THE NATIONAL INDUSTRIAL COURT OF NIGERIA AND THE APPLICATION OF INTERNATIONAL LABOUR STANDARDS AND BEST PRACTICES IN EMPLOYMENT LITIGATION

By

Edafe Ugbeta*

Abstract

This paper examines the application of international labour standards (ILS), particularly those addressing unfair labour practices, in employment and labour-related litigation in Nigeria. In doing so, the paper focuses on the policy and practice of the National Industrial Court of Nigeria (NICN), Nigeria's specialised court for resolving employment disputes, highlighting the Court's expansive utilization of its constitutional mandate to apply or interpret international labour standards. It also analyses the NICN's procedural requirement for litigants to plead and prove international labour standards and (international) best practices, and critiques the inconsistent judicial approaches that have led to uncertainty. The paper concludes by advocating for a consistent, justice-driven approach that reinforces the NICN's role in promoting fair labour practices in line with global standards.

Keywords: International Labour Standards, Unfair Labour Practices, International Labour Organisation (ILO), Conventions, Employment.

1. Introduction

In recent years, the integration of international labour standards into domestic legal systems has become a matter of significant discourse

in labour circles around the world. Typically, international labour standards (ILS) are established by the International Labour Organisation (ILO), a specialised agency of the United Nations, to promote fair working conditions, protect workers' rights, and prevent unfair labour practices globally.[1] These standards are drawn from various conventions, recommendations, and protocols that address a broad range of employment-related issues, including freedom of association, prohibition of forced labour, equal pay for equal work, and occupational health and safety.

For many countries, adherence to international labour standards is both a matter of international commitment and domestic legal obligation. Yet, how such standards are incorporated into domestic law is another issue altogether. For Nigeria, which has ratified and incorporated several labour-related conventions and treaties into its domestic law, the standards embodied in these conventions should ordinarily have direct legal effect and influence on the country's industrial law and practices. However, what one finds in practice is that, beyond mere ratification and domestication, the application of these standards by Nigerian courts remains clogged by certain procedural requirements. As the primary forum for resolving industrial disputes in Nigeria, this article evaluates the policy and practice of the National Industrial Court of Nigeria (NICN) with regard to its application of international labour standards in adjudicating industrial disputes. In particular, drawing on its developing case law, the article highlights how the NICN has interpreted and applied international labour standards in addressing unfair labour practices and how the Court's decisions are shaping the landscape of workers' rights and industrial relations in Nigeria.

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*LLB Hons (Delsu), BL, LLM (Kent), LLM (South Wales); Partner and Head of Litigation & Disputes Practice, Aret & Bret LLP; Phone No. 08037743446; Email: dafe.ugbeta@aret-bret.com

[1] International Labour Organization, *International Labour Standards*, available here (accessed 10 August 2025)

2. Understanding International Labour Standards

As alluded to above, international labour standards are a set of legal instruments formulated under the auspices of the ILO, setting out the basic principles and rights at work.[2] These standards are designed to guide against unfair labour practices and ensure humane conditions for workers globally, regardless of the country they are in. Basically, international labour standards are derived from two main sources:

1. **ILO Conventions, Treaties** and **Protocols** – these are legally binding treaties and agreements that member states can choose to ratify. Once ratified, countries must apply them in national law and practice.

2. **ILO Recommendations** – these are non-binding guidelines that provide more detail or suggest best practices to complement Conventions.[3]

In many cases, a Convention (treaty or protocol) lays down the basic principles to be implemented by the ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied.

3. Defining Unfair Labour Practices

Perhaps it is convenient to begin by stating that the phrase 'unfair labour practice(s)' is not defined in any Nigerian statute, including the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010 which established the exclusive jurisdiction of

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[2] See, International Labour Organization, ILO 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, available here (accessed 11 August 2025)

[3] ----------, Conventions, Protocols and Recommendations, available here (accessed 11 August 2025)

the NICN over civil labour cases involving unfair labour practices.[4] However, from popular usage in labour circles, unfair labour practices generally refer to actions or practices by employers that are deemed unjust or discriminatory against employees.[5] It covers a wide range of actions that violate workers' rights, including unjust dismissals, exploitation, discrimination, and non-compliance with basic labour protection laws.

