithstanding anything to the contrary 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 Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters”.

On the other side of the divide, **Section 254C(1) of the Third Alteration Act** also vests exclusive Jurisdiction on the NIC on matters stated thereunder such as matters relating to or connected with labour, employment, trade unions, industrial relations and matter arising from the workplace, the conditions of service, including health, safety, welfare

of labour, employee, worker and matters incidental thereto or connected therewith. Again, this section⁷ begins with:

“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 exclusive of any other court in civil causes and matters...”.

The concern raised herein, illustratively, is as to which court, as between the FHC and the NIC, would have (exclusive) Jurisdiction to hear and determine a suit relating to the unlawful termination of employment of a party, who is an employee of the Central Bank of Nigeria (an agency of the federal government)? Which as between the exclusive Jurisdiction provisions of Section 251(1) of the 1999 Constitution and section 254C(1) of the Third Alteration Act would prevail over the other, given that the termination of the employee’s contract of employment is both an executive or administrative action or decision by a federal government agency as well as a labour/employment related matter? In other words, is it the FHC that would exercise its exclusive Jurisdiction under section 251(1)(r) over “any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of its agencies”, since the CBN is a federal government agency and the suit seeks a declaration against its executive or administrative action or decision in terminating the employee’s contract of employment? Or it is the NIC that will assume exclusive Jurisdiction over the suit, given that it has exclusive Jurisdiction over all labour/employment related matters under section

⁷ That is section 254C (1) of the Third Alteration Act

254C(1) of the Third Alteration Act? These issues would be addressed hereunder.

The Pre-Constitution Amendment Jurisdiction of the NIC

As stated earlier, the NIC was established by the TDD, which was amended by the TDA⁸. Accordingly, by its section 21, the TDA provides for the Jurisdiction of the NIC as follows:

“(1) the court shall, to the exclusion of any other court have jurisdiction:

- (a) To make award for the purpose of settling trade disputes and;*
- (b) To determine questions as to the interpretation of:*
 - (i) Any collective agreement.*
 - (ii) The award made by an arbitral tribunal or by the court under part 1 of this Act;*
 - (iii) The terms of settlement of any trade dispute as recorded in any memorandum under section 8 of this Act”.*

This statutory Jurisdiction was sustained and further expanded by the NICA⁹, which also upgraded the NIC to a Superior Court of Record as well as conferred on the NIC the powers of a High Court under section 7 of the NICA. Section 7 of the NICA provides:

“The court shall have and exercise jurisdiction in civil causes and matters:

- (a) Relating to –*
 - (i) Labour, including trade unions and industrial relations;*
 - and*

⁸ See footnote 1

⁹ See section 1 of the NICA, 2006

- (ii) *Environment and conditions of work, health, safety and welfare of labour, and matters incidental thereto; and*
- (b) *Relating to the grant of any order to restrain any person or body from taking part in any strike, lock out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock out or any industrial action;*
- (c) *Relating to the determination of any question as to the interpretation of –*
 - (i) *Any collective agreement;*
 - (ii) *Any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute;*
 - (iii) *The terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement;*
 - (iv) *Any trade union constitution; and*
 - (v) *Any award or judgement of the court”*

However, the NICA goes further to resurrect the controversies on the exclusive Jurisdiction of the NIC, when it provides in section 11:

“in so far as jurisdiction is conferred upon the court in respect of the causes or matters mentioned in the foregoing provisions of this part of this Act, the Federal High Court, the High Court of a state, the High Court of the Federal Capital Territory, Abuja or any other court, shall, to the extent that exclusive jurisdiction is so conferred upon the court, cease to have jurisdiction in relation to such causes and matters”.

