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Towards appeals from an industrial court: The national industrial court of Nigeria in focus

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Abstract
The paper highlights the need to allow appeals to lie from all decisions of a single labour court or a labour court of first instance to a higher court. That is not restricting appeals to few matters. It notes that the decisions of the higher courts bind the single labour court or the labour court of first instance, the latter being a lower court than the Court of Appeal and the Supreme Court in the hierarchy of courts. It uses Wedderburn's discussion on labour court and appeals from labour court as a frame work and adds to it in arguing that appeals from a labour court should not be restricted to a few matters but should be extended to all matters in which jurisdiction has been conferred on it. The National Industrial Court of Nigeria (NICN) and some of its decisions was used to project the argument herein. An attempt was also made to answer the question whether appeals from the decisions of a labour court should go to the appellate courts of the ordinary courts or a separate appellate labour courts be established for the purpose.

Keywords: appeals, industrial court, labour court, industrial court of first instance, industrial court of second instance, industrial court of third instance

Introduction
One of the ways through which employment and labour disputes are resolved is the court. And the relevant court is usually a labour court when one has been established in a jurisdiction. The National Industrial Court of Nigeria (NICN) has been established and conferred with exclusive jurisdiction by the Constitution to resolve all disputes relating to employment and labour. When a litigant intends to file an action relating to employment and labour then he must commence it in the NICN. This makes the NICN a court of first instance for labour and employment matters. But the Constitution (as amended) only stipulated a few matters from which an appeal can lie from the decisions of the NICN to a higher court [1]. By this there appears to be legal restriction on appeals from the decisions of the NICN to the Court of Appeal except in few matters for which appeals are allowed from it to the Court of Appeal by the Constitution. The effect of this is that the bulk of the decisions of the NICN on matters under its jurisdiction are unappealable. That is a litigant who is dissatisfied with a judgment that falls under unappealable matters cannot appeal. Thus, most of the matters end in the NICN. Since a higher court have no opportunity to pronounce on most decisions of the NICN, this has resulted in a situation where either a judge of the NICN giving conflicting judgments on cases that have similar facts or different judges of the NICN giving conflicting judgments on cases that have similar facts. And this is so because there is no higher court pronouncement they would have followed and being not bound to follow the decisions of each other (as they are of coordinate jurisdiction), it has created uncertainty in some aspect of Nigerian labour law.

The Paper is divided into the following sections: section 1 is introductory. Clarification of some terms is attempted in section 2. Wedderburn's discourse on labour courts is the focus of section 3. And it is used as a framework for the discussions and arguments in the paper. Section 4 gives a brief history of the NICN. When appeals can lie from the decisions of the NICN to the Court of Appeal under the National Industrial Court Act 2006 (NIC Act) and the Constitution is the focus of section 5. Section 6 discusses the necessity of allowing appeals to lie from all decisions of the NICN, that is not limiting appeals to a few matters. Section 7 attempts to answer the question whether appeals from the decisions of an industrial court should go to the appellate courts of the ordinary courts or a separate appellate labour courts established for the purpose. And section 8 is the conclusion.

Clarification of some terms
'Industrial court' and 'labour court'
The terms 'industrial court' and 'labour court' are used interchangeably and appear to mean the same thing in most jurisdictions. I think it is what a jurisdiction decides to call the court of this nature or this kind of court that is the name it bears. Some jurisdictions such as Nigeria, Kenya Swaziland, Sierra Leone Uganda Zambia call it industrial court while others such as South Africa, Tanzania call it labour court. But basically an 'industrial court' or a 'labour court' can be described as any court conferred with jurisdiction to hear labour, employment and matters connected thereto. Thus, the name this type of court bears depends on that the jurisdiction decides. In Nigeria the terms used in the Constitution (as amended) are: 'National Industrial Court' [2] and 'National Industrial Court of Nigeria' [3] and these terms refer to the same court and are used interchangeably in this paper.

