



Labour related fundamental rights enforcement: A critique of the decision in *S.S.A.U.T.H.R.I.A.I v OLOTU (NO.2)*

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Abstract

It is a fact that the question of which court in Nigeria has jurisdiction over matters of fundamental right enforcement has been a thorny question, giving birth to several conflicting decisions at various times. This question was recently somehow settled by the Supreme Court, in several cases, to the effect that both State (including F.C.T High Court) and Federal High Court have jurisdiction over such matters, irrespective of the subject matter that brought about the alleged infringement or the parties involved in the dispute before the court. However, one aspect of the question seems not completely settled, that is whether the National Industrial Court also has jurisdiction over enforcement of fundamental right matters or not. This is so in view of the decision in the case of *Senior Staff Association of University Teaching Hospitals Research Institutes and Associated Institutions (S.S.A.U.T.H.R.I.A.I) & Ors. v Dr. Sunday Osasu Olotu*. This paper critically examines the decision in the case and concludes that the findings of the Court of Appeal that the National Industrial Court's jurisdiction over matters of enforcement of fundamental right is only limited to disputes relating to interpretation and application of the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, as it relates to employment, labour, industrial relations, trade unionism, employer's association, and not the enforcement of the rights specified under the Chapter, is inappropriate. The paper recommends that the Court, when faced with similar facts in future should hold otherwise, and give the provision of Section 46 of the Constitution a wider interpretation to the effect that the National Industrial Court, which has powers of the High Court, can also entertain matters of enforcement of fundamental rights.

Keywords: Jurisdiction, enforcement, labour, employment, fundamental rights

Introduction

It is trite and settled that jurisdiction of courts is always statutorily created either based on subject matter or persons that could be brought before the court. In spite of this settled position of the law, the question of which court has jurisdiction to entertain matters of enforcement of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, as amended, had been quite controversial, giving rise to so many conflicting decisions, from *Tukur v Government of Gongola State* ^[1] to *FUT Minna v Olutayo* ^[2], among others. The controversy was mainly on the interpretation of section 42 (1) of the Constitution of the Federal Republic of Nigeria, 1979 (now section 46 (1) in the 1999 Constitution). The controversy was somehow put to rest in *Olutayo's* case above where the court finally reiterated its earlier decision that both the Federal High Court and State High Court share original jurisdiction over question of Fundamental Rights infringements.

There may not be an end in sight for the construction of the over stretched provision of section 46 of the Constitution in connection with the issue of fundamental right matters for the purpose of laying to rest the appropriate courts with original jurisdictions in all cases. The tussle remained unrest for the purpose of addressing the court with jurisdiction over labour related fundamental right matters. In an attempt to seal the issue, the court had further revisited the construction of the provision of section 46 (1) of the Constitution in some handful of cases ^[3] including the case of *Senior Staff Association of University Teaching Hospitals Research Institutes and Associated Institutions (S.S.A.U.T.H.R.I.A.I) & Ors. v Dr. Sunday Osasu Olotu* ^[4]

under critique. In this case the court held to the effect that the National Industrial Court of Nigeria can only interpret and apply the provisions of Chapter IV of the Constitution when it is called upon to consider issues bordering on labour and labour related fundamental rights matters but cannot enforce. This position maintained by the court in this case and a scoop of others though yet to be tested at the apex court, sprang up issues of serious concern when viewed through the legal lens, of the extant legislations in force. The court's pronouncement in the case above appears to be in a great deal of variance with the somewhat intendment of the legislators or drafters of the Constitution in Nigeria. A critical appraisal of some of the enactments and their judicial interpretations and applications can be of immense importance in appreciating the exercise of the interpretative role of the Courts adopting a wholesome approach in construing the provision of the Constitution. It is against this backdrop this work, with every respect and humility to their lordships intends to embark on the critique of the position maintained by the Court of Appeal in the case under review.

Conceptual Clarification

A cursory look at some basic elements necessary for the appreciation of the issue at hand will be of significant moment.

