

EXTENDING THE JURISDICTIONAL FRONTIERS OF THE NATIONAL INDUSTRIAL COURT TO ENTERTAIN FUNDAMENTAL RIGHTS APPLICATIONS

By

Dr. Patrick Ehijie Ayewoh-Odiase

LL.B (Hons); LL.M (AAU); PhD (IU); B.L.

Legal Practitioner and Consultant,

Excel Flourish Chambers, Uromi,

Edo State of Nigeria. Tel:07068869691

Abstract

Human rights mean those rights that are essential for man's existence in every given society. It is rights qua man in his capacity as man. However, there is need for state through the instrumentality of law to recognise these bundles of rights in order to ensure that these rights are guaranteed. Human rights background in Nigeria is traced to the pre-independence era when the Colonial government set up the Minorities Commission headed by Sir Henry Willink with a view to protecting the rights of the minorities against oppression by more powerful regions under the three regions envisaged for Nigeria at the material time. It was on account of the findings of the Sir Henry Willink's Commission that the entrenchment of fundamental rights provisions into the Nigerian Constitution was recommended to protect the rights of not just the minorities but individual human rights hence the inclusion of human rights provision in Chapter III of the 1960 Independence Constitution of Nigeria. It is against this background that the paper canvassed for extending the jurisdictional frontiers as well as competence of the National Industrial court, a special court vested with competence over industrial matters in Nigeria, to include and accommodate fundamental rights applications. The author therefore maintained that the extending of the jurisdictional competence of the national industrial court in matters of application for enforcement of rights provisions, such a step will redound to the protection of human rights as contained in both local and international statutes should become pillars for human rights awareness, inclusive of the African Charter on Human and Peoples Rights, the International Covenant on Economic, Social and Cultural Rights.

Keywords: jurisdiction, competence, human right, fundamental rights, protection.

Former Lecturer in Law Ambrose Alli University Ekpoma and Glorious Vision University Oguwa-Edo state Nigeria. Legal Practitioner and Consultant, Excel Flourish Chambers, Uromi, Edo State of Nigeria. <patodiase@gmail.com>

Introduction

The term 'human rights,' cannot be fully appreciated without first understanding what the notion of right is all about. There are dominant authorities on rights. They include Dennis Lloyd and MD Freeman-'Introduction to jurisprudence.' They defined right as any claim that is morally just and legally granted as due to a person. Flowing from the above definition, human rights could generally be defined as those rights which are essential for man's existence in every given society. Human rights background in

Nigeria is traced to the pre-independence era when the Colonial government set up the Minorities Commission headed by Sir Henry Willink to study the political situation in Nigeria with a view to protecting the rights of the minorities against oppression by more powerful regions under the three regions envisaged for Nigeria at the material time. It was on account of the findings of the Sir Henry Willink's Commission that the entrenchment of fundamental rights provisions into the Nigerian Constitution was recommended to protect the rights of not just the minorities but individual human rights hence the inclusion of human rights provision in Chapter III of the 1960 Independence Constitution of Nigeria. This was again followed by the entrenchment of human rights provisions in Chapter III of the 1963 Republic Constitution of Nigeria as well as Chapters IV of the 1979 and 1999 Constitutions. It is however imperative to state that while no procedure was laid down in the 1960 and 1963 Constitutions of Nigeria for the enforcement of fundamental human rights, the 1979 and 1999 Constitutions however empowered the Chief Justice of Nigeria to enact rules of procedure for human rights enforcement hence the current Fundamental Rights Enforcement Procedure Rules 2009 which abrogated the 1979 Rules. Provisions relating to the protection of human rights are contained in both local and international statutes such as the Constitution of Nigeria, the Fundamental Rights Enforcement Procedure Rules 2009, the Universal Declaration of Human Rights, 1948, which is the pivot for agitation of human rights awareness, the African Charter on Human and Peoples Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. The agitation for human right protection led to the evolution of human rights organizations and the National Human Rights Commission which was established in Nigeria as a result of the resolution of the United Nations General Assembly which enjoins all member states to establish National Human Rights Institutions for the promotion and protection of human rights.¹³⁵ The issue of breach of fundamental human rights is entrenched in the Nigerian Constitution.¹³⁶ Where a breach of fundamental human right occurs, the Constitution donates a right of action to the victim to seek redress in the High Court, be it state or federal.¹³⁷ The jurisdiction of a High Court in a State to entertain human rights violation is exclusive where such violation is unrelated to labour issues. The importance of human rights litigation occupies pre-eminence in the Constitution of Nigeria hence a chapter of the Constitution,¹³⁸ was devoted to human rights protection. Furthermore, the Fundamental Rights (Enforcement Procedure) Rules 2009 came into force in order to enhance the provisions of the Constitution in the event of any breach.¹³⁹ The Rules provides for the procedure in commencing enforcement of fundamental right where a