Wedderburn's discussion on labour courts and appeals from decisions of a labour court of first instance
Wedderburn argued that labour courts were an important tool for the 'autonomy of labour law' [4]. He chose the word 'autonomy' in the context of using it to express his view of 'freeing' employment or labour law from the methods and

rules of civil law that work against employees or workers' interests. Wedderburn stated the reason for this approach to be that labour law should make effort to counter the inequality in the employer/employee relationship. He expressed the view that the application of common law principles to the employment relationship founded on contract law are theoretically inappropriate. And that the common law worked to keep subordination in the employment relationship.' Wedderburn supported the establishment of judicial institutions which rely and grow their principles on some foundation other than the common law. He noted that if employment or labour law is to break free from the grip of the common law reasoning and procedures, the direction seems to point to labour courts.

Regarding appellate court, Wedderburn has argued that if an appellate court was considered necessary for a labour court the legislature should ensure that the jurisdiction of the appeal courts of the ordinary courts or the ordinary appeal courts are excluded. Or, the labour court of first instance should organise the means to hear appeals by adjusting its structure or composition further [5]. Concerning Wedderburn's suggestion of excluding the jurisdiction of the appeal courts of the ordinary court from the decisions of the labour court he emphasized that the decisions of the labour court should not end up in the court of appeal of the common law courts (that is appeal court of the ordinary courts) [6]. And that even if appeals from the labour court is only limited to points of law, it would hardly put a check on appeal courts of the ordinary courts to wield their power of applying common law principles for which labour courts were set up to exclude [7]. In other words, Wedderburn reasoned that excluding the ordinary appellate court (s) would prevent the appellate courts from applying the common law principles to labour principles at the appeal level thereby defeating the decisions of the labour court of first instance. And further reasoned that an appellate labour court would more likely follow labour law principles than the ordinary appellate courts.

Commenting on Wedderburn, s position on excluding the appellate courts of the ordinary courts form hearing appeals from the decision of the labour court, I argue that an appeal could lie from the decisions of a labour court to the appellate courts of the ordinary courts, provided that labour matters are heard only by judges learned and experienced in employment and labour matters, and such judges should strictly follow labour court rules (including time frames for hearing such appeals), procedures and laws. This is to exclude possible application of the common law principles and interpretations to employment and labour matters. This, I further argue could takes care of Wedderburn's 'fear' that if appeals are allowed to lie from the decisions of the labour court to the appeal courts of the ordinary courts the judges of the appellate courts of the ordinary courts will apply the common law principles to control labour courts in the direction that is adverse to labour court [8]. Also, on Wedderburn's suggestion that the labour court could organise the means to hear appeals by adjusting its structure or composition further [9], while in support of this, I wish to add that such appellate labour courts if established, could be named 'labour court of first instance' and labour court of second instance I turn now to a brief history of the NICN.

A brief history of the NICN

The NICN, a national labour court was set up in 1976 pursuant to the Trade Disputes Act 1976 but became efficient in 1978. When the National Industrial Court (NIC) Act 2006 was enacted. it removed the NICN out of the regime of the Trade Dispute Act and brought it under the regime of the NIC Act. It also fixed or solved some of the limitations or short comings in the NICN when it was under the regime of the Trade Disputes Act [10]. It is important to note that Part II of the Trade Dispute Act has been repealed. (The repealed parts were the provisions that put the NICN under the Trade Dispute Act). The provisions which remain of the Trade Dispute Act are now read subject to the NIC Act. And where the provisions of the Trade Dispute Act are in conflict with those of the NIC Act, the latter prevails [11], It is important to note further that innovations were introduced in the NICN in 2010 when the Constitution was amended. I turn now to situations when appeals can lie from the decisions of the NICN to the Court of Appeal.

When an appeal can lie from the decision of the NICN to the Court of Appeal.

Situations in which an appeal can lie from the decision of the NICN are provided in two statutes: (a) the NIC Act and (b) the Constitution (as amended)

(a) NIC Act

In section 9(2) of the NIC Act, an appeal can only lie from the decisions of the NICN to the Court of Appeal on matters provided in Chapter IV of the Constitution (relating to fundamental human rights).

(b) Constitution

The Constitution provides for two situations in which appeals can lie from the decision of the NICN to the Court of Appeal: firstly, under section 243 (2), in matters relating to fundamental human rights provided in Chapter IV and secondly, in section 254C(4) and (5), in criminal matters relating to employment and labour.

