

**The Jurisdiction of the National Industrial Court of  
Nigeria on Matters  
Relating to the Employment of  
A Company's Director under CAMA**

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**Abstract**

**T**he issue of jurisdiction is a fundamental one that goes to the root or foundation of any adjudication. It is of paramount importance to any adjudication and must be considered first to avoid incidents of futility in situations where a court wrongly exercises jurisdiction over matters of which it has no *vires*. This article examines the jurisdiction of the National Industrial Court of Nigeria (NICN) regarding matters that pertain to the office of a Director of a Company as it concerns the appointment, remuneration, removal and compensation or damages as enshrined in the Companies and Allied Matters Act 2020 (CAMA 2020). In addressing the issue, the article considered the exclusive jurisdiction of the Federal High Court (FHC) over matters arising from the operation of the CAMA 2020. The article queries whether the NICN's additional and exclusive jurisdiction over civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters incidental thereto or connected therewith has encroached into the exclusive jurisdiction of the Federal High Court over matters arising from the operation of CAMA 2020.

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The article also considered the status of the office of a Director in corporate management *vis-à-vis* the employment status of a Director and finds that two interpretations are plausible.

The first is that the FHC enjoys exclusive jurisdiction over all matters pertaining to Non-executive Directors; exclusive jurisdiction over certain matters/claims pertaining to Executive Directors while it shares concurrent jurisdiction with the NICN in respect of some other matters/claims, depending on the nature of the claim. The second is that the NICN enjoys exclusive jurisdiction over matters relating to the removal of Executive Directors. The article concludes that the first interpretation is more valid and should be adopted.

**Keywords:** Jurisdiction, Court, Director, Corporate Management and Service Contract.

### **Introduction**

Jurisdiction is the power of the court to decide a matter in controversy and this presupposes the existence of a duly constituted court with control over the subject matter and parties. The jurisdiction of all courts is provided for by the constitution which is the highest instrument or statute establishing the court. The issue of jurisdiction remains purely a question of law. The court being faced with the issue of jurisdiction will consider both the law establishing it and the nature of subject matter of the claim and reliefs sought as endorsed on the plaintiff's pleadings.<sup>3</sup> The issue of jurisdiction may arise from certain boardroom intrigues regarding the office of a Director in corporate management which may result in management changes such as termination/appointment of Directors and compensation for loss of office. Issues of this nature could give rise to a cause of action which can be litigated in court.

The Central Bank of Nigeria (CBN) recently<sup>4</sup> intervened in the corporate management of First Bank of Nigeria Limited *via* management changes pursuant to its regulatory powers under the Banks and Other Financial

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<sup>3</sup> K. O. Ogbe, and M. Adigun, 'The Federal High Court Jurisdiction over AMCON Loan Recovery Matters: Is it Exclusive or Concurrent?' [2019]. *SLP L.J.* Vol. 5. 1 – 19 at 2.

<sup>4</sup> Thursday, April 29 2021

Institutions Act 2020.<sup>5</sup> This intervention resulted in the immediate removal of all the Directors of First Bank of Nigeria Limited and FBN Holdings Plc and the appointment of new Directors, announced at a press briefing by the Governor of the CBN. The Press Statement<sup>6</sup> stated thus:

*Ordinarily the board is vested with the authority to make changes in the management team subject to CBN approval. However, the CBN considers itself a key stakeholder in management changes involving FBN due to the forbearances and close monitoring by the Bank over the last 5 years aimed at stemming the slide in the going concern status of the bank. It was therefore surprising for the CBN to learn through media reports that the board of directors of FBN, a systematically important bank under regulatory forbearance regime had effected sweeping changes in executive management without engagement and/or prior notice to the regulatory authorities. The action by the board of FBN sends a negative signal to the market on the stability of leadership of the board and management and it is in light of the foregoing that the CBN queried the board of directors on the unfortunate developments at the bank.*

The action of the CBN was not unconnected to the removal of Dr. Adesola Adeduntan as the Managing Director/Chief Executive Officer of the Bank by the Board on Wednesday, April 28 2021 and his replacement with the Deputy General Manager (Gbenga Shobo) without the necessary regulatory approval of the CBN. The CBN immediately reinstated the Dr. Adesola Adeduntan who was fired by the Board and directed the Deputy General Manager to return to his position.

