

# Jurisdiction of The Courts in Labour And Trade Union Matters

---

By YUSUF O. ALI, SAN

## Introduction

In tackling this topic, recourse will be had to the following statutes, viz the Labour Act Cap 198 Laws of the Federation 1990, Trade Unions Act Cap 437, Trade Disputes Act Cap 432 Laws of the Federation 1990, Trade Unions (Amendment) Decree No. 4 1996 and the Trade Disputes (Amendment) Decree No. 47 of 1992.

Jurisdiction according to Black's Law Dictionary, page 853 thereof is defined by virtue of the case of Federal Land Bank of Louisville, Ky. V. Crombie, 258 Ky. 383,80 S.W.2d 39,40 thus:

*It is the power of the Court to decide a matter, in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.*

This could also be defined as the powers of courts to inquire into facts, apply the law, make decisions and declare judgment. Jurisdiction is said to exist when a court has cognizance of class of cases involved, proper parties are present, and point to be decided is within the powers of court.

Jurisdiction also according to the case of Enugwu v. Okefi<sup>1</sup> is defined as:

*Jurisdiction" is the authority, which a court has to decide matters that are litigated before it, or to take cognizance of matters presented in a formal way for its decision.*

Having settled the meaning of the word jurisdiction, the theme of the paper can be conveniently dabbled into. This is against the backdrop of the inquiry whether or not courts have jurisdiction to entertain matters concerning labour and trade unions.

Section 80(1) of the Labour Act Cap 198 Laws of the Federation of Nigeria 1990 provides thus:

*80(1) A Magistrate's Court (or, in a state where a magistrate's court has no civil jurisdiction, a district court) shall have jurisdiction to hear complaints under section 81 of this Act.*

Sub section (2) of section 80 provides thus:

*(2) Without prejudice to the jurisdiction to hear complaints conferred by sub section (1) of this section, the Chief judge of a state with the*

*concurrence of the state Authority may by order confer jurisdiction to hear such complaints on area courts or customary courts in the state or part of the state.*

Section 81(1) (a) & (b) of the Act describes what amount to labour complaints as:

*81 (1) Where*

- (a) an employer or worker neglects or refuses to fulfill a contract; or*
- (b) any question, difference or dispute arises as to the rights or liabilities of a party to a contract or touching any misconduct, neglect, ill-treatment or injury to the person or property of a party to a contract,*

*Any party to the contract feeling himself aggrieved may make complaint to a court having jurisdiction, which may thereupon issue a summons to the party complained against (the aggrieved party, the court, the party complained against and the complaint being hereafter in this section and in sections 82 to 85 of this Act referred to as "the complaint" respectively).*

Meanwhile sub section (6) of section 81 of the Act<sup>2</sup> excludes the court or courts mentioned in section 80 (1) and (2) from assuming jurisdiction in respect of matters in sub section (6) of the Act when it says:

- (6) This section shall not apply to a trade dispute, that is to say, any dispute or difference between employers and workers (or between workers and other workers) connected with*
  - (a) the employment or non-employment; or*
  - (b) the terms of the employment; or*
  - (c) the conditions of labour of any persons.*

From the provisions of sections 80(1), 81(1) (a) and (b) and sub section (6) of the Act<sup>3</sup>, it is clear that the courts mentioned in sections 80(1) and (2) of the Act have jurisdiction in respect of complaints pertaining to labour matters and these complaints mean criminal proceedings connected with labour matters as sub section (6) of the Act divested the courts mentioned in sections 80 (1) and (2) of the jurisdiction in matters that can be classified as a trade dispute.

Thus by this provision the courts mentioned in section 80(1) and (2) cannot assume jurisdiction on the matters itemized in paragraphs (a) (b) and (c) of sub section 6 of the Act which are purely civil.

Trade Unions Act Cap 437 Laws of the Federation 1990 also by virtue of section 50 (1) provides for the jurisdiction of the courts in respect of the trade union matters when it says<sup>4</sup>.