Putting both situations together (that is under the NIC Act and the Constitution) in which an appeal can lie from the decision of the NICN to the Court of Appeal, it will appear that in all other matters (other than matters relating to fundamental human rights provided in Chapter IV of the Constitution and criminal matters relating to employment and labour), the decision of the NICN is final in all matters for which it has jurisdiction until there is a legislation by the National Assembly allowing appeals to the Nigerian Court of Appeal. It is important to note that section 316 (5) of the Constitution as amended saved the NIC Act and as such its provisions are still applicable. The provisions of the Constitution stipulating when appeals will lie from the decisions of the NICN to the Court of Appeal not only covers what is provided in the NIC Act but added one situation, that is criminal matters connected to employment and labour law.

One pertinent question is that: Can unappealable matters (that is matters falling outside the exception) be appealable if they are contained amongst matters listed in Chapter IV of Constitution relating to fundamental human rights? Or can employment and labour matters not stated to be appealable in the Constitution as amended but contained in Chapter IV of the Constitution be appealable? The NICN has not made any pronouncement on this point but it can be argued that they should be appealable since they are contained in Chapter IV of the Constitution. That is, Chapter IV of the Constitution can be a route through which some appeals

which would not ordinarily lie from the decisions of the NICN can lie to the Court of Appeal. Such employment and labour matters which are unappealable but contained in Chapter IV of the Constitution include: freedom of association (including the right to form and belong to trade union), freedom from discrimination, protection of the dignity of the human persons (including the right not to be held in slavery or servitude and not to perform forced or compulsory labour).

Regarding appeals from the decision of the NICN to the Court of Appeal, it is important to note that section 243 (4) of the Constitution as amended provides that the decision of the Court of Appeal on any appeal from the civil jurisdiction of the NICN is final. One relevant question is: Will matters relating to employment and labour, falling within the civil jurisdiction of the NICN and also contained under fundamental human rights provided in (Chapter IV of the Constitution) relating to employment and labour also terminate at the Court of Appeal in view of section 233(1)(c) of the Constitution? Which section confers exclusive jurisdiction on the Supreme court to hear appeal from the Court of Appeal on decisions on provision of Chapter IV of the Constitution (relating to fundamental human rights)? I think appeals can lie from the decisions of the court of Appeal to the Supreme on fundamental human rights matters. It can also be argued that the issue of finality of matters before the Court of Appeal lies within powers and jurisdiction of the Court of Appeal of which the NICN has no power.

The necessity of allowing appeals to lie from all decisions of the NICN to higher court(s)

The position in the Constitution is that only fundamental human rights [12] and criminal matters [13] connected to employment and labour for which the NICN has jurisdiction are appealable. Unless a legislation is made by the National Assembly (legislature) allowing appeals in other matters [14]. It is important that the National Assembly enact a law making all other decisions of the NICN appealable, not just only for fundamental human rights [15] and criminal matters [16] connected to employment and labour which the NICN has jurisdiction. The reasons for this position are discussed herein.

a. ***It ensures certainty and development of labour or industrial law***

One of the factors that helps development of labour or industrial law in a jurisdiction or country is the certainty of legal rules. Certainty arises from the doctrine of *stare decisis or* precedent. The doctrine states that the decisions of an apex court or a higher court binds the lower courts in the hierarchy of courts [17]. *Stare decisis* or precedent is an essential tool in determining what the law is. And by the lower court following precedent, it leads to an orderly and reliable development of legal rules [18]. By this certainty and development of the law is ensured.

Relating this to the NICN, the argument is that when all decisions of the NICN (a lower court) are appealable (that is not restricted to a few matters relating to fundamental human rights in Chapter IV of the Constitution and criminal matters relating to employment and labour), then the decision of the higher court will bind the industrial court. That is, the industrial court will be bound to follow the decision of the higher court once the facts of the case at hand are the same with that of the higher court. This prevents a situation where same judge of the industrial court gives different judgments in cases of similar facts heard by him or her. It also prevents different judges of the industrial court giving conflicting decisions in cases that have the same facts. Conflicting decisions at the lower court does not help legal certainty. It is important at this point to illustrate the two situations with some decisions of the NICN. Firstly, where same judge of the industrial court gives different judgments in cases of similar facts heard by him or her. And secondly, different judges of the industrial court giving conflicting decisions in cases that have the same facts.

I where same judge of the industrial court gives different judgments in cases of similar facts heard by him or her.