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<sup>5</sup> According to the Governor, he observed that the bank maintained healthy operations up until 2016 financial year when the CBN's target examination revealed that the bank was in grave financial condition with its capital adequacy ratio and non-performing loans ratio substantially breaching acceptable prudential standards. BOFIA 2020, s34(1) & (2)(f) empowers the CBN Governor to by an order in writing remove from office, with effect from such date as may be set out in the order, any director of a bank or appoint any person or persons as a director or directors of the bank and to provide in the order, for the person or persons so appointed to be paid by the bank such remuneration. This is permissible where the CBN after examination of the said Bank is satisfied that the bank is in grave danger; to wit: it is insolvent or it is likely to become unable to meet its financial obligation.

<sup>6</sup> O. Nnodim, 'First Bank Directors Fired to Protect Customers, Minority Shareholders- CBN' *The Punch* (Lagos, April 30 2021) 20.

### **The Historical Background of the National Industrial Court of Nigeria (NICN)**

The Trade Disputes Decree No. 7 of 1976 created the National Industrial Court of Nigeria (NICN) as a specialised court and conferred it with jurisdiction to settle trade disputes, interpret collective agreements and matters connected therewith. The Decree was later amended by Decree No. 47 of 1992,<sup>7</sup> without vesting it with exclusive jurisdiction over such matters. The Court was also not recognized under the CFRN, 1979. This created doubt as to the constitutionality of the Court vis-à-vis other courts recognized under the said Constitution. Despite this statutory *lacuna*, the Court still enjoyed the status of a superior court and shared concurrent jurisdiction with other courts (State and Federal High Courts) in relation to trade dispute matters.<sup>8</sup> Subsequently, the National Industrial Court Act 2006 was enacted for the sole purpose of conferring additional and exclusive jurisdiction on the NICN in all civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters incidental thereto or connected therewith. This enactment did not change the *status quo* but gave room for a constitutional debate as to its validity vis-à-vis the constitution. This later gave birth to the amendment of the CFRN, 1999 by the Third Alteration Act 2010,<sup>9</sup> incorporating the exclusive jurisdiction of the NICN in all civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters incidental thereto.<sup>10</sup> The CFRN, 1999 (as amended), section 254C(1) provides thus:

*Notwithstanding the provisions of sections 251, 257, 272 and anything contained in 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 causes and matters-*

*(a) relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety,*

<sup>7</sup> This later became the Trade Disputes Act Cap T18 LFN 2004

<sup>8</sup> K. O. Ogbe, 'The Finality of Court of Appeal Decision in Labour and Related Matters: is it only Restricted to NICN Judgment?' [2020] *SLP L.J.* Vol. 6. 65 – 75 at 67.

<sup>9</sup> Act No. 3

<sup>10</sup> CFRN, 1999 (as amended) s254C(1)(a).

*welfare of labour, employee, worker and matters incidental thereto or connected therewith;*

*(k) 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.*

The amendment and incorporation finally put to rest the rivalry or concurrent jurisdiction saga between the regular courts (State and Federal High Courts) and the NICN over civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and other incidental matters arising from workplace.<sup>11</sup>

### **The Historical Background of the Federal High Court**

The Federal High Court (FHC) was first created in 1973 and was known as the Federal Revenue Court. The jurisdiction was limited to revenue and tax matters.<sup>12</sup> It was the CFRN, 1979 that first incorporated the Court and renamed it as the Federal High Court with an expanded jurisdiction beyond revenue and tax matters. However, despite the expansion of its jurisdiction, it was still limited when compared with that of the State High Courts.<sup>13</sup> This position was also adopted in the CFRN, 1999 (as amended).

The jurisdiction of the FHC is provided for in CFRN, 1999 (as amended)<sup>14</sup>. Section 251 provides for the exclusive jurisdiction of the Court over certain subject matters in respect of which the jurisdiction of every other court is expressly ousted including that of the NICN. It provides thus:

*Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-  
(...)*

<sup>11</sup> K. O. Ogbe, [2020] *Op. cit.*, 68

<sup>12</sup> Federal Revenue Court Decree No. 13 of 1973.

<sup>13</sup> CFRN, 1979, ss228 and 230.