¹³⁵ National Human Rights Commission (NHRC) Act 1995 as amended by NHRC Act 2010

¹³⁶ Section 46(1) of the 1999 Constitution as amended

¹³⁷ Section 46(2) of the 1999 Constitution as amended

¹³⁸ Sections 33 – 46 of the 1999 Constitution as amended

¹³⁹ Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009

breach occurs.¹⁴⁰ Unlike the previous Rules,¹⁴¹ the provisions of the current rules do not admit of any limitation action as fundamental rights can be instituted at any point in time.¹⁴² The enforcement of fundamental human right can also be brought under other complementary regulations such as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹⁴³ The Act which has been ratified by the National Assembly, forms part of the Rules.¹⁴⁴ In as much as the Constitution¹⁴⁵ and the Rules¹⁴⁶ recognize the exclusive jurisdiction of the Federal High Court or State High Court to entertain and determine fundamental right violation, the issue of enforcement does not rest squarely on a particular court. In *Jack v University of Agriculture, Makurdi* the Court held that a person whose fundamental rights has been breached, being breached or about to be breached, may apply to a High Court or Federal High Court in the State for redress.¹⁴⁷ In *Federal Ministry of Commerce and Tourism v Eze*, the Court of Appeal while elucidating on the concurrent jurisdiction of the Federal High Court and High Court of a State in an action for the enforcement of fundamental rights, held thus:

By virtue of the provision of section 46 of the 1999 Constitution of the Federal Republic of Nigeria, jurisdiction is conferred on any High Court in a State in matters of fundamental rights enforcement. This means that where both the State High Court and the Federal High Court exist in a State, they both have concurrent jurisdiction to deal with an application for the enforcement of fundamental human right and the potential applicant has the option to approach either of the two sets of courts with his application for redress.¹⁴⁸

However, this paper examines the jurisdiction of the National Industrial Court in the enforcement of human rights violations alongside the State or Federal High Court. But before then, it will be imperative to examine the concept of human rights and issue of jurisdiction as conferred on both the High Court and the National Industrial Court of Nigeria.

2. Nature and Scope of Human rights

The term human right cannot readily be defined without regards to morality and legality.

¹⁴⁰ Order II Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules 2009

¹⁴¹ Fundamental Rights (Enforcement Procedure) Rules 1979

¹⁴² Order III Rule 1

¹⁴³ Articles 5 & 6 of the African Charter on Human and Peoples Rights (Ratification and

Enforcement) Act 2004

¹⁴⁴ Fundamental Rights (Enforcement Procedure) Rules 2009

¹⁴⁵ Section 46 of the 1999 Constitution as amended

¹⁴⁶ Fundamental Rights (Enforcement Procedure) Rules 2009

¹⁴⁷ (2004) 5 NWLR (Pt. 865) 208

¹⁴⁸ (2006) 2 NWLR Pt. 964, Page 221

Rights are conditions of life without which no man can seek in general to be himself or at his best.¹⁴⁹ In *Hassan v Economic and Financial Crimes Commission*, where Abiru, JCA stated that:

Fundamental rights are those rights without which neither liberty nor justice would exist. They are freedoms essential to the concept of other liberty, inherent in human nature and consequently inalienable. They are rights that belong to all human beings and they are frequently held to be universal in the sense that all people should enjoy them and to be independent in the sense that they exist and are available whether or not they are recognized and implemented by the legal system or officials of a country.¹⁵⁰

Similarly, in *West Africa Examination Council v Adeyanju*, the Supreme Court defined fundamental rights as follows: Fundamental right is a right guaranteed in the Nigerian Constitution and can be found entrenched in Chapter IV.¹⁵¹ According to learned authors, the true grandeur of humanity is in a moral elevation sustained, enlightened and decorated by the intellect of man.¹⁵² Human rights can therefore be defined as rights or claims that are inherent in every man without which man cannot function in the society for fear of molestation, oppression and degradation. Ezejiakor, in his book defined human or fundamental rights as:

Human or fundamental right is the modern name for what has been traditionally known as natural rights and these may be defined as moral rights which every human being, everywhere at all times ought to have simply because of the fact that in contradistinction with other beings, he is rational and moral.¹⁵³

Furthermore, Kayode Eso JSC defined human right as follows: Human right is a right which stands above the ordinary laws of the land and which is in fact antecedent of the political society itself. It is a primary condition to a civilized existence and what has been done by our Constitution since independence is to have these rights enshrined in the Constitution so that the rights could be immutable to the extent of the non-immutability of the Constitution itself.¹⁵⁴

In *Akinosun v Commissioner of Police, Kwara State*, the Court of Appeal defined

¹⁴⁹ U. U. Chukwunaeze, *Essay in Honour of Ernest Ojukwu* (Abia State University Law Centre) P. 34

¹⁵⁰ (2014) 1 NWLR (Pt. 1389) P. 607

¹⁵¹ (2008) NWLR (Pt. 1092) P. 270

¹⁵² George Merriam and Charles Merriam, *The New Webster's Dictionary of English Language* (1843) CIT page 18

¹⁵³ *Protection of Human Rights under the Law*, (London: Butterworths, 1964) P. 3

¹⁵⁴ *Ransom Kuti v Attorney General of the Federation* (1985) 2 NWLR (Pt. 6) P. 211

fundamental right, thus:

By virtue of Order I, Rule 2 of the Fundamental Rights (Enforcement Procedure) Rules, 2009, the term fundamental and human rights denotes any of the rights provided for in Chapter IV of the Constitution and includes any of the rights stipulated in the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act.¹⁵⁵

Highlighting the importance of the Constitution as the grundnorm that must be respected, the Court of Appeal in *Incorporated Trustees of Nigerian Baptist Convention v Kolawole*, stated thus:

The Constitution of this country or indeed any country that is part of the civilized world, is the embodiment of a people desire to be their guiding light in governance and management of their own affairs. It is the supreme law, the fountain of all laws against which all issues and affairs revolve and are solved. The 1999 Constitution of the Federal Republic of Nigeria as amended, is not a mere academic model but a pragmatic that must be respected. It must not be read with levity, contempt or disdain. Every of its section must be given meaning and effect by the courts. It is at the top of all normative prescriptions.¹⁵⁶

The place of human rights in the Nigerian Constitution is quite sacrosanct as any of the rights enumerated therein cannot be treated with levity.¹⁵⁷ In *Oju Local Government Independent National Electoral Commission*, the court emphasized the fact that where an Act makes a mandatory stipulation, the operators of the Act must comply strictly with such provisions.¹⁵⁸ Furthermore in *Nwana v Attorney General of the Federation*, the courts were enjoined to grant quick reliefs against any breach of a citizen's fundamental human rights.¹⁵⁹ The court has a bounden duty to protect the liberty and fundamental rights of citizens in line with Constitutional provisions.¹⁶⁰ In *Ezennaka v Commissioner of Police, Cross River State*, the Supreme Court held thus:

The court must seek always to do justice at all cost especially where it has to do with the liberty of an individual. The court must assume a more robust role in affairs of the fundamental rights of an individual as in the instant appeal.¹⁶¹

¹⁵⁵ (2023) 6 WRN (Pt. 1879) P. 185

¹⁵⁶ (2015) 13 WRN, P. 113 at P. 141

¹⁵⁷ Chapter IV of the 1999 Constitution as amended

¹⁵⁸ (2007) 38 WRN P. 31

¹⁵⁹ (2010) 15 WRN P. 178

¹⁶⁰ Chapter IV of the 1999 Constitution as amended

¹⁶¹ (2022) 18 NWLR (Pt. 1862) P. 369

The invasion of the citizens' human rights by security agents, individuals, corporate organizations and the government necessitated the conferment of jurisdiction on both the State or Federal High Court and the National Industrial Court to tackle such infractions.