1. Application: In a grammatical parlance, the word simply means an official request for something, usually in writing ^[5]. In another twist, it is a formal or written request for employment, admission, funding, authorization and so on ^[6]. The word is commonly known for a formal means of putting a request or declaration of interest. It follows from the

foregoing definitions that no legal connotation can easily be drawn in connection with the area of interest to this research.

In a legal parlance, the word connotes *Putting to; placing before; preferring a request or petition to or before a person* ^[7]. Although the court's appreciation of the word above indicates or signifies bringing a request to or before a Court, it does not necessarily mean putting or placing before a court a written letter but an application by a Motion ^[8]. On the other hand, *the act of bringing something to bear; using it for a particular purpose* ^[9] has further been connected to the use of the word under review. This grammatical expression has received a judicial nod in the case of *Abacha v F.R.N* ^[10]. Where it was further declared to mean: "...*bringing together, to ascertain some relation or establish some connection, as the application of a rule or principle to a case or fact*".

Whereas the word portrays a simple literal meaning of putting a formal request to a person or a body whether judicial or otherwise, it also appears capable of portraying other allegorical relevance.

2. Enforcement: This literally means when someone in a position of power makes sure you follow the rules ^[11]. It is also seen as the process of making people obey a law or rule, or making a particular situation happen or be accepted ^[12]. These ordinary connotations of the word are not different from the meaning ascribed to it in judicial procedures. Thus, in *Sylvester v Ohiakwu* ^[13] the Court held that; "*Enforcement of law is the mechanism by which the objective of the law is realized. The objective of the law is justice...*"

Therefore, the word simply entails the circumstances of securing compliance with the tenets of the law, regulations or all legal regimes.

Brief Facts of the Case

The Appellants maintained before the Abuja division of the National Industrial Court of Nigeria an action against the Respondent alleging, among other things, violation of their Fundamental Rights under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 and the African Charter on Human and People's Rights and claimed some declaratory, injunctive and monetary reliefs. While opposing the application, the Respondent, challenged the jurisdiction of the Court on the ground of incompetence to entertain an action seeking to enforce any alleged labour related Fundamental Rights' violation through the Fundamental Rights (Enforcement Procedure) Rules. The Court declined jurisdiction for want of competence to try intra-union matters that did not pass through Alternative Dispute Resolution (ADR) mechanisms. The matter as contended by the parties, the court further held, is not the type that could be considered on affidavit evidence.

On appeal, it was contended, among others, whether the National Industrial Court has jurisdiction to entertain the originating application for enforcement of the Appellants' fundamental rights. The Court of Appeal after considering some provisions of the Constitution and of the Fundamental Rights (Enforcement Procedure) Rules, 2009, observed that the National Industrial Court has a limited jurisdiction on disputes relating to the provisions of Chapter IV of the said Constitution ^[14]. Consequently, the Court concluded that; "...the jurisdiction of the National Industrial Court is only in respect of disputes over the interpretation and application of

the provisions of Chapter IV of the Constitution and not the enforcement of the rights specified under the Chapter ^[15]. (Underlining ours, for emphasis)

The above position of the Court is, with every respect and humility to their lordship of the penultimate Court, does not represent a good law. This research is set to critique same as not being a good law.

The Critique

The Appeal Court premised its above position on the isolated consideration of the provision of section 46 of the Constitution. Although the court ran through the provision of subsection 2 of the section but did not accord any relevance of the subsection to any other part of the Constitution. For the purpose of clarity, the subsection provides that;

Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within the state of any right to which the person who makes the application may be entitled under this Chapter ^[16].

It is discernible from this provision that enforcement of fundamental rights was intended to be within the original jurisdiction of a High Court which had been interpreted to include the *Federal High Court or High Court of a State or the High Court of the Federal Capital Territory, Abuja* ^[17]. In other words, the powers exercisable by the High Court as provided by the Constitution, among others, include enforcement of fundamental rights.

Meanwhile, the same Constitution was very categorical When it states that the National Industrial Court of Nigeria should have all the powers of the High Court. It provides that: "*For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court*" ^[18].