The constitutionality of the exclusive Jurisdiction of the NIC, as birthed by the afore-reproduced provisions of the TDA, was subject of judicial determination in **Attorney-General of Oyo State v Nigeria Labour**

Congress¹⁰, where the Court of Appeal, per Adekeye, JCA (as she then was) held:

“The curtailment of jurisdiction of the High Court established the conflict between the Trade Dispute Act, Cap 432 and section 272 of the 1999 Constitution. Whereas, section 251 of the 1999 Constitution is the only lawful and constitutional curtailment on the jurisdiction of the State High Court, the provisions of section 1(3) is categorical on the fact that any law that conflicts with the Constitution is null and void. Since the Trade Dispute Act, Cap 432 (as amended) conflicts with section 272 of the 1999 constitution – by section 1(3) of the same Constitution, the Trade Dispute Act vesting exclusive jurisdiction on the National Industrial Court in trade dispute matters becomes null and void....”

Similarly, after the NICA came into force, the Supreme Court had the opportunity of pronouncing on the status of the NICN. Thus in **N.U.E.E v B.P.E**¹¹, the apex court per Chukwuma-Eneh JSC, held:

“on the backdrop of the foregoing, therefore, Decree No 47 of the 1992 now deemed an Act of the National Assembly is an existing law under section 315(1)(a) of the 1999 Constitution. Before I come to consistency test, the appellants have argued and rightly so that the jurisdiction of State High Court under the 1999 Constitution is radically different from its jurisdiction under the 1979 Constitution, in that, the word ‘unlimited’ has been dropped in outlining its jurisdiction under section 272 and so cannot entertain any matter specifically given to the National Industrial Court or other courts by an Act of the National Assembly. I find this argument as submitted

¹⁰ [2003] 8 NWLR (Pt. 821) 1 @ 33

¹¹ [2010] 7 NWLR (Pt. 1194) 538 @ 571-572 Paras B-E

by the appellants completely flawed. The only difference between the jurisdiction of the State High Court as conferred by the Constitutions of the 1979 and 1999 is that the jurisdiction of the High Court has been made subject to section 251 of the 1999 Constitution, giving exclusive jurisdiction to the Federal High Court that is over matters listed therein. That removal notwithstanding, it is still my view that the State High Court is the court with the widest jurisdiction and has the power to grant declarations and injunctions in matters as this matter, I shall revert to that question later. I now proceed to decide where the provisions of the Trade Dispute Act (as amended) that is, Decree No 47 of 1992 is inconsistent with any of the provisions of the Constitution. I have before now set out in extenso the provision of section 272(1) of the 1999 Constitution as well as Decree No 47 of 1992. The provisions of section 272(1) are plain and the phrase "subject to the provision of this constitution" is used to the effect that the jurisdiction of the State High Court can only be restricted by the provisions of the 1999 constitution and not as is being urged by the appellants by any Act of the National Assembly otherwise specifically conferring exclusive jurisdiction to a court or whatever to override the jurisdiction of the State High Court ... In summary, the implication of conferring exclusive jurisdiction in trade disputes on the National Industrial Court is to exclude the wide powers of the State High Court thus causing the conflict between Decree No 47 and section 272 of 1999 Constitution and as I have outlined above, any inconsistency with section 272 of 1999 Constitution in that regard is void to the extent of the inconsistency. This Constitution has knocked the bottom off the defendants/appellants' case in that regard

as I declare Decree No. 47 null and void being inconsistent with section 272 of the 1999 Constitution.”¹²

However, in a presumed attempt to legislatively resolve the above inconsistency problems, the National Assembly amended the Constitution vide the Third Alteration Act wherein the NICN was constitutionally upgraded to a Superior Court of Record¹³ and its exclusive Jurisdiction was also constitutionally conferred and expanded.

The Exclusive Jurisdiction of the NICN under the Third Alteration Act

As noted above, the Third Alteration Act has not only constitutionally recognized the exclusive Jurisdiction of the NICN in certain specified matters, but it has also effectively expanded the said exclusive Jurisdiction vide section 254C(1). For the purposes of clarity and better appreciation, we have taken the liberty to reproduce the provisions of section 254C (1) &(2) as follows:

“(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 on 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;

¹² See also *African Petroleum Plc v. Akinnowo* [2012] 4 NWLR (Pt. 1289) 100 @ 116 paras F-H, per Ariwoola JCA.