Whilst there is no statutory definition of the phrase 'unfair labour practice' in Nigeria, the NICN has offered some working definitions. For instance, in *Mix & Bake Flour Mill Industries Ltd v National Union of Food, Beverage, and Tobacco Employees (NUFBTE),*[6] while explaining what could constitute an unfair labour practice, it stated that *"...[t]o be unfair, it must be established that the practice does not conform to best practices in labour circles, as may be enjoined by local and international experience."*[7] The Court adopted a broader approach to the definition in *Omage John v Supreme Pharmaceuticals Company,*[8] where it had recourse to the meaning provided by the Black's Law Dictionary, 8th edition, and defined it in the following terms:

> *[a]ny conduct prohibited by the state or federal law governing the relations among employers, employees and labour organisations. Examples of an unfair labour practice by an employer include – interfering*

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[4] A Olatunbosun and K Onu, 'An Examination of Unfair Labour Practices against Workers in Nigeria and some selected Jurisdictions' (2020) vol.11:4 The Gravis Review of Business & Property Law, at 122-137

[5] See, Canada Industrial Relations Board, 'Labour Relations – Unfair Labour Practice' available here (accessed 12 August 2025)

[6] (2004) 1 NLLR (Pt. 2) 247 (Suit No. NICN/4/2000)

[7] See also *Tekena Obrabiel Lawson & Ors v AG and Commissioner for Justice, Rivers State & Anor* – Suit No NICN/PHC/79/2018- Unreported judgment delivered on 18 October 2018.

[8] Unreported judgment delivered on 15 May 2014 by Honourable Justice Oyewumi Oyebiola in Suit No. NICN/LA/53/2013.

> *with protected employees' rights such as the right to self-organisation, discriminating against employees for union-related activities, retaliating against employees who have invoked their rights, and refusing to engage in collective bargaining…"*

Beyond these NICN's definitions, the ILO has championed the adoption of several conventions that are directly relevant in identifying and explaining the acts, omissions, or practices in employment relationships that constitute unfair labour practices worldwide. Key among these conventions are: (i) Convention No. 87 on Freedom of Association and Protection of the Right to Organize, 1948; (ii) Convention No. 98 on the Right to Organize and Collective Bargaining, 1949, and (iii) Convention No. 158 on Termination of Employment, 1982. These conventions emphasize the protection of workers' rights from arbitrary or discriminatory actions by employers, the promotion of fair dispute resolution mechanisms, and the establishment of systems that ensure fair treatment for workers.

4. The Convention on Termination of Employment (1982)

To illustrate how the standards embodied in these ILO conventions address/prohibit unfair labour practices, we will focus on some provisions of the Convention No. 158 on Termination of Employment.[9] Historically, an employer under the common law had the unfettered right to terminate an employee's contract of service without giving any reason. However, this right has been significantly curtailed by Convention No. 158 and several other international labour conventions that now require employers to justify termination with valid reasons related to the employee's performance, behaviour or the operational needs of the business.

[9] ILO, C158 – Termination of Employment Convention, 1982 (No. 158), available here (accessed 12 August 2025)

Notably, Article 4 of Convention No. 158 sets out the principle as follows:

> *"[t]he employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*

As can be seen, the above provision requires an employer to give valid reasons for terminating an employee's employment and sets out parameters for determining whether such reasons are valid or not. But, to provide further context, the Convention itself spells out certain scenarios, though not exhaustive, under which a termination would be considered an unfair practice and therefore invalid. Specifically, by Articles 5 and 6 of the Convention, any termination based on the following reasons is deemed invalid:

i. union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

ii. seeking office as, or acting or having acted in the capacity of, a workers' representative;

iii. the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

iv. discriminatory reasons, including race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

v. absence from work during maternity leave;

vi. temporary absence from work because of illness or injury.