The two following cases of the NCN are used to illustrate the situation where same judge of the industrial court gives different judgments in cases of similar facts heard by him or her. The two cases relate to workers' right to strike. The reason for this illustration is to use it to support the argument of allowing appeals to lie from all decisions of an industrial or labour court to a higher court. Since by the doctrine of *stare decisis* the decisions of a higher court will be followed by the lower court, (in this instance the industrial court) in the hierarchy once the facts are similar. This ensures consistency of rules of law in a jurisdiction.

The first case (decided 2012) is *Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) and others* [19]. And the facts were that the plaintiff employer, (Osun State government) sought an injunction to restrain the defendants (the Nigerian Labour Congress Osun State Council, the Osun State Council of Trade Unions Congress, and the chairman of the Osun State Joint Service Negotiating Councils I, II and III) from calling its (Osun State government) workers to strike over implementation of the minimum wage. Following section 31(6) of the Trade Unions Act (as amended) [20] the NICN found that all conditions precedent to strike has not been followed and held that the requirements of exercising the right to strike in section 31 (6) of the Trade Unions Act (as amended) [21] has not been and must be met before the right to strike can arise. And that non-compliance of any of the provisions of the Act imply that the right to strike cannot be exercised having not arisen. Thus, the right to strike was said not to have arisen. According to the judge, since there was no evidence before the Court that the requirements for strike in section 31(6)(a), (d) and (e) of the Trade Unions Act, (as amended) [22] have been met, the defendants threatened strike action could not be legal.

The second case (decided 2014 by the same judge that decided the previous case) is *Aero Contractors Co. of Nigeria Limited v National Association of Aircrafts and Engineers (NAAPE), Air Transport Services Senior Staff Association of Nigeria (ATSSAN), National Union of Air Transport Employees (NUATE)*, [23] And the facts were that *Aero Contractors*, the plaintiff company (engaged in the domestic air travel sector in Nigeria) sought an injunction restraining the defendants (consisting of pilots, engineers and their senior staff unions) from embarking on a strike, claiming that its business was an 'essential service' as defined under the Trade Disputes (Essential Services) Act [24]. The decision did not follow the requirements for strike in section 31 (6) of the Trade Unions Act (as amended) [25],Trade Dispute Act [26] and the Trade Disputes (Essential Services) Act, [27] and the earlier decision in *Attorney*

General, Osun State v Nigeria Labour Congress (Osun State Council) and others [28]. But rather followed the ILO's interpretation of concept of essential services.

The judge's reason for this decision is that the NICN is mandated to apply international best practice and treaties, conventions and protocols ratified by Nigeria [29]. Following the International Labour Organisation's (ILO), supervisory bodies' interpretation he ruled that 'essential services' in the strict sense for which the right to strike may be subject to major restrictions or even prohibitions are: the hospital sector, electricity services, water supply services, the telephone services, air traffic control. Applying the foregoing principles, the NICN held that only members of the defendant unions engaged in air traffic control came within the ambit of those engaged in an essential service. It further held that all other workers in the aviation sector apart from those in air traffic control can exercise their right to strike.

***Some Comments about Attorney General, Osun State* [30] *and* Aero *Contractors Co. of Nigeria Limited* [31]**

It is important to note that while the first case, *Attorney General, Osun State* was decided in 2012, the second, *Aero Contractors Co. of Nigeria Limited* was decided in 2014 (that is both cases were decided after the constitutional amendment in 2010. Also, the two cases relate to exercise of workers right to strike and decided by same judge. While in the *Attorney General, Osun State* only the Trade Unions Act (as amended) [32], a local statute was relied on, even though there were ILO Conventions that were relevant to strike, in the *Aero Contractors Co. of Nigeria Limited.* The judge applied the relevant ILO Convention to hold right to strike in favour of majority of aviation workers. It can be argued that where same judge of a lower court, (in this instance the NICN) gives different judgments in two cases that have similar facts, it leads to uncertainty or as to what the law. Hence, I argue for appeals to lie from the decision of the NICN to a higher court which decision will bind the NICN to ensure consistency of rules.

I turn now to the second situation, where different judges gave conflicting decisions on cases that had similar facts.

Ii Different judges of the Industrial Court giving conflicting decisions on cases that have similar facts.