<sup>14</sup> Ss. 251 and 252

The section provides for subject matters upon which the FHC can exercise jurisdiction as enumerated in paras (a)-(s). The relevant one for this article is para (e) which provides thus: ‘Arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act’.

### **The Office of the Board of Directors**

A company being an artificial person, its management must be entrusted to human agents called Directors. The CAMA 2020 defines ‘Directors’ to, ‘include any person occupying the position of director by whatever name called; and includes any person in accordance with whose directions or instructions the directors of the company are accustomed to act’.<sup>15</sup> The management of the company is vested in the Board of Directors who are expected to act on a collective basis, although the Articles of the Company may, and in large companies generally do, provide for the delegation of powers to smaller committee of the Board and individual Directors.<sup>16</sup>

Directors, as the word implies, are persons appointed to direct and manage the business of the company.<sup>17</sup> Directors are not ‘employed’ by the company and as such are not employees of the company, nor are they servants or members of staff of the company,<sup>18</sup> but they are officers for the purpose of making a company vicariously liable for their negligence while engaged in the business of the company.<sup>19</sup> It should be noted that in small private companies the same individuals may fulfil a number of roles within the business as directors, workers and shareholders. Directors need not be shareholders except where there is share qualification in the Articles of Association.

The Directors may elect a Chairman as the head of the Board and determine the period for which he is to hold office.<sup>20</sup> This is more common in big companies where there is a clear division of roles between Executive and Non-executive Directors. The Non-executive Directors act as monitors of

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<sup>15</sup> CAMA 2020, s868(1).

<sup>16</sup> Dignam, A. J. and Lowry, P. J. *Corporate Finance and Management Issues in Company Law* (rev edn, University of London Press 2008), 10.

<sup>17</sup> CAMA 2020, s269(1).

<sup>18</sup> *Moriarty v Regent’s Garage Co Ltd.* (1921) 1 KB 423.

<sup>19</sup> Orojo, O. *Company Law and Practice in Nigeria* (5th edn, LexisNexis Butterworths, 2008), 248.

<sup>20</sup> CAMA 2020, s289(4).

the Executive Directors and they are thus considered as part-time appointments. The primary responsibility of the Chairman is to ensure effective operation of the Board and, as much as possible, maintain a distance from the day-to-day operations of the company which should be the primary responsibility of the Chief Executive Officer and the management team.<sup>21</sup>

### **The Executive or Special Directors (Managing Directors)**

A Managing Director has been described as the directing mind and the alter ego of a company, through which the company acts. This makes him an automatic member of the Board of Directors if he was not before the appointment.<sup>22</sup> The Articles of Association of a company usually give the Board of Directors the power to appoint Executive or Special Directors for the purpose of exercising some of its powers through them by way of delegation. This can be done by appointing one or more of its members to the office of Managing Director and Executive Directors.<sup>23</sup> The Board also reserves the right to appoint a Non-director (an ordinary employee who is not a member of the Board) to such positions. Nevertheless, such an appointee remains an employee of the company with employment or service contract, but the status of the employment has been clothed with statutory flavour under CAMA 2020.<sup>24</sup> This is one of the main distinguishing features between members of Board of Directors strictly and Managing/Executive Directors. The Managing and Executive Directors are given very wide and implied powers for the effective management of the day-to-day operations of the company. The Managing and Executive Directors, though employees of the company would have been elevated to the status of Directorship and thus subject to removal under s288, CAMA 2020.<sup>25</sup>

### **Jurisdiction of the Court on the Removal of a Director and other Incidental Matters**

Generally, it is the company's responsibility to enforce the Directors' duties. However, because of the powerful administrative machinery of the company at the disposal of Directors, it is not easy for the company to enforce the duties and so the usual way of doing so is by removing the Directors either

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<sup>21</sup> Orojo, O. Op. cit., 283.

<sup>22</sup> *Longe v F.B.N. Plc* (2010) 6 NWLR (Pt. 1189) 1 (SC) at 42 – 43 paras H-A

<sup>23</sup> CAMA 2020, ss88 and 289(5).

<sup>24</sup> *Longe v F.B.N. Plc (supra)* at 40 para H.