Additionally, Article 7 of the Convention emphasises the importance of fair hearing and procedural fairness in termination decisions, stating that:

> *[t]he employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.*

As will be seen from some of the cases that have been reviewed in the next paragraphs, the NICN has often embraced and applied the above international labour standards and others, rather than traditional common law principles, in its decisions.

5. The NICN's Policy on International Labour Standards and Unfair Labour Practices

To preface the discussion in this section, we should perhaps mention that, under Nigerian law, international treaties and conventions can only have direct legal effect in Nigeria if they are domesticated. This is because section 12 (1) of the 1999 Nigerian Constitution *(as amended)* provides that no treaty between Nigeria and any other country would have the force of law in Nigeria except such treaty has been enacted into law by the National Assembly. In the oft-cited case of *Abacha* v *Fawehinmi*,[10] the Supreme Court highlighted this rule, stating that no matter how beneficial to the country or the citizens an international treaty which Nigeria has ratified might be, it remains unenforceable if it has not been enacted into the law of the country by the National Assembly.

[10] (2000) 6 NWLR (Pt. 660) 228 at 346-347.

Although Nigeria has ratified several employment and labour-related conventions and treaties over the years, the issue of whether these conventions have been domesticated or expressly incorporated into Nigerian law by the National Assembly to make them directly applicable in Nigeria has been subject to considerable debate. It is not the focus of this article to join that debate, but there is a surfeit of views on that elsewhere.[11] For present purposes, it suffices to mention that the prevailing policy of the NICN is that a community reading of sections 254C (1) (f) and (h) and 254C (2) of the 1999 Constitution (*as amended*) and section 7 (6) of the National Industrial Court Act 2006 satisfies the domestication requirement prescribed by section 12 of the Constitution or constitutes an exception to that requirement.[12] For instance, in ***Aero Contractors Co (Nig) Ltd v National Association of Aircrafts Pilots and Engineers (NAAPE)***,[13] the claimant argued that although the ILO conventions 87 and 98 (on the Freedom of Association & Protection of the Right to Organize and the Right to Organize & Collective Bargaining, respectively) have been ratified, the NICN cannot possibly apply them since they have not been domesticated. Rejecting this argument, the court held that section 254C (2) of the Constitution constitutes the domestication requirement prescribed by section 12 of the Constitution.[14] In the more recent case of ***Julius***

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[11] See, generally, L Ochulor and I Ozuo, *Civil Jurisdiction of Courts in Nigeria – Superior Courts of Record* (LexisNexis, 2024) pp 241 – 244; 256 – 259

[12] E.A. Bassey, 'The Concept of Unfair Labour Practices in Nigeria through the Cases' (Mondaq website, 15 January 2025) also available here (accessed 13 August 2025)

[13] Suit No: NICN/LA/120/2013 -unreported judgment delivered on 4 February 2014.

[14] See also *Mrs. Folarin Oreka Maiya v Incorporated Trustees of Clinton Health Access Initiative Nigeria & 2 Ors (2012) 17 NLLR (Pt. 76) 110*. Here, the NICN recognized and applied the ratified but non-domesticated Discrimination (Employment and Occupation) Convention, 1958 (No. 111). This Convention prohibits all forms of discrimination in the workplace by employers on grounds of sex, age, colour, race, religion, etc.

Ola-Peters v Nigeria LNG Limited,[15] the Court (per Hamman J.) re-echoed the current attitude of the court in the following words:

> *I must answer straightaway that there is no dispute on the jurisdiction of this court with respect to the interpretation and/or application of international best practices in labour and international labour standards. Section 254C (1) (f) and (h) and 254C (2) of the 1999 Constitution (as amended) clearly donated exclusive jurisdiction to this court on matters relating to or and relating to, connected with or pertaining to the application or interpretation of international labour standards. See also section 7(6) of the National Industrial Court Act, 2006*

The implication of the above is that the NICN, bolstered by the provisions of sections 254C (1) (f) and (h) and 254C (2) of the Constitution which imbued it with exclusive jurisdiction over civil disputes relating to the application or interpretation of international labour standards and international best practices in labour and employment matters, has exercised that jurisdiction uncontrolledly to establish a policy which allows it to apply international labour standards and best practices (whether embodied in international conventions ratified/domesticated by Nigeria or not), when they are relied upon by parties in litigation before it.[16]