¹³ See section 2 of the Third Alteration Act

- (b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to Labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;*
- (c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters connected therewith or related thereto;*
- (d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employers' association or any other matter which the court has jurisdiction to hear and determine;*
- (e) relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;*
- (f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;*
- (g) relating to or connected with any dispute arising from discrimination or sexual harassment at the workplace;*
- (h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*

- (i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;*
- (j) related to the determination of any question as to the interpretation and application of any –*
 - (i) collective agreement;*
 - (ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;*
 - (iii) award or judgment of the Court;*
 - (iv) terms of settlement of any trade dispute;*
 - (v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;*
 - (vi) trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;*
 - (vii) disputes relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;*
- (k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;*
- (l) relating to –*
 - (i) appeals from the decisions of the Registrar Of Trade Unions, or matters relating thereto or connected therewith;*
 - (ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising*

- from or connected with employment, labour, trade unions or industrial relations; and*
- (iii) *such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;*
- (m) *relating to or connected with the registration of collective agreements.*

(2) Notwithstanding anything to the contrary in this constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith."

The Constitutional Crisis Inherent in the Third Alteration Act

As noted earlier, the Third Alteration Act came into force on 04 March, 2011 when it received the President's assent. One of the implications or practical translations of this Act is that all High Courts (whether federal or state, including the Federal Capital Territory) would, with effect from the said 04 March 2011, cease to have or exercise Jurisdiction to hear and determine all new causes and matters listed in section 254C(I) as outlined above, including matters already pending before the Courts, but in respect of which trial or hearing has not yet commenced¹⁴.

However, we dare to submit that this legislative objective may not be totally attained, having regard to the probable constitutional cum jurisdictional incongruity heralded by the Third Alteration Act. We observe that although the Third Alteration Act has commendably put to

¹⁴ Orthopaedic Hospital Management Board v. Mallam Umaru Garba & 2 Ors [2002] 14 NWLR (Pt. 788) 538

rest the constitutionality concern of the NIC, it has however, on the other side of the sheet, deepened the existing jurisprudential contention as to the exclusive nature of the Jurisdiction of the NIC. With the exclusive Jurisdiction regime introduced by the Third Alteration Act for the NIC, there may likely be certain matters where the Jurisdictions of the FHC and the NIC would overlap.

To drive home the point being expressed here, it is noteworthy that section 251(1) of the 1999 Constitution, which gives the FHC exclusive Jurisdiction over the matters listed therein provides:

“notwithstanding anything to the contrary contained in this Constitution ... the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters...”

Similarly, section 254C(1) of the Third Alteration Act provides:

“Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution ... the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters ...”

As can easily be seen by a discerning mind, the Third Alteration Act is capable of opening up a floodgate of constitutional crisis, if not already doing so, by creating a conflict between section 251(1) of the 1999 Constitution (granting exclusive Jurisdiction to the Federal High Court) and section 254C(1) of the Third Alteration Act (giving exclusive Jurisdiction to the National Industrial Court). Our worry is informed by the fact that, there are occasions where the matters listed in section 251 of the 1999 Constitution would have labour or employment elements or ingredients stated in section 254C(1) of the Third Alteration Act. In such

circumstances, it becomes jurisprudentially a concern to determine which court, as between the FHC and the NIC would assume Jurisdiction. For the purposes of illustration and clarification, we shall now examine the case of **Obiuwevbi v C.B.N**¹⁵. In that case, the Appellant who was at all times material to the suit, a senior staff of the Respondent Bank, was suspended and subsequently had his employment terminated. Aggrieved, he instituted an action before the Lagos State High Court on 7th July, 1988. The suit later became a victim of two trials de novo, owing to the transfer of the two different Judges who had earlier handled it. While the matter was pending before the third Judge and before trial could commence before him, the Respondent's counsel raised an objection to the Jurisdiction of the trial court in view of the provisions of section 251(1)(p) and (r) of the Constitution which provide:

251 (1) "notwithstanding anything to the contrary 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 Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

(p) the administration or the management and control of the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal government or any of its agencies."