<sup>25</sup> *Ibid.*, Per Oguntade, JSC at 36; Per Adekeye, JSC at page 61; Orojo, O. Op. cit., 248.

under s288(1) – (3) or s288(6), CAMA 2020. The Act provides that a company may, by ordinary resolution requiring special notice, remove a Director before the expiration of the period/term of office notwithstanding the provision in the Articles or even in the terms of the contract of appointment as a Director. The Act also provides for the power of the company to remove the Directors either in accordance with the terms of the Articles of the company or the terms of the contract of appointment which will usually stipulate the procedure for removal from office. This gives the general meeting (shareholders) the choice of using any procedure that may seem simpler in removing the Director depending on the facts and circumstances of each case. The removal of the Director in breach of any of the procedure or before the expiration of the tenure of office as provided for, will therefore give rise to a cause of action for wrongful termination or dismissal from office as a Director of the company.

Historically, from the creation of the Federal High Court in the CFRN 1979, the Court has exercised exclusive jurisdiction over matters related to appointment of Directors, removal/termination of appointment of Directors, remuneration and compensation/damages for termination of appointment of Directors. A review of some of the cases handled by the Court will give a perfect insight into the subject.

*Yalaju-Amaye v AREC Ltd & others*<sup>26</sup>

The facts of the case were that the Plaintiff/Appellant was the founder of the 1<sup>st</sup> Defendant/Respondent who invited the 3<sup>rd</sup> – 5<sup>th</sup> Defendants/Respondents as partners in the formation of the 1<sup>st</sup> Defendant/Respondent. The articles of incorporation of the 1<sup>st</sup> Defendant named the Plaintiff as the Managing Director and the 3<sup>rd</sup> – 5<sup>th</sup> Defendants as Directors. The 2<sup>nd</sup> and 6<sup>th</sup> Defendants later became shareholders and Directors. Subsequently, the 2<sup>nd</sup> Defendant was elected Chairman of the 1<sup>st</sup> Defendant's Board and became actively involved in the supervision of the execution of the contractual project of the company. On 20<sup>th</sup> August 1979, at a meeting of the Board, a disagreement developed between the Plaintiff and the 2<sup>nd</sup> Defendant on the issue of who among them should be in control of the supervision of a particular project of the company. The 2<sup>nd</sup> Defendant with the support of the other Directors claimed that the Plaintiff had orally resigned his appointment as a Director and as the Managing Director of the company

<sup>26</sup> (1990) 4 NWLR (Pt. 145) 422 (SC)

including disposing of his entire interest in the company. On the 21<sup>st</sup> of August 1979, the Plaintiff received a letter signed by the 2<sup>nd</sup> Defendant informing him that pursuant to an Extraordinary General Meeting of the company, held on the said date, his oral resignation and decision to dispose of his entire interest in the company has been accepted. The Board thereafter appointed the 2<sup>nd</sup> Defendant as his replacement, and thus became both the Chairman and Managing Director of the company. The Plaintiff protested this decision denying that he ever made such representation as claimed. The Plaintiff claimed that pursuant to the said decision of the Board, he had been deprived of participating in the affairs of the company and had never been invited to any meeting of the company either in his capacity as Director, Managing Director (MD) or as Shareholder of the company. He also claimed not to have received any remuneration in his capacity as MD and has not been paid any dividend as a shareholder.

Expectedly, the Plaintiff approached the Federal High Court, Benin Division and sought a declaration that he remains a Director, Managing Director and Shareholder of the 1<sup>st</sup> Defendant and that the purported appointment of the 2<sup>nd</sup> Defendant as Chairman/Managing Director of the company is illegal, void and ultra vires the Memorandum and Articles of Association of the company; and a declaration that the Plaintiff is entitled to be paid all his remunerations, dividends and other benefits and allowances from the 21<sup>st</sup> of August, 1979 up to the date of judgment amongst other reliefs. In the alternative, the Plaintiff claimed from the Defendants jointly and severally the sum of ₦1,300,000.00 being special and general damages for his wrongful removal as Director, Managing Director and Shareholder of the 1<sup>st</sup> Defendant by the Defendants. The trial Court after making specific findings of fact gave judgment for the Plaintiff on the alternative claim pertaining to general damages in the sum of ₦275,000.00 for wrongful removal but refused the claim for specific damages and failed to grant the declarations sought.