3. Nature of Jurisdiction

The term jurisdiction connotes the authority of a court to entertain and determine any matter before it. Jurisdiction is so fundamental that the absence of it is fatal to adjudication. In *Nsirim v Amadi* the Supreme Court held as follows: 'Jurisdiction in its strict sense is the limit which is imposed upon the power of a validly constituted court to hear and determine issues properly brought before it by due process by reference to:

1. The subject matter in issue
2. The persons between whom the issue is joined and
3. The kind of relief sought.¹⁶²

Furthermore, in *Ibrahim v Fulani* the Court of Appeal while dwelling on the importance of jurisdiction to entertain any dispute held thus:

It is a basic principle of law that jurisdiction of a court is very fundamental to adjudication of the matter before it. It is so radical that it forms the foundation of adjudication. If a court lacks jurisdiction, it lacks the necessary competence to entertain the claim before it. That is why the issue of jurisdiction, where raised, whether by the parties or by the court itself *suo muto*, must be determined in *limine*. Whether an objection is raised to jurisdiction of the trial court to try an action, the court at that stage, has to enquire into whether in fact it possess the requisite jurisdiction to so proceed.¹⁶³

In *Ohakim v Agbaso* the Supreme Court while expositing the fundamental nature of jurisdiction stated thus:

It is settled that jurisdiction is the life blood of any adjudication without which no proceeding however brilliantly conducted by the court or tribunal can be made. It is really a threshold matter and sometime referred to as a periphery matter to be dealt with once raised or challenged in any proceeding. Without jurisdiction, the whole trial or proceeding of the court is a nullity however well conducted, that is why jurisdiction is very vital and fundamental to administration of justice in any judicial system.¹⁶⁴

It is therefore posited that the importance of jurisdiction to entertain a matter cannot be over-emphasized. In *Incorporated Trustees of Algon v Riok (Nig) Ltd & Ors* the Court of Appeal stated *inter-alia* thus:

¹⁶² (2016) Vol. 253 P. 115

¹⁶³ (2009) 18 WRN P. 40

¹⁶⁴ (2010) Vol. 189 LRCN P. 73

It is no longer debatable that courts are creatures of the Constitution and the statutes, and the Constitution and statutes defined their areas of jurisdiction. A court or tribunal must possess the necessary vires to try or embark on adjudication of any cause or matter.¹⁶⁵

In determining the jurisdiction of a High Court of a State be it Federal or State High Court vis-à-vis the National Industrial Court in fundamental right suit, it is the claim before court that must be examined in order to determine the issue of jurisdiction. In *Ezerebo v Amuka & Ors*, the Court of Appeal while harping on the importance of jurisdiction opined thus:

Coming to the issue of the jurisdiction of the lower court to entertain the application for the enforcement of the fundamental rights of the 1st and 2nd respondents, it is the law, that is, the writ of summons and statement of claim of the plaintiff that is to be considered by court. Where it is discovered that the court has no jurisdiction to hear and determine a case or matter, everything done in such want of jurisdiction, is a nullity.¹⁶⁶

The jurisdiction of the High Court of a State to entertain a fundamental right application cannot be invoked where the subject matter of the application bothers on a transaction which falls within the jurisdiction of the Federal High Court. In *Nwanze v Nigerian Railway Corporation*, the Supreme Court stated thus:

Even when an application for enforcement of fundamental rights is brought under section 46(2) of the Constitution of the Federal Republic of Nigeria 1999, the High Court of a State lacks jurisdiction to entertain the application where the alleged breach of fundamental rights arose from a transaction or subject matter which falls within the exclusive jurisdiction of the Federal High Court as provided by section 251 of the Constitution.¹⁶⁷

It is in the light of the aforesaid that the jurisdiction of both courts; High Court in a State and the National Industrial Court, will be examined in relation to fundamental rights enforcement suit in order to determine whether or not, the National Industrial Court is clothed with jurisdiction to entertain such suit.

A. The High court of a state

High Court in a State as contained in the 1999 Constitution refers to either a State High Court or Federal High Court. In *Uwa v Akpan*, the Court of Appeal held as follows:

¹⁶⁵ (2018) LPELR – 49233

¹⁶⁶ (2021) 18 WRN P. 149

¹⁶⁷ (2022) 18 NWLR (Pt. 1862) P. 265

Both the State High Court as well as the Federal High Court have concurrent jurisdiction in handling issues of fundamental rights. If a State High Court refuses to make an order entitling an applicant to enforce his fundamental rights, this will not preclude the Federal High Court from entertaining the same application because such proceedings are akin to applications for bail.¹⁶⁸

There is no doubt that the original jurisdiction of the High Court to entertain applications for the enforcement of the fundamental rights of the Nigerian citizens cannot be displaced as it remains inviolable. In *Ushae v Commissioner of Police Cross River State* the Court of Appeal held thus:

By virtue of Section 46 (2) of the 1999 Constitution, a High Court is given original jurisdiction to hear and determine any application made to it in pursuance of the provisions of the said section. It also has very wide powers to 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 the fundamental rights chapter of the Constitution.¹⁶⁹