The following two cases will be used to illustrate situations where different judges of the NICN gave conflicting decisions on cases that have the same facts. The first is: *Alhaji Garba Umar v Taraba State Government (Umar)* [33] and the second, is: *Bala James Nggilari v Adamawa State Government & 2Ors (Nggilari)* [34]. In *Umar*, the facts were that the plaintiff/claimant, (a former acting governor of Taraba State between 14th November 2012 and 21st November, 2014). sought an order for the defendant to pay his gratuity as stipulated by the Remuneration of Political and Public Office Holders' Law of Taraba State. One of the issues considered was whether the State House of Assembly (Taraba State) had authority enact a law on payment of benefits to former holders of political office as it did in the Taraba State Governor and Deputy Governor's Pension Law, 2015.

Relevant provisions of the Constitution (as amended) were considered, *viz* sections 124(1), 124(5) and item.44 in the Exclusive Legislative List, under Part 1, of the Second Schedule to the Constitution and section 32 (d) of the Third Schedule to the Constitution. It was held that a State House of Assembly has no power to fix any sum in benefits for its past governors and deputy governors as gratuity or pension unless the RMAFC had first fix a particular sum as gratuity or pension for its past Governors and Deputy governors. And the sum fixed should not exceed the sum that have been set by the RMAFC. The NICN further held that since the RMAFC had not fixed any sum as gratuity or pension for its past governors and deputy governors any law enacted by the House of Assembly of a state on gratuity or pension for its past deputy governors and governors was null and void. And that as a result of this, the Taraba State Governor and Deputy Governor's pension law, 2015 was null and void,.

The second case, *Nggilari* was decided by another judge of the NICN. The facts were that the plaintiff/claimant was a former deputy governor and governor of the first defendant (Adamawa State) and had served the first defendant between 29th May 2007 and 29th May 2015. The plaintiff commenced this action for his gratuity and pension to be paid. as provided for by the Adamawa State Governor's Pension (Amendment) Law 2010. The plaintiff /claimant had no case against the 3rd to 42nd defendants. Other than they thought that the Adamawa State Governor's Pension (Amendment) Law 2010 was unconstitutional and simply because of the earlier decision in *Umar by* another judge of the NICN which case had similar facts with this current case. The NICN held that all pension laws enacted by the states by virtue of section 124(5) of the Constitution are valid. And that they cannot be understood to contravene the Constitution or any legislation. The NICN further held that if the legislature intended the RMAFC to specify or set out gratuity or pension of former deputy governors and governors, they would have expressly stated it

Some comments about Umar and Nggilari

It is important to note that the two cases were decided by two different judges of the NICN. And though the facts of the two cases were similar the decisions were different. While in the first case, *Umar* it was held that the Taraba State Governor and Deputy Governor's Pension Law, 2015 was null and void because the RMAFC had not fixed any sum as gratuity or pension for its past governors and deputy governors. In the

second case, *Nggilari* it was held that all pension laws enacted by the states in Nigeria by virtue of section 124(5) of the Constitution are valid. And that if the legislature intended the RMAFC to specify or set out gratuity or pension of former deputy governors and governors, they would have expressly stated it.

Concerning these two foregoing decisions of the NICN, it can be argued that where different judges of an industrial or labour court give conflicting decisions on cases that have the same facts, and appeals are not allowed to lie from such decisions to a higher court, it leads to uncertainty regarding the law that regulates a particular labour matter in a jurisdiction. The uncertainty becomes obvious when for instance a relevant question is asked concerning for instance pension law in Nigeria thus: Are pension laws made by states governments for past governors and deputy governors in Nigeria pursuant to section 124(5) of the Constitution valid? It will appear that the answer to the question lies in the two foregoing conflicting decisions of the NICN. Which decisions fall within matters for which appeals are not

permitted to lie to the Court of Appeal under the Constitution (as amended) [35]. The implication of *Umar is* that past governors and deputy governors cannot be paid pensions, while by *Nggilari,* past governors and deputy governors can be paid pension. It is important to note that both decisions are given by different judges of same court (NICN), and this leaves the states in Nigeria either to follow *Umar* or *Nggilari* To this I argue for all decisions of an industrial court to be appealable,(not just restricting appeals to a few matters as the case in the NICN) so that once a decision is made by a higher court, the law regarding a particular labour matter will be more predictable compared to conflicting decisions of an industrial court that creates uncertainty.

b. Other reasons

Another reason while it is necessary for appeals to lie from all decisions of an industrial court (not restricting it to a few matters) to a higher court include: an unsatisfied litigant have another opportunity of arguing his case in a higher court. It also gives the higher court opportunity to correct errors or mistakes made by the lower court in interpretation.