The trial court agreed with the Respondent that it lacked Jurisdiction to entertain the suit pursuant to the provisions of section 251 which vests

¹⁵ [2011] 7 NWLR (Pt. 1247) 465. See also *Oloruntoba-Oju v. Dopamu* [2008] 7 NWLR (Pt. 1085) 1

exclusive Jurisdiction on the Federal High Court in matters relating to the aforesaid provisions of section 251(1)(p)and(r).

The Appellant's appeals to the Court of Appeal and the Supreme Court were dismissed. In the words of Adekeye, JSC at pages 513 - 514 paras D - A of the Law Report:

"Consequently a State High Court would no longer have jurisdiction in such matter notwithstanding the nature of the claim in the action, in order to give the Federal High Court exclusive jurisdiction, the matter must be a civil matter arising from the administration, management and control of the federal government or any of its agencies. The matter must arise from the operation and interpretation of the constitution. The matter must also arise from any action or proceedings for a declarations or injunction affecting the validity of any executive or administrative action or decision by the federal government or any of its agencies. The Appellant filed this action against the Central Bank of Nigeria, a federal government agency for the termination of his employment which is an administrative action of the agency. The action is for declaration affecting the validity of an administrative decision of the Central Bank. The court of Appeal was right to affirm the ruling of the Lagos State High Court where it declined jurisdiction over the appellant's suit which now falls within the exclusive jurisdiction of the Federal High Court."

While we concede that the Obiwevbi case relates to the State High Court /FHC jurisdictional controversy, we however submit that the pronouncements of Their Lordships in the Obiwevbi case have far reaching effect on the matter under consideration herein. The question is,

assuming the case was instituted at the NIC¹⁶ as against the State High Court, would Their Lordships have maintained the same position, i.e., that the matter falls within the exclusive Jurisdiction of the FHC? Clearly, the Obiuevbi case can well be accommodated under section 251(1)(p), (q) & (r) of the 1999 Constitution and section 254C(1)(a) & (d) of the Third Alteration Act. This is particularly so because, on the one hand,, the suit relates to termination of employment which is a matter exclusively reserved for the NIC constitutionally, and on the other hand, the action is for a declaration affecting the validity of an executive or administrative action or decision by CBN, a federal government agency, which also makes the suit an exclusive preserve of the FHC. Which of the exclusive Jurisdictions would become exercisable in a similar case like the Obiuevbi case post Third Alteration Act regime? Which of the “notwithstanding” in sections 251(1) and 254C(1) would prevail over the other? In **Ahmed v COP, Bauchi State**¹⁷ the word “notwithstanding” was judicially defined as follows:

“... It is to be noted that, in legal drafting, the term “notwithstanding”, denotes exclusion, a removal from the orbital confines of an enactment. It further simply means inspite of, irrespective of, without being adversely affected by or disregarding....”

Whether the latter “notwithstanding”, as in section 254C (1) of the Third Alteration Act would prevail over that in section 251(1) of the 1999 Constitution is yet to be decided by our courts. While we eagerly wait for judicial pronouncements on the issue, we humbly maintain that where the jurisdictional pendulum would likely swing is dependent on the pivotal

¹⁶ Note that the decision was delivered on 11 March, 2011, barely 7 days after the Third Alteration Act, 2010 became operative on 04 March, 2011