6. How the NICN Determines which Labour Practices Constitute Unfair Labour Practices

In the next section, some landmark cases that provide insight into how the NICN applies international labour standards and best practices in disputes involving unfair labour practices will be

[15] Suit No. NICN/YEN/96/2015 – unreported judgment of the NICN delivered on 29 October 2021

[16] Bassey (n 12).

examined in some detail. However, before delving into that, it must be noted that the instances of unfair labour practices highlighted below are merely indicative and not exhaustive. This is because no statute contains a list of what constitutes an unfair labour practice in Nigeria, just as there is no statutory definition of the meaning of the phrase itself. Rather, the NICN, in the exercise of its exclusive jurisdiction over labour disputes has taken the liberty to continuously determine the particular workplace practices that constitute unfair labour practices in Nigeria upon evaluation of the facts and circumstances of each case.[17]

Unarguably, a common thread that runs through the existing decisions on the subject is that, to constitute an unfair labour practice, it must be established to the court's satisfaction that the alleged conduct constitutes a violation of the provisions of a written law (such as the human rights provisions of the Nigerian Constitution); offends the minimum standards prescribed by the labour legislation in Nigeria); or falls short of international best practices in labour and employment.[18] In deserving circumstances, the NICN also reviews the internal policies of employers and employees' unions to determine whether an alleged practice amounts to an unfair labour practice.[19] Having said that, it bears mentioning that what constitutes an unfair labour practice is entirely at the discretion of the NICN, looking at the facts and circumstances of each case.

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[17] See, Folabi Kuti SAN, 'Review of some Significant Decisions in Labour and Employment Matters' (National Industrial Court of Nigeria website, 17 January 2025), also available here (accessed 18 April 2025)

[18] Ochulor and Ozuo (n 11) 232- 234

[19] *See, Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors* – Suit No. NICN/ABK/02/2021 – unreported judgment delivered on 15 December 2021.

7. Workplace Practices that have been Declared Unfair Labour Practices by the NICN

Having established the parameters for determining what constitutes an unfair labour practice in Nigeria, we shall now examine specific actions that have been declared unfair labour practices by the NICN. From its existing case law, the following are some notable examples:

(i) Termination without observing fair hearing procedures

In *Petroleum and Natural Gas Senior Staff Association of Nigeria v. Schlumberger Anadrill Nigeria Ltd.*[20] the defendant terminated an employee's contract due to alleged gross negligence in his department. Before termination, the employee was served with a letter stating that an internal investigation had determined he was grossly negligent and, as a consequence, he was given three days to provide reasons why he should not be disciplined. The NICN overturned the termination, emphasising that while an employer has the right to terminate an employment relationship, once a reason is provided, the employee must be provided an opportunity to defend themselves before a determination of their guilt. The decision stresses that the absence of a fair hearing before dismissal/termination is contrary to modern labour practices.

(ii) Discriminatory Termination of Pregnant Employee

In *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative Nigeria*,[21] the employee alleged that her employment was terminated after she disclosed to her supervisor that she was pregnant. No reason was provided for the termination. The Court found that the termination was discriminatory, as it was based solely on her pregnancy, thus violating her constitutional rights and international conventions, including the ILO's Convention No. 111 on discrimination. The

[20] (2008) 11 NLLR (Pt. 29) 164
[21] (2012) 17 NLLR (Pt. 76) 110

NICN ruled that the termination was a violation of the employee's fundamental rights to non-discrimination, awarding her aggravated damages.