One pertinent question is: should appeals from the decisions of an industrial court go to the appellate courts of the ordinary courts or a separate appellate labour courts be established for the purpose? I turn now to attempt to answer this question.

Should appeals from the decisions of an industrial court go to the appellate courts of the ordinary courts or a separate appellate labour courts be established for the purpose?

Having highlighted the reasons why all the decisions of an industrial or labour court be appealable, that is not restricting appeals to a few matters, the next relevant question is: should appeals go from the industrial court to the appellate courts of the ordinary courts (that is Court of Appeal and Supreme Court) or a separate appellate labour courts be established to hear appeals from the decisions of an industrial court?

I consider either positions as adequate and put it thus:

a. appeals could lie from an industrial court to the Court of Appeal and Supreme Court of the ordinary courts with certain considerations to be made regarding employment and labour matters or
b. appeals could go from an industrial court to appellate labour courts established for the purpose. And such appellate labour courts could be named 'Industrial Court of Second Instance' and 'Industrial Court of Third Instance'

I argue for either positions for a country or jurisdiction because either will ensure that employment and labour principles and procedures are followed through at the appellate level and the decisions of the industrial court or labour court will not be defeated or frustrated at the appellate level by the principles and procedure of the common law. I turn now to further examine either of the positions

a. *Appeals could lie from an Industrial Court to the Court of Appeal and the Supreme Court of the ordinary courts with certain considerations to be made regarding employment and labour matters*

If the option is the appellate courts (that is Court of Appeal and Supreme court) of the ordinary courts, then it is important that all the judges in the panel of the appellate courts appointed to hear the appeals from the industrial court must have the knowledge and experience of employment and labour law. Also, the flexibility, and other rules of procedures of the industrial court should also be followed. Currently in the NICN, appeals in a few specified matters [37] can go to the Court of Appeal, one of the ordinary courts. And the decision of the Court of Appeal on any civil jurisdiction of the NICN is final [38]. The implication is that appeals on any criminal jurisdiction of the NICN end at the Supreme Court not the Court of Appeal. It is important to note that in the few matters that go on appeals from the NICN to the Court of Appeal, the idea of appointing only judges knowledgeable and have experience of labour matters to hear the appeals from the industrial court is yet to be considered by the appellate courts in Nigeria.

b. *Appeals could go from an Industrial Court to appellate labour courts established for the purpose. And such appellate labour courts could be named 'Industrial Court of Second Instance' and 'Industrial Court of Third Instance'.*

Concerning the suggestion that appeals could go from an industrial court to separate appellate courts established for the purpose. The reason for suggesting these names: 'Industrial Court of Second Instance' and 'Industrial Court of Third Instance' is to avoid duplicating the names of the appellate courts of the ordinary court system (Court of Appeal and Supreme Court) in the suggested appellate industrial courts system.

What then will be the position or status of the 'Industrial Court of Second Instance' and 'Industrial Court of Third Instance' in the hierarchy of courts in a country or jurisdiction? I would suggest that they should be regarded as specialised appellate courts which system is parallel to that of the ordinary courts. They are parallel because only employment, labour and matters connected thereto that can come to such appellate industrial or labour courts.

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Conclusion

The paper emphasized the need to allow appeals to lie from all the decisions of an industrial court to a higher court. It notes that decisions of a higher court bind a lower court (in this instance the industrial court) in the hierarchy and this prevents conflicting decisions at the industrial court and by this leads to certainty and development of labour or industrial law in a jurisdiction. It uses the discussion of Wedderburn on labour court and appeals from labour court as a framework and adds to it in arguing that appeals from an industrial court to a higher court should not be restricted to a few matters, *viz* fundamental human rights and criminal matters relevant to employment and labour alone, but should be extended to all other matters in which jurisdiction has been conferred on it.