The learned Justices of the Appeal Court never averted their minds to this portion of the Constitution while holding as above. This line of interpretation of the Constitution has long been rejected under the law. Thus, the court in *Lafia Local Government v The Executive Governor, Nasarawa State* ^[19] held that: "*Related sections of the Constitution ought to be interpreted together so as to produce a harmonious result*"

In the same vein, the court emphasized the necessity of giving a broader interpretation more especially when it relates to fundamental rights of citizens ^[20]. The Fundamental Rights (Enforcement Procedure) Rules, 2009 provides that: "The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action ^[21]." The Rules, with respect to its overriding objectives, provides that:

The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realizing the rights and freedoms contained in them and affording the protections intended by them.

For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the court may make consequential orders as may be just and expedient.

The court shall proactively pursue enhanced access to justice for all classes of litigants ^[22]...

In another development, it was further pronounced that construction of the provisions of the Constitution should be broad and liberal enough so as to promote its purpose ^[23]. The noble lords of the Court of Appeal, appeared to have read the provision of the subsection and the definition section of the Fundamental Rights (Enforcement Procedure) Rules in negation of other relevant sections of the Constitution, particularly section 254D of the Constitution to so conclude. This glaring neglect by the Court seems an apparent somersault especially at a time when the same Court enjoined other courts to read the jurisdiction of the High Courts in the subsection, subject to other provisions of the Constitution ^[24]. Invariably, had the noble lords read the provision of section 46(2) along with section 254D both of the Constitution, more meaning would have been added to aid a broader conclusion.

The holding of the Court under review further negates a celebrated principle of the law in connection with construction of statutes. Where statutes are of the same subject matter, the general practice of the courts is to read them together. Thus, in *Nigerian Army v Aminun Kano* ^[25] the Supreme Court held that;

Statutes are said to be of the same subject or matter where they relate to the same thing or person or have a common purpose. Such statutes are read, construed or applied together so that the intention of the legislature is discovered from the whole set of enactments on the same subject matter.

It needs no over emphasis that the provisions of section 254D which immediately trailed the provision of section 254C, both of the Constitution, is in tandem with the provision of section 46(2) of the Constitution so as to aid the Appeal Court to have read, construed and applied them together in this case. Thus, the conclusion that the provision of section 46 of the Constitution must no longer be read in isolation but along with other provisions of the Constitution vesting exclusive jurisdiction on the National Industrial Court in labour and employment related fundamental human rights cases ^[26] becomes sanctified. Therefore, the basis maintained by the Court to oust the jurisdiction of National Industrial Court from enforcement of fundamental rights on labour related matters as not being contemplated by the Rules may not be tenable. It is against this background that Michael concluded that: *"The non-inclusion or contemplation of the NIC as a High Court in the FREP Rules does not ipso facto limit or circumscribe the powers of the NIC, which is the creation of the Constitution* ^[27]"

Although the National Industrial Court was not expressly captured in the Rules, interpretation of the Rules to include the Court which earned relevance much later would be more conforming to the law than otherwise. As such will not be in any way offensive to any of the existing laws. Thus, the apex court's harmoniously reformative gesticulation in *Ishola v Ajiboye* ^[28] that existing laws could be read with such modifications or alterations would have treated the seeming jurisdictional dilemma as *dead on arrival* in favour of the jurisdiction of the National Industrial Court. This is

because the provisions of the Fundamental Rights (Enforcement Procedure) Rules were never intended to be exhaustive or exclusive ^[29] of any possible dynamism. Therefore, the notoriety is beyond doubt that the provisions of the Rules can be stretched to accommodate any subsequent and relevant changing circumstances while giving effect to the provisions of the Constitution.

These monumental omissions of their lordships complicated the whole instance when it further neglected its role of considering other relevant statutes in arriving at its decision. The courts are enjoined by the provision of section 318(4) of the Constitution to apply the provision of the Interpretation Act ^[30] for the purpose of interpreting the provision of the Constitution. The provision of section 10 (2) of the Interpretation Act may have been instrumental in construing the provision of section 254D of the Constitution to include the power of the National Industrial Court to enforce any question of labour related fundamental rights violation alongside other courts enjoying the special jurisdiction. This has been demonstrated by the court in *INEC v PDP* ^[31] where the section was interpreted to mean that: *"an enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it"*.