(iii) Sexual Harassment at the Workplace

In *Ejieke Maduka v. Microsoft Nigeria Ltd. & 3 Ors.*,[22] the claimant alleged sexual harassment by the Country Manager of Microsoft Nigeria, followed by retaliation in the form of termination after she rejected the advances. The NICN applied the principles outlined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and ILO Convention No. 111, ruling that sexual harassment is a form of gender-based discrimination. The Court found that Microsoft Nigeria and its parent company, Microsoft Corporation, were vicariously liable for the manager's actions and awarded general damages for the violation of the employee's rights. This case emphasizes the responsibility of employers to prevent sexual harassment and discriminatory conduct in the workplace.[23]

(iv) Unfair Termination of Employment

In *Godwin Okosi Omoudu v. Prof Aize Obayan & 4 Ors*,[24] the claimant claimed that his employment with Covenant University was wrongfully terminated because he was not allowed to defend himself in relation to the allegations levied against him before his appointment was terminated. The Court (per Adejumo J.) in entering judgment in the claimant's favour stated that it can never be just in modern labour practice for an employer, without just and established cause, to impugn the integrity of an employee and based on such

[22] Suit No. NICN/LA/492/2012 – unreported judgment delivered on 19 December 2013

[23] See also *Pastor (Mrs) Abimbola Patricia Yakubu v Financial Reporting Council of Nigeria* -Suit No. NICN/LA/673/2016 -Unreported judgment delivered on 24 November 2016.

[24] Suit No. NICN/AB/03/2012 – unreported judgment delivered on 8 October 2014

impugnation, proceed to terminate his employment peremptorily. The court went further to hold that the law has shifted from the narrow confines of the common law master/servant relationship to a more proactive approach that secures the rights of both parties to an employment contract.

(v) Employer's Failure to Apply Equal Pay for Equal Work

Finally, in *Uzo Ezekwumadu v Blue Arrow TSW Ltd*,[25] the claimant, a Nigerian, claimed that it was an unfair labour practice for the defendant, his employer, to have created a difference between his remuneration and that of expatriate employees who occupied the same management level position as himself. The NICN agreed with the claimant and held that the employer's failure to apply equal pay for equal work constituted an unfair labour practice.

Notwithstanding the NICN's extensive policy on unfair labour practices as seen in the cases reviewed above, the point must be made that the Court of Appeal maintains a somewhat different stance on the issue. In *Oak Pensions Ltd & Ors v. Olayinka*[26] the Court of Appeal held that the NICN cannot unilaterally apply or import international best practices, including those concerning unfair labour practices, into the contractual relationship between an employer and an employee. The Court ruled that rights, obligations and entitlements of the parties involved in an employment relationship are governed by the terms and conditions freely agreed to by such parties, not by abstract concepts of fairness or international conventions, provided those terms do not violate statutory or constitutional provisions. To use the exact words of the court:

> *[u]nfair labour practice or international best practices may arise in the course of employment or in a trade dispute or industrial relations, but cannot*

[25] Suit No. NICN/LA/242/2016 – unreported judgment delivered on 18 March 2021

[26] (2017) LPELR-43207 (CA)

> *rightly and properly be imported into the terms and conditions of a contract of service freely entered into for a servant-master relationship. The rights, entitlements and obligations of the parties in such a relationship, are in law and equity, to be and are governed by the terms and conditions voluntarily agreed to by the parties and not by sentimental conjunctures of what is fair or unfair conduct in the relationship in complete disregard of the terms and conditions.* ***The issue of unfair labour practice or international best practice would not arise in the exercise of a right vested in the parties by their own voluntary agreement on how to end or determine the relationship between them***.[27]

The implication of the above decision by the Court of Appeal, being the final court in employment and labour-related disputes in Nigeria, is that a party involved in employment dispute will not be able to rely on unfair labour practices and international labour standards if these were not expressly made a part of the particular employment contract leading to the dispute. Given that most international labour standards are not usually included in employment contracts in Nigeria, the position of the Court of Appeal throws up another issue altogether. But this article is not the place to address that issue. In any event, the NICN has continued to maintain its stance on the applicability of international labour standards in matters before it and it is only those matters which go on appeal to the Court of Appeal that are likely to be upturned in line with the decision in ***Oak Pensions Ltd & Ors.***