The Defendants/Appellants, dissatisfied, appealed the judgment to the Court of Appeal while the Plaintiff/Respondent cross appealed. The Court of appeal allowed the appeal on the grounds of lack of jurisdiction of the trial Court; awarding damages on principles not known to law; and lack of *locus standi*. The Court of Appeal also dismissed the cross appeal.<sup>27</sup> The Court of

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<sup>27</sup> Ibid., 424 - 426

Appeal on the issue of jurisdiction referred to the Federal High Court Act 1973, s7(1)(c)(i); CFRN, 1979, ss230 and 231; and its decision in *Eka v Onagoruwa & another*, and accepted the submission of the counsel to the Defendants/Appellants to hold that the claim in respect of the removal of the plaintiff as Managing Director and Director of the 1<sup>st</sup> Defendant/Appellant's company, was not a claim within the provision of s7(1)(c)(i) which relates to the operation of the Companies Act 1968. The Court also held that a Managing Director is a servant of the company, and his claim for damages is akin to a claim for wrongful dismissal and is not within the jurisdiction of the Federal High Court.<sup>28</sup>

On a further appeal to the Supreme Court, the apex Court allowed the appeal and held that the Plaintiff/Appellant was entitled to the declaration sought that he is still the Managing Director of the 1<sup>st</sup> Defendant/Respondent Company. The Court also expressed the view that the question of damages for wrongful dismissal in contract of service in a master and servant relationship does not arise having regard to the fact that the Plaintiff/Appellant has not been dismissed by the 1<sup>st</sup> Defendant/Respondent.<sup>29</sup> The Court was equally of the view that parties did not join issues on contract of service as it was clear from the pleadings that no contract of service was pleaded, and that no breach of the same was alleged.<sup>30</sup> Accordingly the Supreme Court in considering the issue of jurisdiction and master and servant relationship as raised by the Court of Appeal then held thus:

*The tenure of the office of Managing Director is governed entirely by the provisions of the Companies Decree. Hence the determination whether a Managing Director was properly appointed or has ceased to hold office is a matter arising from the operation of the Companies Decree- see Articles 75 and 80.<sup>31</sup>*

*I cannot imagine what cause or matter raises a better issue about the operation of a company than one which complains about the manner of appointment or removal of those men or women who, because of their unique position in the company,*

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<sup>28</sup> Ibid., 440, paras F-G

<sup>29</sup> Ibid., 445 para E

<sup>30</sup> Ibid., 443 – 444 paras H-A

<sup>31</sup> Ibid., Per Karibi-Whyte, JSC at 441 para D

*are usually referred to as its alter ego; that is to say, those men and women who because a company is an abstraction and so cannot do anything of its own, constitute the head and thinking brain of the company. Among them are the directors and Managing Director. Although there are decisions in other jurisdictions arising from different legislations to the effect that the Managing Director of a company is an employee of the company; see (...) and this was the view of the Court of Appeal in this case yet, to my mind it would be wrong to hold that because the relationship of a Managing Director and the company was based on contract, it was ipso facto a matter of master and servant for which the Federal High Court had no jurisdiction. A Managing Director does not cease to be a director simply because he is managing the company. And the better view is perhaps, that directors of a company are trustees, agents and fiduciaries of the company; see (...). It is therefore a drastic over-simplification to simply equate the position of the appellant, as a Managing Director, to that of a servant; and his suit as that of master and servant for which reasons the Federal High Court would have no jurisdiction. I am satisfied that the Federal High Court had jurisdiction to entertain the suit.<sup>32</sup>*

*Iwuchukwu v Nwizu & another*<sup>33</sup>

The Plaintiff/Appellant in this case was first appointed in May, 1979 as a Special Assistant to the General Manager (1<sup>st</sup> Defendant/Respondent) of the 2<sup>nd</sup> Defendant/Respondent under a contract of employment determinable by three months' notice or salary in lieu of notice. He was thereafter appointed a member of the Board of Directors of the 2<sup>nd</sup> Defendant in November, 1979. He was further appointed as the Managing Director of the 2<sup>nd</sup> Defendant in January, 1980. He was subsequently appointed in November 1980 as a Director of another company which was a subsidiary of the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant being the alter ego of the 2<sup>nd</sup> Defendant in a letter dated 12<sup>th</sup> September 1983 terminated the appointment of the Plaintiff as both Director and Managing Director of the 2<sup>nd</sup> Defendant and redeployed the Plaintiff as the Manager in charge of the Poultry Project