The Appeal Court was in error to have limited the jurisdiction of the National Industrial Court to disputes over the interpretation and application of the provision of Chapter IV of the Constitution only but not the enforcement of such rights ^[32]. This brings us to the question how does the Court apply the provision of Chapter IV of the Constitution after the interpretation? The pronouncements of the Court in that regard fall apparently short of how the duty of application of the rights after interpretation can be carried out by the court. This is factually necessary that the enforcement of the interpreted rights becomes reasonably necessary to enable the application of the interpretation of fundamental rights under Chapter IV of the Constitution by the Court. Therefore, the application of the provision of section 10 (2) of the Act would have done the necessary remedy in accommodating the National Industrial Court in the corridor of enforcement of labour related fundamental rights.

In furtherance of the omission, the Court also neglected the other most relevant provision of the Interpretation Act ^[33], which provides to the effect that judges of coordinate standing should be deemed to be within the meaning of an enactment relating to the last mentioned judge. The crux of the decision in the case under review as mentioned and concurred by their lordships in the judgment that the meaning of High Court in section 46 of the Constitution, for the purpose of enforcement of fundamental rights does not include the National Industrial Court ^[34], appears to be, with every respect and humility to the noble lords, in total disregard to the long standing statutory provisions that the National Industrial Court shall have all the powers of the High Court ^[35], and the Supreme Court's pronouncement in *Sifax (Nig.) Ltd v Migfo (Nig.) Ltd* ^[36] that:

By virtue of sections 251, 254, 257 and 272 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Federal High Court, the National Industrial Court, the Federal Capital Territory High Court and the State High Court are courts of co-ordinate jurisdiction.

The implication of the positions above is simply that had the noble lords of the Court of Appeal put into consideration the other provisions of the Constitution and the overriding objectives of the Fundamental Rights (Enforcement Procedure) Rules, 2009, among others, into contemplation, their decision in the case under review, would have been different. Although, the apex court in the land is yet to make any specific pronouncement in this regard, it is discernible from the previous approaches of the court to constitutional issues that the judgment under review could not be said to have set a good precedent on the jurisdiction of the 'Nigerian Labour Court' over questions of labour related fundamental rights matters. In the light of the Court's pronouncement in *Ishola's* case above, which emphasized the important role of the court in construing and giving effect to existing laws, the Court ought to have read the provision of section 46 of the Constitution and Order 1 Rule 2 of the Fundamental Rights (Enforcement) Rules, 2009 along with the provisions of section 254D of the Constitution and section 1 (3) (b) of the National Industrial Act, 2006 to accommodate the relevance of the Court in the enforcement of labour and labour-related rights violation, especially that the 3rd Alteration Act that modified the status of the labour court was not in place when the Fundamental Rights (Enforcement Procedure) Rules were made.

Similarly, the position maintained in the case under review by the Court, Per Adumein JCA, while relying on the provision of section 254C (1) (d) of the Constitution limiting the jurisdiction of the trial National Industrial Court to "*disputes over the interpretation and application of the provisions of Chapter IV of the Constitution*" [37] only, may not be tenable under the law. The fact that the word 'enforcement' was not mentioned in the section conferring the jurisdiction on the Court as seemed the 'corner stone' of the court's denial of the trial court's power when the court added "*and not the enforcement of the rights specified under the Chapter*", may not be enough justification for denying the court's power to be involved in enforcing labour and labour-related rights violations.

It becomes pertinent at this point to emphasize the fact that all courts are enjoined to take into cognizance of the principle that says "*Under the Constitution granting specific powers, a particular power must not be granted before it can be exercised.*" [38] It follows, therefore, that the provision of the Constitution granting the trial court power to 'interpret and apply' the provision of Chapter IV of the Constitution alone suffices to guide the Appeal Court to construe the provision of section 46 of the Constitution and Order 1 Rule 2 of Fundamental Rights (Enforcement Procedure) Rules, 2009, to include the National Industrial Court in labour and labour related rights enforcement matters. This is geared towards attaining international best practices on human rights matters and will further ensure compliance with the need to avoid toying around with the rights of the citizens under any guise [39] possible.