Similarly, the Fundamental Rights Rules defined court as follows: ‘Court means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory.’¹⁷⁰

Flowing from the above, it is clear that the jurisdiction of the High Court in a State to entertain matters relating to enforcement of fundamental rights is not in doubt and cannot be compromised. In *Okorofor v Emeka*, the Court of Appeal held thus:

It is judicially settled across jurisdictions that where a provision of the Constitution or a statute mentions subjects, items or things to which it applies, it clearly intends that the subject, item or thing not mentioned, is excluded from its application. This interpretative approach is often expressed in the latin maxim, *expressio unius est exclusio alterius* (to express or include one thing implies the exclusion of the other or of the alternative). So the violations or threatened violations vested in a person by Section 46(1) of the 1999 Constitution and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules invoke the special jurisdiction of the High Court to entertain and determine human rights application.¹⁷¹

¹⁶⁸ Section 46(1) of the 1999 Constitution as amended

¹⁶⁹ (2010) 47 WRN P. 85

¹⁷⁰ (2006) 1 FWLR (Pt. 287) P. 267

¹⁷¹ Order I of the Fundamental Rights (Enforcement Procedure) Rules 2009

It is therefore contended that the special jurisdiction of the High Court in a State to entertain and determine fundamental right applications must be interpreted alongside other Constitutional provisions relating to fundamental rights enforcement. Furthermore, where specific and general provisions are made in two separate Sections of the Constitution, they must be interpreted literally in relation to fundamental rights enforcement applications.

In *Attorney General of Lagos State v Attorney General Federation*, the Supreme Court held that:

It is an accepted canon of construction that where there are two provisions, one special and the other general, covering the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. The reason behind this rule is that the legislature in making the special provisions is considering the particular case and expressing its will in regard to that case; hence the special provision forms an exception importing the negative; in other words, the special case provided for in it is excepted and taken out of the general provision and its ambit: the general provision does not apply.¹⁷²

B. The National Industrial Court

The National Industrial Court was established by the Constitution¹⁷³ and it is conferred with jurisdiction over labour or trade dispute.¹⁷⁴ The Constitution also donates powers directly to the National Industrial Court or by an Act of the National Assembly to possess the all powers of a High Court when exercising its jurisdiction.¹⁷⁵ In *Oshiomhole v Federal Government of Nigeria*, the Court of Appeal held that: ‘For a trade dispute to be declared within the meaning of Section 47 of the Trade Dispute Act Cap. 432 Laws of the Federation of Nigeria 1990, the following ingredients must be present:

- (a) There must be a dispute;
- (b) The dispute must involve a trade
- (c) The dispute must be between:
 - (i) employers and workers or
 - (ii) workers and workers;
- (d) The dispute must be connected with:
 - (i) the employment or non-employment or
 - (ii) the terms of employment, or
 - (iii) physical conditions of work of any person¹⁷⁶

¹⁷² (2015) 34 WRN Page 45 at P. 129

¹⁷³ (2014) LPELR 22701

¹⁷⁴ Section 254A of the 1999 Constitution as amended

¹⁷⁵ Section 254C of the 1999 Constitution as amended

¹⁷⁶ Section 254D (i) of the 1999 Constitution as amended

In the case of *Apena v NUPPP*,¹⁷⁷ the Court of Appeal held that for a dispute to arise under the Trade Dispute Act, the following factors must be present:

1. That the trade dispute must be one in which an employee or worker is a party
2. That the dispute must have industrial dispute.¹⁷⁸

Similarly, in the case of *BPE V NUEE*, the court held that for the provisions of Trade Dispute Act to apply, there must be a clear case of an employer/employee relationship between the parties and the point of agreement between them must point unequivocally to a trade dispute.¹⁷⁹ The thrust of this paper is to examine the special jurisdiction of the National Industrial Court relating to the enforcement of fundamental human rights. However, this cannot be achieved without recourse to the general jurisdiction of the National Industrial Court under the Constitution.¹⁸⁰

The jurisdiction of the National Industrial Court to entertain labour related dispute does not include making of declarations and issuing of injunctive orders which is exclusively conferred on the High Court. However, the jurisdiction of the National Industrial Court to entertain fundamental rights application must be tied to trade dispute in a workplace. In the case of *Attorney General of Oyo State v Nigerian Labour Congress*, the Court of Appeal held that:

The combined effect of section 2 of the Trade Disputes (Amendment) Act No. 47 of 1992 and section 20 of the Trade Disputes Act [Cap. 432] Laws of the Federation, is that the jurisdiction of the regular court in entertaining trade dispute matters was removed and vested exclusively in the National Industrial Court which can be interpreted to mean that the High Court of a State cannot exercise jurisdiction in trade dispute matters.¹⁸¹

The jurisdiction of the National Industrial Court is clearly spelt out under the 1999 Constitution.¹⁸² Specifically the Section which has direct bearing with human rights enforcement is encapsulated in sub section (d) thereof. But for a holistic appreciation of the jurisdiction of the National Industrial Court, some of the provisions of the enabling law are reproduced below:

Notwithstanding the provisions of Sections 251, 257, 285 and anything contained in

¹⁷⁷ (2007) 21 WRN P. 10

¹⁷⁸ (2003) 8 NWLR (Pt. 822) P. 426

¹⁷⁹ Section 47 of the Trade Dispute Act

¹⁸⁰ (2003) 13 NWLR (Pt. 837) P. 382

¹⁸¹ Section 254C (1) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010

¹⁸² Section 254C (1) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act 2010

this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil courses and matters

-
- a. relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from work place, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;
 - I. relating to, connected with or arising from Factories Act, Trade Dispute Act, Trade Unions Acts, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Act or Laws;
 - II. relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the federation and matters incidental thereto;
 - III. relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the court have jurisdiction to hear.

It is therefore, beyond every conjecture that the jurisdiction of a court to entertain any suit is determined by the claim of the plaintiff.¹⁸³

In *Ferdinand Dapaah & anor. v Stella Ayan Odey* the Court of Appeal while drawing a distinction between principal and ancillary reliefs as they relate to jurisdiction of the National Industrial Court to entertain fundamental rights applications exposted thus:

It is crystal clear that Chapter IV provides for rights to human dignity and freedom from discrimination which are both human rights amongst other human rights. The trial court therefore can within a claim arising from employment or a claim related to where those rights are intricately connected and to which workplace related issues arise, have jurisdiction. It is settled that once the alleged breach of human right is not the principal claim, the court with complete or fuller jurisdiction usually hears the claim and therefore the trial court can hear a claim for wrongful termination where a breach of human right is alleged as an ancillary issue.¹⁸⁴

¹⁸³ (2003) 8 NWLR (Pt. 821) P. 1

¹⁸⁴ *Santory Company Ltd v Bank of the North Ltd* (2005) 8 NWLR (Pt. 925) P. 594

It is in the light of the aforesaid, that the jurisdiction of the National Industrial Court to entertain fundamental rights applications is narrower than that of the State or Federal High Court in view of the fact that outside workplace, breach of fundamental rights cannot be entertained by the National Industrial Court. Therefore, the special provisions contained in the Constitution are mutually exclusive with reference to the nature and circumstance of the alleged breach.¹⁸⁵

3. Challenges to the enforcement of fundamental human rights

Although the High Court of a State and the National Industrial Courts have exclusive and special jurisdiction to entertain fundamental rights suits, the jurisdiction is however circumscribed by law and judicial authorities notwithstanding the admonition of the Supreme Court in *Ihim v Maduagwu & Anor*, where Per Ngwuta, JSC opined that:

It would negate the principle behind the guarantee of fundamental rights of a citizen if there is to be any obstacles placed in the part of enforcing these rights. I will add that no statute or Constitution should be construed in such a manner as to place fetters in the way of pursuit of Chapter IV rights.¹⁸⁶

The Nigerian Courts have recognized the need to place fundamental right suit in a special category to enhance speed in other not to defeat the essence of the provisions as contained in the Constitution.¹⁸⁷ In the case of *Jaiyesimi v Darlington*, the Supreme Court held as follows:

The enforcement of fundamental right is in the special breed amongst the various means of approaching the courts for justice in that the procedure is peculiarly structured to achieve speed and uphold the constitutionally guaranteed freedom of the aggrieved party. It is governed by specific and special rules which have bypassed the normal rules of procedure in other to give effect to the overriding needs for speedy justice in the cases which in time passed were originated by writ habeas corpus to force the state to bring up prisoners in the custody of the state. The procedure renders meaningful the provisions of the Constitution dealing with enforcement of fundamental rights.¹⁸⁸