<sup>32</sup> Ibid., Per Nnaemeka-Agu, JSC at 463 – 464 paras F-A

<sup>33</sup> (1994) 7 NWLR (Pt. 357) 379 (SC)

of the subsidiary company. The Plaintiff protested the termination and redeployment as contained in the said letter and refused to accept his new appointment. He thereafter instituted an action at the Federal High Court contesting his removal as Director. This necessitated the 1<sup>st</sup> Defendant to issue a letter dated 31<sup>st</sup> October, 1983 terminating the Plaintiff's earlier appointment as Special Assistant by giving him 3 months' salary in lieu of notice. The Plaintiff's claim before the Court was for a declaration that his purported removal as Executive Director of the 2<sup>nd</sup> Defendant by the 1<sup>st</sup> Defendant is ultra vires, null and void and of no effect, and for an order of restoration of his entitlements and an injunction restraining the 1<sup>st</sup> Defendant from interfering with the enjoyment of his entitlements as Executive Director. In the alternative, he claimed the sum of ₦1,000,000.00K as special and general damages. The trial Court gave judgment for the Plaintiff and declared that his removal was ultra vires, illegal and void.

The Defendants/Appellants appealed to the Court of Appeal and the appeal was allowed on the ground that the Plaintiff/Respondent was an ordinary employee or servant and that his contract of employment was determinable by 3 months' notice as contained in the letter of appointment as Special Assistant. On a further appeal to the Supreme Court by the Plaintiff/Appellant, the appeal was allowed, and the apex Court held thus:

With respect, therefore, the Court of Appeal was in serious error when it held that the appointment of the Appellant was lawfully terminated at will on his being offered 3 months' salary in lieu of notice. It is his appointment as Special Assistant to the Managing Director that requires and can be lawfully effected by such notice or payment in lieu of notice. Removal from office of director in the absence of a provision in the Articles of Association or contract demands a different procedure which involves calling of a general meeting and the passing of an ordinary resolution removing the appellant.<sup>34</sup>

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<sup>34</sup> Ibid., 404 para A-B

*Longe v F.B.N. Plc*<sup>35</sup>

The facts of this case show that the Plaintiff was appointed the Managing Director/Chief Executive Officer of the Defendant on 24-2-2000 for a term of six (6) years. Before that date, the Plaintiff was simply an employee of the Defendant in the position of an Executive Director and was not a member of the Defendant's Board of Directors. Following an improper grant of loan to a customer of the Defendant, the Plaintiff was on 22-04-02 suspended by the Defendant's Board of Directors, and on 13-06-02, his appointment was revoked. The Plaintiff was not given the notice of the meeting of the Board of Directors of the Defendant at which the decision to terminate his appointment was taken. The Plaintiff/Appellant thus approached the Federal High Court for a declaration that his removal from office as the Managing Director and Chief Executive Officer of the Defendant/Respondent's Board of Directors was unlawful, invalid, null and void and incapable of having any legal consequences. The Plaintiff also sought for an order of injunction to restrain the Defendants from giving effect to the said removal and a declaration that he is entitled to remain in office. The Plaintiff also claimed for the continuous enjoyment of all associated allowances until the expiration of a reasonable time from the date of any lawful and valid termination of his contract of service with the Defendant.

Instructively, it was the Plaintiff's contention that under CAMA 1990, s266<sup>36</sup> he was entitled to be given notice of the meeting and that the failure to give him such notice would render his termination null and void. The Defendant in its defence claimed that the revocation of the Plaintiff's appointment was done in accordance with his contract of employment – in a master and servant relationship and that it was entitled to dismiss the plaintiff, for any reason or for no reason at all without notice and without any financial benefits to the plaintiff or at all. It was also part of its defence that the Plaintiff was not entitled to attend the Board meeting where his appointment was determined and dismissed having been suspended effective April 22, 2002 before his dismissal on June 13, 2002 at the meeting of the Board. The Plaintiff's response was that as a Director of the Defendant as at the time of his dismissal, his appointment has transformed from that of master and servant as CAMA 1990 has, as it were, clothed his employment

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<sup>35</sup> (2010) 6 NWLR (Pt. 1189) 1 (SC)

<sup>36</sup> now CAMA 2020, s292.

with statutory flavor. In a nutshell, what the Plaintiff/Appellant invited the Court to determine was whether the procedure adopted by the Defendant/Respondent in giving him a summary dismissal as a Managing Director/Chief Executive Officer; an office recognized by CAMA, 1990 was valid? The Plaintiff's claim was dismissed by the trial Court and the same was upheld by the Court of Appeal.