[27] Ibid, 41

7. The Requirement to Plead and Prove International Labour Standards & Best Practices

A crucial aspect of the NICN's policy that deserves exploring before a commentary on this issue may be considered exhaustive is the procedural requirement to plead and prove international labour conventions, protocols and treati es before they can be relied upon in disputes before the court. This practice, which traces its origin to section 7 (6) of the National Industrial Court Act 2006,[28] is well elaborated in the current Rules that govern the practice and procedure of the court, the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017 ("the NIC Rules 2017"). Specifically, Order 14A Rule 1 (1) of the NIC Rules 2017 provides that:

> *Where an action involves a breach of or non-compliance with an international protocol, a convention or treaty on labour, employment and industrial relations, the Claimant shall, in the complaint and witness statement on oath, include:*
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> *(a) the name, date and nomenclature of the protocol, convention or treaty; and*
>
> *(b) proof of ratification of such protocol, convention or treaty by Nigeria.*

This procedure, which ostensibly relates to international labour standards which are mostly codified and derived from protocols, conventions and treaties, applies with equal force in the context of international best practices (which are not necessarily codified or derived from conventions, treaties and protocols) because Order 14A Rule 2 of the same NIC Rules 2017 requires a party relying on international best practice to plead and prove the existence of same

[28] Hereafter referred to, for convenience, as the 'NIC Act 2006".

in line with the provisions relating to proof of custom in the extant Evidence Act.

The NICN's procedural requirement that international conventions and best practices must be pleaded and proved before they can be relied upon stems from section 7 (6) of the NIC Act 2006, which prescribes that '... *what amounts to good or international best practice in labour or industrial relations shall be a question of fact*'. In *Oak Pensions Ltd & Ors v Olayinka*,[29] the Court of Appeal emphasised this point in the following words:

> *.. as provided for in section 7(6) of the NICA, the issue of good or international best practice in labour and industrial relations is a question of fact to be pleaded and proved satisfactorily by a Claimant before the trial Court could judiciously have regard to it in the determination of the case presented by him.*

1. Divergent Pronouncements of the NICN on Pleading International Labour Standards.

Although, in principle, the NICN has in place a procedural requirement that international labour standards and best practices must be pleaded and proved, recent decisions coming from the court indicate that the judges of the court are not on the same page on this issue. For example, in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors*,[30] the court (*per* Arowosegbe J.) reasoned that that section 7(6) of the NIC Act from where the NIC derived the idea and practice of pleading and proving international best practices as questions of fact negates section 254C (1) (f) of the Nigerian Constitution which did not make international best practices (and by extension international labour standards) questions of fact. As a result, the court rejected the Defendants'

[29] *Oaks Pensions* (n 26)
[30] *Elizabeth v Alex Ekwueme* (n 19)

position that the Claimant needed to plead international best practices and unfair labour practices before relying on them to establish his case. In fact, the court went ahead to nullify section 7 (6) of the NIC Act, which makes international best practices a question of fact, for being inconsistent with section 254C (1) (f) of the Constitution, holding that international best practice and unfair labour practice are questions of law to be applied by the judges of the NIC who are 'presumed to know…what amounts to unfair labour practice and international best practice".

The decision in the above case followed the earlier case of *Olawunmi Oyebola v Sahara Energy Resources Ltd*,[31] where the claimant neither pleaded nor proved that an award of two years' salary is the international best practice on the award of damages in cases of wrongful dismissal. Despite this, the court (per Peters J.) relied on international best practice and awarded damages equivalent to two years' salary that the claimant would have earned if she had not been wrongfully dismissed from service.[32]

However, in *Julius Ola-Peters v Nigeria LNG Limited*,[33] the court took a different path, insisting that international labour standards are questions of fact which a party must plead and prove before they can rely on them. In this case, the claimant sought to rely on the Termination of Employment Convention 1982, which enshrines the international labour standard prohibiting the termination of employment without giving a reason. In accepting the defendant's argument that the claimant did not satisfy the procedural requirement of pleading and proving the Termination of Employment Convention to be able to rely on its provisions, the court (per Hamman J), held thus:

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[31] *Suit No. NICN/LA/191/2014* -unreported judgment delivered on 14 July 2016

[32] Interesting, the Court of Appeal affirmed the NIC decision in Sahara Energy Resources Ltd v Oyebola (2020) LPELR-51806 (CA)

[33] *Ola-Peters v Nigeria LNG Limited* (n 15)

I have pored over the Claimant's pleadings as contained in the Amended Statement of Facts filed on the 20th day of March 2019, and the only reference made to international best practice in labour is paragraph 24 which is hereunder reproduced for the purpose of lucidity.