A Recent Intervention

The recent pronouncement of the apex court can be seen to have lent credence to the competence of the National Industrial Court to not only interpret and apply but to exclusively enforce the provisions of Chapter IV of the Constitution especially when it relates to matters within the exclusive competence of the Court. The Court rightly posited to the effect that a court is not seized of the

jurisdiction where the cause of action for enforcement of fundamental rights arose from a transaction within the exclusive jurisdiction of another court [40]. The Court acknowledged the fact that the substance of the reliefs in the main action giving rise to the objection that resulted in the judgment under review borders substantially on the rights of members of the appellant as workers of the Psychiatric Hospital Uselu, Benin City, Edo State to Life, Association, Dignity of Human Person as well as to freely operate as a Trade Union [41]. The question of whether the need for the enforcement of the identified rights emanated from an employment related transaction is not far-fetched from the surrounding circumstances of the case.

Similarly, the community readings of the claims in the main action will suggest that no proper determination of the main action could be achieved without determining other claims such as declaration that the withholding of the check off Dues deducted from their salaries and other acts of victimization meted to the workers amount to violation of their fundamental rights to life, freedom of association and dignity of human person. The need to resolve the above claims being at the moment undoubtedly within the exclusive preserve of the Labour Court in Nigeria may also form another bedrock in favour of the Court to assume jurisdiction in enforcing labour and employment related fundamental rights violations [42]. Although, these pronouncements of the Supreme Court may have been made in contemplation of the jurisdictions of the State High Courts and that of the Federal High Court prior to the elevation of the National Industrial Court of Nigeria, the effect of such positions may have been shifted to the National Industrial Court of Nigeria pursuant to the intervention of the 3rd Alteration Act, 2010 that introduced section 254C of the Constitution of the Federal Republic of Nigeria 1999 as amended. Thus, Oluwadunsin, while commenting on the efficacy of section 254C (1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, observed that the jurisdiction of the National Industrial Court is not only exclusive to it but *cannot be concurrently exercised or shared among the other High Courts in the same plinth of authority or power* [43]. Consequently, the privilege enjoyed by the State High Courts, High Court of the Federal Capital Territory, Abuja and the Federal High Court by virtue of the above provision *ceased to have validity in law* [44].

Conclusion

As stated earlier, the decision of the Court of Appeal under review has been shown to have fallen short of adopting a broad and liberal approach towards the construction of the provision of section 46 of the Constitution of the Federal Republic of Nigeria. The decision of the court in this case, given devoid of cognizance of relevant section of the Constitution further demonstrated the failure of the Court to observe the celebrated principle of law that requires community readings for the purpose of interpretation of the organic law of the land. Similarly, the judgment of the Court appears economical for its inadequacy in appraising other relevant statutory provisions, example, that of the NIC Act, 2006 and those of the Interpretation Act despite the Constitutional directives to so do in situations like the one under review. These monumental failures of the Court of Appeal have, with respect to my noble lords, occasioned a gross impediment on the exercise of jurisdiction by the

National Industrial Court on enforcement of labour or employment related cases of fundamental rights violation. The restrictive tendency of the judgment on the jurisdiction of Court to the interpretation and application of Chapter IV of the Constitution only, and without the power for enforcement relying on the definition part of the Rules which did not identify the Court, is persuasively suggestive of the fact that the provisions of the Rules are exhaustive and exclusive. This may appear puzzling when this same Court, per Adumein JCA ^[45], while describing the provisions of Fundamental Rights (Enforcement Procedure) Rules to be non-exhaustive and non-exclusive, further concluded that the provisions of the said Rules being a product of the Constitution should not *be given "a restrictive and constrictive interpretation"*. Hence, the emphasis made by Obaje, that a special procedure is required for the enforcement of labour-related fundamental right matters ^[46] may have been made without recourse to the flexible nature of the rules as stated above and its relevant provisions admitting of all modes of commencing an action ^[47].