¹⁷ [2012] 9 NWLR (Pt. 1304) 104 @ 125 Paras D-F

cause of action and remedies sought before the court. We further maintain however, that in a similar case like *Obiuwevbi's*, post the Third Alteration Act, as between the FHC and the NIC, the provisions of section 254C(1) may likely prevail over section 251(1). Our view is predicated on the facts that:(a) the Legislators are presumed to have at the back of their minds all the laws of the land before enacting any subsequent law; (b) the provisions of section 254C(1) of the Third Alteration Act are later in time vis-a -vis the two constitutional provisions; and (c) section 254C(1) appears to have expressly eradicated any potential jurisdictional threat that may arise from section 251(1), when it provides that “Notwithstanding the provisions of **sections 251, 257, 272 and anything contained in this constitution...**”. We humbly opine that the categorical provisions of section 254C(1) have a far reaching effect of over-riding the provisions of section 251(1)(p),(q) & (r) of the 1999 Constitution. It can safely be suggested that the coming into effect of the clear provisions of section 254C(1) is an answer to the demand of the Supreme Court in **Oloruntoba - Oju v. Dopamu**¹⁸ where the court held at pages 29 - 30 that: “It seems to me too that to construct the interpretation clause in section 47 of Cap 432, 1990, Laws of the Federation as conferring on the National Industrial Court the jurisdiction to adjudicate on all manner of disputes covering employment matters could do a great violence to the provisions of section 251(1) (q) (r) and (s) of the 1999 Constitution. It would in my view take a more specific provision [like the extant section 254C(1)(a) of the Third Alteration Act] and not just an interpretation clause to have such a far reaching effect which overrides the clear provisions of section 251(1) (q), (r) and (s) of the Constitution ...”

¹⁸ See footnote 15.

In **N.U.T Niger State v COSST, Niger State**¹⁹, the Court of Appeal judicially recognized or affirmed the position of the law to the effect that the NICN now has and exercises exclusive Jurisdiction over all employment matters. We note however, that, unlike the Obiwevbi case, the subject matter in the NUT case does not clearly overlap with the provisions of section 251 of the Constitution.

On a final note, we equally observe that another area of likely overlap of NIC Jurisdiction vis-a-vis FHC Jurisdiction would be employments based on the Companies and Allied Matters Act (CAMA)²⁰. **Longe v FBN Plc**²¹ has decided that the employment of a company director is one gabbbed with statutory flavour, pursuant to sections 244(1) and 266 of CAMA. By the tenor of section 251(1)(e) of the Constitution, the FHC has exclusive Jurisdiction in matters “arising from the operation of Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.” The emerging issue herefrom is, as between the NIC and the FHC, which court would assume Jurisdiction, post Third Alteration Act, over matters relating to the appointment or dismissal of a company director? Without any scintilla of doubt, the appointment or dismissal of a company director falls within the jurisdictional competence of both courts. In one breath, it borders on labour or employment issue over which the NIC has exclusive Jurisdiction. In another breath, it is a matter touching on or arising from the operation and interpretation as

¹⁹ [2012] 10 NWLR (Pt. 1307) 89 @ 111D-H

²⁰ Cap C20, Laws of the Federation of Nigeria, 2010

²¹ [2010] 6 NWLR (Pt. 1189) 1. For a detailed comprehension of this case, see B. Atilola, *“Expanding the Frontiers of Employment with Statutory Flavours: A Review of the Supreme Court’s Decision in Longe v. First Bank”* Labour Law Review (NJLIR), Vol. 5, No. 3 of September, 2011, Pg. 1

well as application of some sections of CAMA, thereby bringing it into the exclusive jurisdictional conclave of the FHC.

We hope the courts would have the earliest opportunity to resolve these looming constitutional issues. We also hope the National Assembly would look into the issues raised herein in their present bid to further amend the Constitution.

CONCLUSION

In this paper, we have examined the Pre - 1999 Constitution Amendment Jurisdiction of the NIC with the attendant controversies that trailed it as per the exclusive nature of the Jurisdiction. We have also explored the extant or Post-1999 Constitution Amendment Jurisdiction of the NIC. Attempts have also been made to bring to the front burner the likely jurisdictional conflict that may arise between the NIC and the FHC under the new constitutional regime while suggestions have been made on how to resolve same.