"24. The Claimant avers that this act of the Defendant in determining his employment without cause and/or reason is tantamount to unfair labour practice against International Labour Standards and Practices."

The question is whether the averment above has satisfied the requirement of pleading International Labour Standard and Practice. I do not think so. The claimant is required to plead the particular International Labour Standard (ILS) he intends to rely on in the suit and give particulars of same with respect to the ratification of the ILS be it protocol, convention or treaty. To merely aver that the termination of employment is against international labour standard without stating the very ILS in question does not in any way meet the legal requirement. I so hold.

I must add that, while I appreciate the very enthralling arguments of the learned counsel to the Claimant [...] in urging the court to apply the provisions of the Termination of Employment Convention, 1982 (no. 158) to this case, it is however unfortunate that I am not persuaded to take that path for the simple reason that the address of learned counsel cannot take the place of pleadings and evidence. Having not pleaded the said

> *Termination of Employment Convention, 1982 (No. 158) and prove same, he cannot do that at the address stage…*

The above decisions bring to mind the vexed issue of inconsistent decisions by Nigerian courts. As the NICN prides itself as a court that stands firmly on its previous decisions,[34] one would have thought that this kind of inconsistency would not exist. That said, it is hoped that, going forward, the court will maintain the position in *Olawunmi Oyebola v Sahara Energy Resources Ltd.* For one, it was preferred in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors,* (which of course is a later decision to *Ola-Peters v Nigeria LNG Limited)* and has been confirmed by the Court of Appeal in *Sahara Energy Resources Ltd v Olawunmi Oyebola.*[35]

9. Conclusion

This article reflects on the policy and practice of the NICN relating to its application of international labour standards, particularly those related to unfair labour practices, in resolving employment and labour-related disputes in Nigeria. The article established that the NICN, leveraging its constitutional (exclusive) jurisdiction over employment disputes bordering on these issues, has developed an expansive policy and practice to consider and apply international labour standards and best practices when they are relied upon by parties involved in litigation. However, as illustrated by the Court of Appeal's decision in *Oak Pensions Ltd v. Olayinka*, the NICN cannot unilaterally invoke international labour standards and best practices where these are not expressly included in the terms and conditions

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[34] See Justice Arowosegbe's position in *Chukwedo Onyeka Stanley* v *Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors* – Suit No. NICN/ABK/07/2022- unreported judgment delivered on 24 March 2023

[35] (2020) LPELR-51806 (CA)

of the employment contract between the parties involved in the dispute, except these terms and conditions violate statutory or constitutional provisions.

Through an analysis of its recent decisions, the article also established that the NICN still has work to do in terms of how it deals with the procedural requirement of pleading and proving international conventions, protocols, and treaties (which mainly enshrine international labour standards) as well as international best practices before they can be relied upon by litigating parties. Specifically, the article showed that although the rules governing the NICN's practice and procedure on this issue are clear on paper, judicial attitude reveals that the court is fundamentally conflicted. Since justice is not just about following procedural rules, it is recommended that, in resolving future disputes, the NICN will adhere to the stance in *Olawunmi Oyebola v Sahara Energy Resources Ltd*, so parties will not need to plead and prove international labour standards and best practices before they can be relied on in court. After all, the provisions of section 7(6) of the NIC Act 2006, which form the basis of this procedural requirement, have been nullified in *Elizabeth v Alex Ekwueme Federal University Ndufu Alike Ikwo (AE-Funai) & 2 Ors*. More importantly, its procedure in *Olawunmi Oyebola v Sahara Energy Resources Ltd* has been affirmed by the Court of Appeal, the final court for employment-related litigation in Nigeria, in *Sahara Energy Resources Ltd v Olawunmi Oyebola.*