On a further appeal to the Supreme Court, the appeal was allowed and all the declarations sought by the Plaintiff/Appellant were granted. The apex Court in resolving the issues by the parties, considered the Appellant's Letter of Appointment as Managing Director and Chief Executive Officer; the Minutes of the Extraordinary Meeting of the Board of Directors where the appointment was made; the Articles of Association of the Respondent; the Letter of Suspension; the Extract of the Minutes of the Extraordinary Board Meeting wherein the appointment was revoked; the Letter of Revocation of Appointment; and the provisions of CAMA, 1990 particularly sections 262, 266, and 257 and consequently held as follows:

*In the final conclusion, this appeal must be allowed, it is meritorious. The judgment of the court below is set aside. The removal of the plaintiff as Managing Director/Chief Executive of the defendant without a notice to him to attend the meeting at which the decision was taken is a clear violation of section 266(1) and (2) of the Companies and Allied Matters Act; and such violation must attract the penalty prescribed by law under section 266(3). The said meeting is under the law, invalid. I so pronounce it.*

*I declare that the removal of the plaintiff is not in accordance with law. The plaintiff must be deemed to be still the Managing Director/Chief Executive of the defendant. I accordingly grant the reliefs 1 – 5 claimed by the plaintiff/appellant.<sup>37</sup>*

It is imperative to note that of importance to this research paper is the fact that the three (3) cases considered above were not determined on the basis of contract of employment involving a master and servant relationship. They

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<sup>37</sup> Ibid., 45 paras A-C

were determined purely on the status of the office of a Director under CAMA. It is also noteworthy that in the defence of the cases, the Defendants made attempts to introduce the issue of contract of employment involving master and servant relationship under common law. In the case of *Longe v F.B.N. Plc (supra)*, the Defendant introduced extraneous and irrelevant facts for the purpose of bringing the case within the realm of contract of employment involving master and servant relationship under common law. This defence failed because the procedure adopted by the Defendant in summarily determining the Appellant's appointment could not be supported by either the contract of service or the Respondent's Articles. As a matter of fact, the Supreme Court in its finding held that: 'The power to remove a director under the Articles of Association of the respondent is made subject to the provisions of CAMA'.<sup>38</sup> The Supreme Court noted that from the perusal of the defence filed by the Respondent, it pleaded and relied on facts which were not relevant and directly necessary to defeat the claims made by the Appellant. The apex Court pointed out that it is the plaintiff who by his statement of claim primarily nominates the issues to be tried in a suit and on which he relies to have the judgment of the court.

For a defendant, it is only necessary to resist the plaintiff's claim on the facts pleaded. It is not for the defendant to setup facts which would convey that it is not just setting up a defence to plaintiff's suit but setting up a new case of his own. He is only permitted to do this when he is setting up a counter-claim.<sup>39</sup>

In considering the exclusive jurisdiction of the National Industrial Court of Nigeria (NICN) on matters of labour, employment, salaries, wages and the wrongful termination of the same vis-à-vis the office of Directors of companies under CAMA; the cases considered above will serve as a major guide. In determining the Court that has jurisdiction (between the Federal High Court and the National Industrial Court of Nigeria) over matters relating to the office of a Director, the following important factors or issues should be considered and properly evaluated to serve as a guide:

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<sup>38</sup> Ibid., per Adekeye, JSC at 61 para D

<sup>39</sup> Ibid., at 24 – 25 paras H-A

*The Status of the Director*

The status of the Director as to whether he is a Non-executive Director or an Executive Director is very important. The Supreme Court recognized this distinction in *Longe v F.B.N. Plc (supra)* when it held:

*The further reasoning of the court below that an executive director is not the same as a non-executive director is untenable. From other angles it may be correct<sup>40</sup> but for the purpose of removal under section 266(1) of CAMA, all directors, whether executive or non-executive are the same as long as they are engaged to direct and manage the business of the company.<sup>41</sup>*

It is important to note that though all Non-executive Directors are members of the Board of Directors, but not all Executive Directors are necessarily members of the Board, except for the Managing Director who is a member of the Board. The CBN in the recent intervention in First Bank Nigeria Ltd., appointed both Non-executive<sup>42</sup> and Executive Directors<sup>43</sup> for the Bank pursuant to its powers as regulator. The aforesaid dichotomy can be found in the distinction between *contract of service* (also known as contract of employment) and a *contract for service*.