However, impediments exist which limit the jurisdiction of the High Court in a State, as well as the National Industrial Court to determine cases of human rights violations. One of such fetters is that the principal relief must be predicated on breach of fundamental right. In *Nwanze v Nigerian Railway Corporation*, the Supreme Court held

¹⁸⁵ (2018) LPELR 46151

¹⁸⁶ (2021) 30 WRN P. 77

¹⁸⁷ Chapter 4 of the 1999 Constitution

¹⁸⁸ (2022) 9 NWLR (Pt. 1825) P. 335

that:

Where ancillary or incidental or accessory claim or claims are so inextricably tied to or bound up with the main claims before the court in a suit, the court cannot adjudicate over them where it has no jurisdiction to entertain the main claims if such incidental or ancillary claims cannot be determined without a determination at the same time of the main claims or where the determination of such incidental or ancillary claims must necessarily involve a consideration or determination of the main claims. In the instant case, the trial court may have granted the first relief sought by the applicant but it lacked the jurisdiction to grant the other two reliefs sought by the applicant. The issue of the appellant's right to fair hearing in the first relief could not be determined in isolation of the other two reliefs which were based on the appellant's employment.¹⁸⁹

In the case of *Tukur v Government of Taraba State*, the Court of Appeal stated thus:

In ascertaining the justiciability or competence of a suit commenced by way of an application under the Fundamental Rights (Enforcement Procedure) Rules 2009, the court must ensure that the enforcement of the fundamental rights under Chapter IV of the Constitution is the main claim and not the ancillary claim. Where the main or principal claim is not the enforcement of fundamental rights, the jurisdiction of the court cannot be said to be properly invoked and the action will be liable to be struck out for incompetence.¹⁹⁰

It must also be borne in mind that the High Court of a State cannot also activate its jurisdiction where a fundamental rights provision for the enforcement of a fundamental right suit has been breached. In *Efobi v Ikeji*, it was Per Tsamiya JCA, held that:

It is now a settled principle of law that any breach of the fundamental right provisions, renders any act subsequent to such breach, a nullity. Obtaining a judgment without service of the process of court required to be served by which the judgment was acquired, rendered not only the judgment so gotten, but also the purported execution of same a nullity. A party like the appellant affected by a null decision or order of court is entitled *ex debito justitiae* to have same set aside and it is that very court that had the jurisdiction to revisit such a decision in the first place.¹⁹¹

Similarly in *SCC (Nigeria) Ltd. & Anor v Fidelis Joseph & Anor*, the Court of Appeal held that dispute concerning application of Chapter IV of the 1999 Constitution over which the National Industrial Court has exclusive jurisdiction, is limited to those

¹⁸⁹ *Nwanze v Nigerian Railway Corporation*, *Supra*

¹⁹⁰ (1997) 6 NWLR (Pt. 510) P. 549

¹⁹¹ (2010) 10 WRN P. 137

connected with matters which the court has jurisdiction to hear and entertain by virtue of Section 254C (1) (d) of the 1999 Constitution.¹⁹² It must be appreciated that jurisdiction of the National Industrial Court to entertain fundamental rights enforcement applications, can only be invoked where the alleged breach, occurs in a workplace as envisaged under the Constitution and that it must be related to any employment, industrial relations, trade unionism, employers association or any other matter over which the National Industrial Court has jurisdiction to entertain. However, for the National Industrial Court to exercise exclusive jurisdiction over fundamental rights suits, either of the reliefs must be predicated on breach of fundamental rights.¹⁹³ Where breach of fundamental human rights, is contained in the ancillary relief, the jurisdiction of the National Industrial Court cannot be activated.

It is to be appreciated that fundamental human rights provisions as contained in the Constitution,¹⁹⁴ are not absolute as occasions may arise where such rights cannot be enforced. Significantly, in *Ezeigbo v Asco Investment Ltd*, the Supreme Court held as follows:

The rights guaranteed under Sections 34, 35, 37 and 38 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) are qualified rights. They are subject to any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other people. In essence, the rights provided for and guaranteed under the provisions and indeed all the other fundamental rights provided for under Chapter IV of the Constitution, are not absolute or sacrosanct, but rather qualified.¹⁹⁵

4. Conclusion

The High Court and the National Industrial Court are by diverse account clothed with special jurisdiction to entertain and determine fundamental rights applications depending on the circumstances of such violations. While the jurisdiction of the High Court is exclusive but limited to all other breaches of fundamental human rights apart from those relating to labour, trade and workplace, the jurisdiction of the National Industrial Court as it relates to enforcement of fundamental rights, cannot be invoked in respect of matters which occurred outside workplace or those relating to labour, trade and employment. Therefore, both the State and Federal High Court have concurrent jurisdiction to entertain and determine cases of fundamental rights applications depending on the circumstances. It is in the light of the clear provisions of the Constitution, that the argument relating to the issue as to whether or not, fundamental