The paper argues that when all decisions of an industrial court, a lower court are appealable (that is not restricted to a few matters *viz*: fundamental human rights contained in Chapter IV of the Constitution and criminal matters relating to employment and labour), then the decision of the higher court will bind the industrial court. That is, the industrial

court will be bound to follow the decision of the higher court once the facts of the case at hand are the same with that of the higher court. This will prevent a situation where same judge of the industrial court gives different judgments in cases of similar facts heard by him or her. It also prevents different judges of the industrial court giving conflicting decisions on cases that have the same facts. This will ensure certainty and development of labour or industrial law in a jurisdiction.

The following cases of the NICN were used to support the argument herein: The two following cases were used to illustrate a situation where same judge of the industrial court gave different decisions in cases that had similar facts: First, *Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) and Others and secondly, Aero Contractors Co. of Nigeria Limited v National Association of Aircrafts and Engineers (NAAPE), Air Transport Services Senior Staff Association of Nigeria (ATSSAN), National Union of Air Transport Employees (NUATE),* The two cases relate to exercise of workers' right to strike and decided by same judge and they were decided differently even though they had similar facts. The situation where same judge gives conflicting decisions in two cases that have similar facts leads to confusion as to what the law. Hence, I argued for appeals to lie to a higher court so that its decision can bind the NICN to ensure consistency of rules.

Also, the two following cases were used to illustrate situations where different judges of the NICN gave conflicting decisions on cases that had the same facts. The first is: *Alhaji Garba Umar v Taraba State Government (Umar)* and the second, *Bala James Nggilari v Adamawa State Government & 2Ors (Nggilari).* Though the two foregoing cases had similar facts they were decided differently by different judges. To this I argue for all decisions of an industrial court to be appealable,(not just restricting appeals to a few matters as the case in the NICN) so that once a decision is made by a higher court, the law regarding a particular labour matter will be more predictable compared to conflicting decisions of different judges of an industrial court that creates uncertainty.

An attempt was also made to answer the question whether appeals from the decisions of an industrial court should go to the appellate courts of the ordinary courts or a separate appellate labour courts be established for the purpose. Anyone of the two following positions were considered adequate. Either appeals could lie from an industrial court to the Court of Appeal and Supreme Court of the ordinary courts with certain considerations to be made regarding employment and labour matters. Or appeals could go from an industrial court to appellate labour courts established for the purpose. And such appellate labour courts could be named 'Industrial Court of Second Instance' and 'Industrial Court of Third Instance' I suggested either positions in a country or jurisdiction because either will ensure that employment and labour principles and procedures are followed through at the appellate level and the decisions of the industrial court or labour court will not be defeated or frustrated at the appellate level by the principles and procedure of the common law.

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26. Trade Unions Act
27. Trade Dispute Act, Cap T8, Laws of the Federation of Nigeria, 2004 s 48 (1) and the First Schedule to the Act
28. Trade Dispute (Essential Services) s 7 (1)
29. *Attorney General Osun State v Nigeria Labour Congress (Osun State Council) and Others* (n32)
30. *Aero Contractors Co. of Nigeria Limited v National Association of Aircrafts and Engineers (NAAPE), Air Transport Services Senior Staff Association of Nigeria* (n36)
31. *Attorney General Osun State v Nigeria Labour Congress (Osun State Council) and Others*, unreported suit No: NICN/LA/275/2012 <http://judgment.nicn.gov.ng/> judgment delivered by Hon. Justice B B Kanyip on 19th December 2012,

accessed April 29th April 2020
32. *Attorney General, Osun State* (n32)
33. Trade Unions Act 2004
34. *Alhaji Garba Umar v Taraba State Government*, unreported Suit No. NICN/JOS/26/2016, the judgment delivered on 9th December 2019 by Hon. Justice Amadi <https://lawcarenigeria.com/alhaji-garba-umar-vs-taraba-state-government>/ accessed 2nd May 2020
35. *Bala James Nggilari v Adamawa State Government* & 2Ors, unreported, Suit No: NICN/ABJ/356/2015, judgment delivered 4th March, 2020 by Hon Justice B.B. Kanyip, <http://judgment.nicn.gov.ng/> accessed 30th of April 2020
36. For now, only matters relating to fundamental human rights provided in Chapter IV of the Constitution and criminal matters relating to employment and labour are appealable. See the Constitution, ss 243 (2), 254C (4)(5) and 243 (3). See also National Industrial Court, Act s 9 (1)
37. Constitution, section 243 (2) and 254C (4)
38. Constitution section 243 (4)