- 50(1) every offence against this Act alleged to have been committed*
  - (a) by a trade union which has not yet been registered or any official of such a trade union;*
  - (b) by a body which is or has been registered under this Act or by an office of such body;*

- (c) *by an official of any such body in circumstances such that both the body and the official are guilty of the same offence;*

*may be prosecuted summarily before a magistrate's court having jurisdiction where the registered office of the body in question is situated or, if the body has ceased to be registered, where its registered office was situated immediately before it ceased to be registered.*

- (2) *In this section "official" includes a former official*

- (3) *The foregoing provisions of this section are without prejudice to any jurisdiction exercisable by any court apart from this section.*

It could be seen from the above quoted section that the Act vests in the Magistrate court having jurisdiction where the registered office of the union in question is situated to assume jurisdiction in respect of any offence committed against the Act.

However, Decree No 4 of 1996 has introduced an "amendment to Cap 437. This amendment, which specifically touches on jurisdiction, was provided for by section 85, which further amended the amendment introduced by section 50A immediately after the existing section 50 of the principal Act, and it says:

*50A No question as to the Validity of any act taken by any person or authority in pursuance of this Act shall be entertained by any court of law or tribunal in Nigeria<sup>6</sup>,*

From this quoted additional section, one could infer that the jurisdictional provision for the magistrate's court under section 50(1) of the principal Act still remains in respect of criminal proceedings, but ordinary courts of the land are denied jurisdiction on matters affecting civil proceedings having connection with trade unions.

Meanwhile, after the introduction of section 50A by section 8 of the Trade Unions (Amendment) Decree No. 4 of 1996, there also came another Decree known as Trade Unions (Amendment) Decree<sup>7</sup> which by its section 7 further amended section 50 A of the principal Act and substituted it with a new section 50A which provides as follows;

*50A No question as to the validity of any action taken by any person or authority in pursuance of this Act shall be entertained by any court other than the appropriate court having the jurisdiction to entertain such matters.*

Also, section 52 of the principal Act which by its interpretation describes "appropriate High Court" to be High Court of the state in which the registered office of the union is situated; was further amended by section 8 of the Decree<sup>8</sup> when it says:

*8 section 52 of the principal Act is amended by (a) inserting in alphabetical sequence the following new interpretation, that is-*

*“appropriate court” means the Industrial Arbitration Panel and the National Industrial Court as the case may be;*

It should be noted that by virtue of 5 the combined effects of sections 50A introduced by the Trade Unions (Amendment) Decree No. 1 of 1999 and 8 (a) of the same section which describes "the appropriate court" mentioned in section 50A as the Industrial Arbitration Panel and the National Industrial Court, "it has clearly shown that ordinary or regular courts of the land do not have jurisdiction to entertain matters affecting trade unions.

Trade Disputes Act, which could be found in Cap 432 Laws Of the Federation, is the principal Act<sup>9</sup> and it is the law that at present governs resolution of trade disputes in Nigeria. It is to be noted that this Act itself was amended in 1992 by another Decree<sup>10</sup>.

The main purport of this amendment as it affects this paper is on jurisdiction of courts to entertain cases on trade disputes. The Trade Disputes (Amendment) Decree was aimed at divesting the regular courts of jurisdiction to entertain cases on trade disputes, and inter or intra union disputes.

Section 19 (1) of the Trade Dispute Act cap 432 Laws of the Federation of Nigeria 1990 (hereinafter referred to as "the principal Act") makes provision for the establishment of the National Industrial court for Nigeria and according to the principal Act, its jurisdiction is with respect to the settlement .of trade disputes, the interpretation of collective agreements and matters connected therewith.

However section 20(1) of the principal Act provides that the National Industrial Court shall, to the exclusion of any other court have jurisdiction in respect of any matter that has to do with trade disputes when it says:

- 20 (1) the court shall, to the exclusion of any other court have jurisdiction*
- (a) to make awards for the purpose of settling trade disputes; and*
  - (b) to determine questions as to the interpretation of*
    - (i) any collective agreement*
    - (ii) any award made by an arbitration tribunal or by the court under part 1 of this Act,*
    - (iii) the terms of settlement of any trade dispute as recorded in any memorandum under section 7 of this Act.*
- 2. The court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute.*
  - 3. No appeal shall lie to any other body or person from any determination of the court.*
  - 4. Nothing in subsection (1) or (2) of this section shall prejudice any jurisdiction of the Supreme Court of Nigeria under section- 259 or 213 (2) (c) of the Constitution of the Federal Republic of Nigeria or any jurisdiction of a high Court under section 242 of that constitution.*

From the above quoted sections one could see that by the provision of the principal Act it is the National industrial Court to the exclusion of all other courts that has jurisdiction on matters connected with trade disputes.