¹⁹² (2020) LPELR 49764

¹⁹³ Chapter IV of the 1999 Constitution as amended

¹⁹⁴ Section 46 (1) and 254C (1) (d) of the 1999 Constitution as amended

¹⁹⁵ (2022) 8 NWLR (Pt. 1832) P. 367

human rights suit is limited to High Court in a State, cannot be sustained as both the High court and National Industrial Courts can deal with breaches of fundamental rights as the case may be. It is imperative to restate that one of the major challenges to the enforcement of fundamental human rights is the issue of whether or not the reliefs sought is the principal or ancillary relief. While it is the case that the issue of whether a relief is principal or ancillary in a fundamental rights application also applies to the National Industrial Court, the National Industrial Court which can exercise jurisdiction where the relief sought is tied to labour related dispute in a workplace. However this cannot be said of the High Court which predicates the issue of jurisdiction on the subject matter of the application on the principal relief. For instance, in *Aig-Imoukhuede v UBA*, the Court held that for a claim to qualify as falling under fundamental rights, the principal relief must be the enforcement of fundamental rights.¹⁹⁶ Similarly, in *Opara v Shell Petroleum Development Company Ltd*, the court held that the correct approach in a claim for the enforcement of fundamental rights is to examine the relief, grounds for the reliefs and the facts relied upon in other to know whether the facts disclosed a breach of fundamental rights before the courts can assume jurisdiction to entertain the matter.¹⁹⁷ Furthermore, the issue of poverty is also an inhibition to the realization of fundamental human rights enforcement as the generality of the Nigerian citizens are not enlightened to understand the essence of human rights protection coupled with the fact that they lack the means to prosecute cases of human rights violation. According to an eminent jurist, Aguda J. in his paper, he observed thus:

The practical actualization of the fundamental rights cannot be achieved in a country like ours where millions are living below starvation, in circumstances of this nature, fundamental rights enshrined in the Constitution are nothing but meaningless jargons to all those of our people living below or just at starvation level.¹⁹⁸

Drawing attention from the adumbrated inhibitions above, it is suggested that for fundamental human rights protection to be realistic and pragmatic, the subject matter of rights violation, should be jettisoned in as much as element of human rights violation could be gleaned from the application for enforcement of fundamental human right. The purpose of fundamental human right is to create a seamless access to the court for the enforcement of rights violation as demonstrated in the case of *Ezeonara & Ors v Inspector General of Police & Ors*, where Tukur JCA specifically paraphrased portion of the Fundamental Right (Enforcement Procedure) Rules to the effect that:

The Fundamental Right (Enforcement Procedure) Rules 2009, (FREP Rules), was enacted as a result of the importance of fundamental rights to create unique procedure for enforcement, with a liberal mind-set aimed at making the enforcement of fundamental rights entrenched in the Constitution and the rights in the African Charter on Human and Peoples Right, as easily realizable as possible. The preamble sheds light

¹⁹⁶ (2015) 8 NWLR (Pt. 1462) P. 405

¹⁹⁷ (2015) 14 NWLR (Pt. 1479) P. 307

¹⁹⁸ Paper presented at a Public Lecture at Kuru-Jos Plateau State in 1987.

on the intention behind the formulation of the rules, and particularly in clause 3(E) as part of its overriding objectives provides thus:

- IV. The court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*, in particular human rights activists, advocates, or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human right litigation, the applicant may include any of the following:
- (i) Anyone acting in his own interest;
 - (ii) Anyone acting on behalf of another person;
 - (iii) Anyone acting in the public interest, and
 - (iv) Association acting in the interest of its members or groups.¹⁹⁹

It is therefore recommended that when the aforesaid inhibitions are obliterated, the issue of whether or not the relief sought is ancillary or principal, will be consigned to the dustbin of history. Furthermore, victims of fundamental rights violation should have unhindered access to court without imposition of filing fees and other fees for prosecution of such matters which can be undertaken pro bono if the realization of the fundamental rights protection in Nigeria as enshrined in the Constitution, can be achieved and guaranteed.

¹⁹⁹ (2021) 14 WRN P. 115