

**Labour Justice and the Public Interest: Welcome Remarks and Setting the Tone for the Public Lecture Under the Same Title and the Bar-Bench Forum, organized as part of the 2024/2025 Legal Year Celebrations of the National Industrial Court of Nigeria**

**By**

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**AND**

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1. Courtesies

2. I welcome you all (physical and virtual participants) to this public lecture/ Bar-Bench Forum. The public lecture is the third held since my assumption of the headship of the National Industrial Court of Nigeria (NICN), while the Bar-Bench Forum will be the second. The first public lecture we held as part of the activities of the 2020/2021 Legal Year took place on 6 October 2020. The theme was “*Dignity of Labour and Labour Justice*”, and Most Rev. Dr Matthew Hassan Kukah, the Catholic Bishop of Sokoto Diocese, was our guest speaker on same topic. The second was delivered on 6 October 2022, and the theme was “*Labour Justice and Socio-Economic Development*”. The public lecture was delivered by Her Honour, Hon. Justice Deborah Thomas-Felix, the then President of the Industrial Court of Trinidad & Tobago. She spoke on “The Role of Industrial Courts and International Labour Standards in Promoting Good Governance to Support Economic and Social Development”.

3. Today’s lecture is on “Labour Justice and the Public Interest”, to be delivered by none other than Mr Olusegun Adeniyi, an accomplished journalist and author, a public analyst, current Chairman of the Editorial Board of ThisDay Newspapers and a former presidential spokesman to the late President Umaru Musa Yar’Adua, GCFR. Having followed his writings over the years, a chanced meeting with him through my classmate and friend, Mr Mohammed Bello Adoke, CFR, SAN, former Attorney General of the

Federation and Minister of Justice, sparked in me the desire to have him speak to us in this year's legal year celebration. I accordingly asked him and he agreed to give the lecture. For this, we are most grateful.

4. The lecture and Bar-Bench Forum is chaired by a very respected jurist, His Lordship Honourable Justice Ejembi Eko, JSC (Rtd). In an era of lean dissenting opinions on the Bench, what His Lordship was honoured with, on his retirement, was a public presentation of the book titled, *Hon. Justice Ejembi Eko Dissents: A Collection and Comments on His Lordship's Dissenting Judgments at the Supreme Court of Nigeria* and edited by Chief Ogwu James Onoja SAN and Yeye Funmi Quadri, SAN. Known for his principled stance on issues, we thought it fitting for His Lordship to chair today's session. We are grateful His Lordship accepted.

5. For us at the NICN, there is an additional reason for inviting His Lordship. We remember His Lordship's decisive words/stance in the leading judgment on the jurisdiction of the NICN in *Coca-Cola Nig. Ltd. v. Akinsanya*<sup>1</sup>. The question was whether the NICN's exclusive jurisdiction as to employment under section 254C(1) of the 1999 Constitution included private employment or master-servant relationship. You will wonder why such a mundane issue (one that a first year labour law student knows the answer to be in the affirmative) should even be raised at all, not to talk of it being the subject of a case stated to the Supreme Court. But it was indeed raised by a very senior counsel. and it did get to the Supreme Court for resolution. His Lordship, our Chairman today, had the burden of resolving the issue. He did, answering the question in the affirmative. And that paved the way for the NICN to be what it is today. The labour justice we deliver to especially employment relationships in the private sector is because His Lordship answered truthfully that the word "employment" as used in section 254C(1) of the 1999 Constitution meant both public and private employment. Once again, we extend our gratitude to His Lordship for his steadfastness and fidelity to the Constitution and the law.

6. We have continued in the tradition of retaining "Labour Justice" in our legal year themes since that is our core mandate, which conforms with our motto, "the bastion of labour justice". Of course, the sub-themes over the

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<sup>1</sup> [2017] 17 NWLR (Pt. 1593) 74.

years have differed — “dignity in labour” in 2020, “socio-economic development” in 2022, and “public interest” in this year.

7. The public backlash on the judiciary has of late been on the increase, as judicial bashing appears to be a pastime. The judiciary now is like the ocean where the debris of rivers is dumped. And because the rivers are not dredged, the ocean becomes a dumping site. As we all know, cleaning up of the ocean can be a very daunting task.

8. We at the National Industrial Court of Nigeria (NICN) have not been spared. In the keynote address I delivered at the 2024 NLC and TUC Pre-May Day Lecture on 29 April 2024 at Olaitan Oyerinde Hall, Labour House, Abuja under the title, “Labour Laws and Trade Unions in Nigeria”, I noted thus at paragraph 5:

We at the NICN have been variously accused: government complains that they have unnecessarily lost so many cases at the NICN (in fact the former Governor of Kaduna State, Nasir El Rufai said we specialize in freeing crooks and that government made a mistake to establish the NICN); employers and their lawyers think that the NICN is an employee’s court; and labour on its part...have accused of us being pliant judges, compromised judges, who grant jankara and black market injunctions. So if the three stakeholders/social partners (government, employers and labour) all complain about the NICN, does it not show that we are simply doing our work? After all, “Lady Justicia” is blind!

9. I only paraphrased what the immediate past Governor of Kaduna State said. His full remarks were actually on 1 February 2023, where on Channels television he said that the Nigerian judiciary is pathetic, too slow and often on the side of crooks rather than on the side of government or the innocent, before concluding that one of the greatest mistakes ever made is the creation of the National Industrial Court, which sees its duty as taking sides with the employee against the employer, ruling against employers in favour of criminals<sup>2</sup>.