However, there came in 1992, an amendment to the principal Act which amendment substantially affected the issue of jurisdiction of court in trade disputes matters as could be seen in section 1A-(1) of the Trade Disputes (Amendment) Decree No. 47 of 1992 which provides thus:

*1A (1) subject to the provisions of sub section (3) of section 20 of this Act, no person shall commence an action, the subject matter of a trade dispute or any inter or intra union dispute in a court of law and accordingly, any action which, prior to the commencement this section is pending in any court, shall abate and be null and void.*

Sub section (2) of the Decree however makes it crystal clear that it is only the National Industrial Court that has jurisdiction in respect of the matters when it says

*(2) Notwithstanding this provision of the Constitution of the Federal Republic of Nigeria 1979, any interim or interlocutory order, judgment or decision made by any court other than the National Industrial court established under this Act, in respect of any trade dispute inter or intra union dispute prior to the commencement of this section shall cease to have effect.*

With the coming into effect of section 1A of the Trade Disputes (Amendment) Decree No 47 of 1992, it could be safely concluded that regular courts of the land have been divested jurisdiction in any action relating to trade disputes or inter or intra trade union matters as jurisdiction has been exclusively vested in the National Industrial court thereby ousting jurisdiction of other courts.

On this we may wish to see the case of *Udoh v, OHMB*<sup>11</sup> where the Supreme Court gave construction to section 1A of the Trade Dispute (Amendment) Decree No. 47 of 1992 per Karibi Whyte JSC (as he then was) stated thus:

*Thus as at 1st January 1992 no actions relating to trade disputes, whether intra, or inter union, can be commenced. The jurisdiction of the courts in respect thereof is ousted. Again, actions pending in court as on that day will abate and shall be null and void. It seems to me fairly clear that the section is concerned with the exclusion of the jurisdiction of the court in respect of "commencement of actions" and the "continuance of pending actions" as on the 1st January, 1992. Thus whilst no civil proceedings, whether intra or inter in respect of trade disputes can be entertained, such pending actions will abate and shall be null and void.*

The case of *Udoh vs. OHMB* (Supra) makes it clear that ordinary or regular courts have no jurisdiction in labour related matters particularly at page 148 paragraphs D-E where the word "Action" used in the section was defined as:

*action means a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court but does not include a criminal proceedings*

To buttress the above quoted dictum of per Karibi Whyte, he went further on page 149 at paragraph C of the same case to state that

*it seems to me that the mischief aimed at by this amendment is to avoid the proliferation of trade union cases in several High Courts and ensure their litigation in the National industrial Court only<sup>12</sup>*

## **Conclusion**

A critical perusal of the various statutory provisions with the amendments thereof and the judicial authorities cited in the course of this paper would clearly convince one that ordinary or regular courts of the land are divested of jurisdiction in respect of all civil matters touching on labour related and trade unions and that the jurisdiction in respect thereof is vested mainly on the Industrial Arbitration Panel and National Industrial Court as court of first instance and appeal respectively.

However, the Magistrate's court or courts of its equivalent jurisdiction are vested with the jurisdiction in matters involving or connected with criminal aspects of the items provided for by the various Acts dealing with the matters having connection with labour and trade union matters.

### Notes

- 1 (2000) 3 NWLR (Pt. 650) 620 at 639'paras B-C.
- 2 Labour Act Cap 198 L.FN 1990. Ibid.
- 3 Ibid
- 4 Sections 50(1) of the Trade Unions Act Cap 437 LFN 1990.
- 5 Trade Unions (Amendment) Decree No. 4 of 1996.
- 6 A Handbook of Nigerian labour Laws by Bamidele Aturu Esq  
(a publication of Friedrich Ebert stifling) 2001.
- 7 A Handbook of Nigerian Labour Laws by Bamidele Aturu Esq (a publication of Friedrich Ebert  
stifling) 2001
- 8 Trade Unions (Amendment) Decree No. 1 of 1999
- 9 Ibid
- 10 Trade Disputes (Amendment) Decree No. 47 of 1992.
- 11 (1993) 7 NWLR (Pt. 304) 139 at 148 paras B-C.
- 12 See Savannah Bank (Nig) Ltd v, Ajilo (1989) 1 NWLR (pt. 97) 305." See also Tidex Nig Ltd v.  
NUPENG".