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Client Alert

# Nigeria Supreme Court Narrows National Industrial Court Powers in Tort Disputes

## Introduction

The Supreme Court of Nigeria (the '**Court**') has resolved the controversy created by conflicting judicial pronouncements on the extent of the jurisdiction of the National Industrial Court of Nigeria ('**NICN**') to entertain tortious claims arising from, connected with or incidental to an employment setting.

Prior to the Third Alteration to the Nigerian Constitution in 2010<sup>1</sup>, the jurisdiction of the High Courts to entertain claims founded in torts was not in dispute. It was also not in dispute that the Industrial Court was a specialised labour and employment court and claims in torts were outside its jurisdictional purview. The controversy over the appropriate forum for litigating claims in torts arising from, connected with or incidental to an employment setting was sparked by the expansive jurisdiction conferred on the NICN by Section 254C(1) which was introduced into the Constitution by the Third Alteration.

Section 254C(1) basically provides that the NICN shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, ... and matters incidental thereto or connected therewith ..."

A literal reading of the above provisions would suggest that Section 254C(1) of the Constitution has taken away the jurisdiction of the High Court and vested it in the NICN where the tort relates to or is connected with labour or employment or arose from the work place. However, if the literal rule of interpretation is jettisoned for a more contextual interpretation, a different conclusion would be reached. It was against this backdrop that several conflicting judicial pronouncements were handed down by the courts.

<sup>1</sup>The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, (No 3), 2010 (the "Third Alteration")

## The Test Case

In a landmark judgment delivered in The case of **Emma Elegbe & Anor v. HP International Schools Ltd & 3 Ors**<sup>2</sup> became the test case that provided the Supreme Court with an opportunity for the interpretation and application of Section 254C(1) of the Constitution (the '**Decision**'). Being an issue of significant constitutional importance that was referred by the Court of Appeal to the Supreme Court pursuant to Section 295(3) of the Nigerian Constitution<sup>3</sup>, the Court constituted a full panel of seven justices and invited Amici Curiae, **Messrs. Abimbola Akeredolu, SAN, Dr. Oladapo Olanipekun, SAN, Inam Wilson, SAN** and **Prof. Emmanuel Ayangarumum Kenen, Esq.,** ) to submit Amicus Briefs of Argument to assist the Court in its interpretation of the provision of Section 254C(1) of the Constitution.

## Background to the Test Case

The claim arose from, or related to, defamatory statements allegedly made by the 1st Appellant, who was employed and later resigned as the Head of the 1st Respondent School, and the 2nd Appellant who is the spouse of the 1st Appellant concerning the 2nd to 4th Respondents, who are members of the Board of Directors of the 1st Respondent.

At the court of first instance, High Court of Lagos State where the Appellants commenced the defamation claim, the Respondents filed an objection to the jurisdiction of the High Court on the ground that the subject-matter of the Suit relates to and is connected with the 1st Appellant's employment with the Respondents and the High Court lacks jurisdiction to entertain same. The High Court of Lagos State dismissed the objection and held that it has jurisdiction to entertain an action founded on the tort of defamation. Dissatisfied by the ruling, the Appellants appealed to the Court of Appeal, Lagos.

However, given the expansive language of Section 254C(1)(a) of the Constitution, the NICN and the Court of Appeal have given conflicting interpretations to the phrase civil causes and matters "relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace."

Considering the conflicting decisions on the interpretation and application of Section 254C(1) of the Constitution, the Court of Appeal referred the Constitutional issue to the Supreme Court for determination.

## The Decision of the Supreme Court

The Supreme Court, agreed with the submissions of the Respondents as well as the Amici Curiae: Messrs. Abimbola Akeredolu, SAN, TEMPLARS Partner Inam Wilson, SAN and Prof. Emmanuel Ayangarumum Kenen, Esq., that a strict literal interpretation of Section 254C(1)(a) of the Constitution would lead to absurdity. The Court agreed that the preferred approach is to give purposive consideration of the provision. In the opinion of the Court, Section 254C(1)(a) must be construed literally but organically, bearing in mind the constitutional intent behind the establishment of the NICN as a specialized labour court.

<sup>2</sup> Appeal No: SC/CV/899/2025

<sup>3</sup> Section 295(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that "Where any question as to the interpretation and application of this Constitution arises in any proceedings in the Court of Appeal and the Court is of opinion that the question involves a substantial question of law, the Court may, and shall if any party to the proceedings so request, refer the question to the Supreme Court which shall give its decision upon the question and give such directions to the Court of Appeal as it deems appropriate".

To summarise, it is the opinion of the Supreme Court that:

- Section 254C(1)(a) of the Constitution does not confer the NICN with exclusive jurisdiction to entertain a defamation claim merely because it arose in the context of employment;
- where the defamation claim can be determined independently of the employment contract, jurisdiction lies with the State High Court, not the NICN;
- where a defamation claim cannot be resolved without construing the contract of employment — that is, where the claim is inextricably linked to the employment relationship — the NICN would have jurisdiction;
- where a substantive or principal claim is for wrongful termination of employment, the NICN would have jurisdiction to entertain an ancillary claim for defamation, even if that ancillary claim does not strictly require interpretation of the employment contract.

### Implications of the Decision

- Though the decision was given in the context of a defamation claim, the principles to be adopted for the interpretation and application of Section 254C(1) of the Constitution will apply to other species of torts.
- It is now settled that Section 254C(1)(a) of the Constitution does not confer a blanket jurisdiction on the NICN for all torts arising in an employment context. To this end, the Court rejected the notion that every workplace defamation is “connected with” employment.
- Tortious claims, including defamation, do not fall within the scope of labour and employment matters contemplated by Section 254C of the Constitution. Consequently, the scope of the NICN’s jurisdiction to entertain defamation claims and by extension other torts, “relating to” or “connected with” or “arising from” employment and the workplace has been whittled down significantly.
- The long-established principle established in **Tukur v. Government of Gongola State**<sup>4</sup> that where a court is properly seized of a principal claim, it may entertain an ancillary or incidental claim flowing from the principal claim to avoid a multiplicity of suits, was reaffirmed by the decision.

### Concluding Remarks

The matters intended by the legislature to be vested exclusively in the NICN are labour and employment disputes strictly so called, and not tortious causes of action merely arising in an employment setting.

Going forward, wrongful termination/dismissal claims remain within the NICN’s exclusive remit while claims of defamation will, in most instances, properly lie before the State High Courts unless the defamatory claim is genuinely framed as intricately connected and ancillary to the subsisting labour claim.

***If you require any further clarification, do not hesitate to contact us.***

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<sup>4</sup> (1989) 4 NWLR (Pt. 117) 592