Similarly, the power of the courts to exercise a similar power reasonably necessary or incidental to the exercise of the conferred power in an enactment is also shown to be of relevance towards attainment of the purpose and intendment of the framers of the Constitution, for donating the power of *interpretation and application* of the provision of Chapter IV of the Constitution to the trial court. Therefore, it appears expedient for the construction of the power of the trial court to interpret and apply the provisions of Chapter IV of the Constitution to be all inclusive of such other powers to enforce the provision of the same Chapter. In other words, the power of the National Industrial Court to enforce the provisions of the Chapter is not only incidental but reasonably necessary to carry out the duty of interpretation, application and enforcement of the Chapter on labour and employment related rights violations.

The analogical exercise of the power to enforce the provision of Chapter IV of the Constitution by the National Industrial Court alongside existing courts with the special jurisdiction on employment-oriented rights infringements, was also shown to be tenable. It has been shown that it is deducible from the coordinate standing of the judges of the Court and those of the existing courts to read the power to enforce the provision of the Chapter to include the judges of the Court having the same status under the law with that of the last mentioned judge or judges exercising the power.

Moreover, the amendment of the Constitution, through the Third Alteration Act, 2010, has elevated the standing of the Court to one of superior court of record with the power to interpret and apply the provisions of Chapter IV of the Constitution is certainly an alteration and modification of the Constitution made later than the existing Fundamental Rights (Enforcement Procedure) Rules, 2009. As was shown earlier, the novelty of the Alteration Act must not in any way possible be allowed to constitute an estoppel against the Court on enforcement of rights violation of matters connected with labour and employment. Wherefore, the construction of the Rules together with the related part of the Alteration Act would have embellished the Rules in recognizing the jurisdiction of the Court within the meaning of the Rules. Although, the courts do not make laws, reading the existing laws together with the modified sections of the Constitution, would have afforded the Court an opportunity

to *interpolate though not expressly into the text* ^[48] the Rules in its favour. This is to attain the end purpose of the Rules which is to ensure *speedy enforcement of rights and simplification of the procedure* ^[49]. Wherefore, restricting the jurisdiction of the Court to interpretation and application of human rights cases, is indirectly granting the jurisdiction to enforce the provision of Chapter IV of the Constitution in connection with labour and employment related matters to other High Courts which would be in abeyance of the purport of the 3rd Alteration Act, 2010. The situation was aptly summed up as follows:

Following the enactment of the Constitution (Third Alteration) Act, 2010 which gave exclusive jurisdiction to the National Industrial Court on labour matters, both the State and Federal High Courts including that of the Federal Capital Territory, Abuja ceased to have jurisdiction in those matters pending before them ^[50].

The question of origin of the cause of action resulting in an application for the enforcement of a fundamental right along with the need to resolve other issues exclusively within the purview of the jurisdictional competence of National Industrial Court have also been shown to constitute another milestone towards the recognition of the Court within the realm of Courts of competent jurisdiction to enforce fundamental rights related to it.

Consequently, this work recommends that the courts, especially the Supreme Court, when faced with similar facts in future should give effect to other relevant parts of the Constitution and of the Interpretation Act as well as the overriding objectives of the Fundamental Rights (Enforcement Procedure) Rules, 2009 and the plethora of judicial pronouncements, to give the provision of Section 46 of the Constitution a wider interpretation to the effect that the National Industrial Court, which does not only have the powers of the High Court, but also enjoys co-ordinate status with the other High Courts, to entertain matters of enforcement of labour and employment related fundamental rights violation, alongside the existing courts enjoying the special jurisdiction. As a matter of fact, in view of the rampant cases of rights violations in Nigeria, all courts presided over by persons called to the Nigerian Bar, as Barristers and Solicitors of the Supreme Court, should be given the powers to entertain cases of fundamental rights violations.

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50. John v Igbo-Etiti Local Government Area (2013)7 NWLR (Pt. 1352) p. 1 at p. 17, paras, A-B