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<sup>2</sup> See generally <https://dailypost.ng/2023/02/01/nigerias-judicial-system-pathetic-sides-with-crooks-el-rufai/> and <https://thenigerialawyer.com/nigerias-judicial-system-sides-with-crooks-el-rufai/>, both as accessed on 27 September 2024.

10. Given that courts are independent of both the Legislative and Executive arms of Government, and by section 6(6)(b) of the 1999 Constitution, judicial powers extend to all matters between persons or between government or authority and to any persons in Nigeria, for which none is to be favoured over the other, what does he mean with the assertion that the Nigerian Judiciary is not on the side of government? Was the judiciary set up to be on the side of government, or to deliver justice? Now that he is before the court (which he labelled a pathetic institution) for the enforcement of his fundamental rights against the Kaduna State House of Assembly and the Kaduna State Government over allegations by the House that N423 billion was diverted during his eight-year administration as Governor of the State<sup>3</sup>, going by his logic, should the court side with government?

11. The charge that we grant indiscriminate *ex parte* orders restraining labour from embarking on industrial actions for gets that we grant them as a matter of course where the industrial action is yet to commence, and to both private and public employers. We do this given sections 7(1)(b) and 19(a) of the National Industrial Court (NIC) Act 2006, which empowers the NICN to restrain any person from embarking on a strike and the grant of urgent interim reliefs, and section 18(1) of the Trade Disputes Act (TDA) LFN 2004.

12. The accusation that the NICN is an employee's court is historically not incorrect. This is because labour law itself, the very subject matter of the NICN, is a product of the uneven bargaining power between employees and employers. And so I must acknowledge that labour law itself admits of a good deal of paternalism, which has seen conscious effort being made to safeguard the interest of the worker. The International Labour Organization (ILO)'s decent work agenda is a pointer to this. Back home, as far back as 2014, the Court of Appeal in *Afrab Chem Ltd v. Pharmacist Owoduenyi*<sup>4</sup>, for instance, held that courts should not allow the imposition by employers of servile conditions on employees.

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<sup>3</sup> See <https://www.thisdaylive.com/index.php/2024/08/09/court-declines-el-rufais-suit-against-kaduna-assembly-for-lack-of-jurisdiction/> as accessed on 27 September 2024.

<sup>4</sup> [2014] LPELR-23613(CA). See also *Clement Abayomi Onitiju v. Lekki Concession Company Limited* unreported Suit No. NICN/LA/130/2011, the judgment of which was delivered on 11 December 2018.

13. The paternalism of the law, however, has not beclouded our sense of justice and fairness to all litigants at the NICN. For there are cases in which the employer did not even make an appearance, or for one reason or another failed to enter any appropriate defence, and yet the employee lost. In *Mr Ige Adediran v. Arik Air Ltd*<sup>5</sup>, for instance, the claimant sued against his summary dismissal and prayed for reinstatement. His case was dismissed for lack of proof despite that the defendant did not enter any appearance or file any defence process. And in *National Pension Commission v. Tradeways Express International Limited*<sup>6</sup>, there was no legal representation for the defendant (a company). Yet, the case of the claimant (a government agency) was dismissed.

14. I need to draw attention a point. Employment rights are in the main rights in *personam*, as distinct from rights in *rem*. I am not unmindful of the school of thought in labour/employment law discourse that see especially the employment right as to security of tenure as one that is a proprietary right and so is one in *rem*. This aside, we generally view employment rights as rights in *personam*. And so public interest litigation by especially civil society organisations/non-governmental organisations on behalf of employees that should have themselves sued have generally been frown on and denied competence on the ground of absence of *locus standi* by the NICN. This was the case in *The Incorporated Trustees of Initiative on Education for Global Growth v. National Broadcasting Commission & 2 ors*<sup>7</sup> and *Association of Legislative Drafting and Advocacy Practitioners (ALDAP) v. President of The Senate, National Assembly & 8 ors*<sup>8</sup>.

15. Reminiscent of that biblical question by the Good Lord Himself, who do people say I am?, and which was followed by the second, and who do you say I am?, I took out time to ask for the impression of people especially in the social media about the NICN. I was given a handful from Twitter and Facebook, which turn out to be positive reviews of our work and impact. They range from we are “the best court and perhaps one of the best public

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<sup>5</sup> Unreported Suit No. NICN/LA/126/2016, the judgment of which was delivered on 14 December 2017.

<sup>6</sup> Unreported Suit No. NICN/LA/424/2014, the judgment of which was delivered on 4 July 2017.

<sup>7</sup> Unreported Suit No. NICN/ABJ/302/2023, the ruling of which was delivered on 21 May 2024.

<sup>8</sup> Unreported Suit No. NICN/ABJ/75/2024, the judgment of which was delivered on 15 August 2024.

agencies in Nigeria”, “Best court system in Nigeria by a mile”, we “are doing well”, we have “really taken the bull by its horns in broadcasting proceeding to the general public...” to “NICN has always been on the part of JUSTICE especially for the WORKERS” and “The most progressive institution in Nigeria”. One even intoned: “It feels like this court is not a Nigerian Court. So advanced!”.

16. So I leave it to you whether as a labour court, we have outlived our usefulness (as the immediate past Governor of Kaduna State seems to intuit) or we are on the track.

17. I say this with all seriousness especially as the current National Assembly has kick-started the process of altering the Constitution where drastic suggestions are being made to alter the constitutional provisions that relate to especially the Judiciary. Like I pointed out yesterday in my legal year speech, for us at the NICN, we are contented with all the constitutional provisions relating to the NICN as they are and so we urge that they be left intact and untouched.

18. And so as we all ruminate over the NICN and its constitutional mandate, I invite you to savour the lecture of today. I thank you all for your attention as I once again welcome you.