It is admitted that it is sometimes difficult to distinguish between a contract of service and a contract for services as Lord Denning in *Stevenson, Jordan & Harrison Ltd v Macdonald & Evans Ltd*,<sup>44</sup> puts it, 'it is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies'. One of the ways to determine whether a contract is one of service and not one for service is the degree of control, also known as the 'control test'. This test examines the company's exercises of control over the individual. The more the control that is being exercised over the individual by the company, the more likely the conclusion that the

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<sup>40</sup> For emphasis

<sup>41</sup> Ibid., 44, para H

<sup>42</sup> The persons of Tunde Hassan-Odukale was named as Chairman of the Board of Directors while Tokunbo Martins, Uche Nwokedi, Adekunle Sonola, Isioma Ogodazi, Ebenezer Olufowose and Ishaya Elijah B. Dodo were named Directors.

<sup>43</sup> The persons of Dr. Adesola Adeduntan and Gbenga Shobo were retained as the Managing Director/Chief Executive Officer and Deputy Managing Director respectively. Also retained were Dr. Remi Oni and Abdullahi Ibrahim as Executive Directors.

<sup>44</sup> (1952) 1 TLR 101

individual is an employee of the company. The foregoing position was succinctly amplified by the UK Supreme Court in the recent case of *Uber BV & Others v Aslam & Others*<sup>45</sup> where the court held *inter alia* that the drivers who are registered with the Uber BV app are employees of Uber since the company dictates how much the drivers are paid for the work they do and the drivers are restricted from altering the prices which the passengers are charged and also because Uber exercises significant control over the way in which drivers deliver their services.

The distinction is crucial as it determines to what extent and whether or not statutory protection applies as well as the rights and remedies that can be claimed under the different courts. The distinction is most vital for this research in determining a Director's legal position and right to approach either the Federal High Court or the National Industrial Court of Nigeria in an action for damages for wrongful termination or dismissal of appointment as a Director. The contractual status of a Non-executive Director whose contract with the company is anchored on CAMA 2020 and Articles of Association of the company is classified as a contract for service and that is why they are referred to as agents of the company and not as employees of the company. Thus, such Directors cannot under any circumstances whatsoever invoke the jurisdiction of the National Industrial Court because there is no employment status as recognized under CFRN, 1999 (as amended), s254 c (1). The Non-executive Director's claim for wrongful termination or dismissal will be based on breach of contract under CAMA 2020 and thus is restricted to the exclusive jurisdiction of the Federal High Court. An Executive Director who may have a contract of service with the company can invoke the jurisdiction of the National Industrial Court of Nigeria under CFRN, 1999 (as amended), s254 c (1) for wrongful termination or dismissal from office.

#### *The Mode of Termination of the Appointment of the Director*

There are three ways of determining the appointment of a Director (whether Executive or Non-executive). It can be under CAMA 2020, the Articles of Association or the letter/contract of appointment. Determining the appointment of a director pursuant to the articles of association or contract of appointment is recognized by CAMA 2020, s288(6) and in either case, it

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<sup>45</sup> (2021) UKSC 5 on appeal from [2018] EWCA Civ 2748

is required that the manner of removal must be provided for in the aforementioned documents. Where it is not, the only available method will be CAMA 2020, s288(1) – (3).<sup>46</sup>

As a general rule, there is usually the employment relationship of master and servant (although not always, as was the case in *Yalaju-Amaye*) between the Managing Director who is seen as an employee and the company. As an employee, there is bound to be a contract of service/employment with the company commonly known as Service Contracts with enough details providing for tenures of office and manner of removal, amongst others. This is supplemental to the Articles of Association of the Company on which the Executive Directors rely for the tenure of their office.<sup>47</sup> Where the appointment of the Executive Director is determined under the service contract, the Executive Director can invoke the jurisdiction of the NICN in a claim for wrongful termination or dismissal from office. It should be noted that there can be instances where the termination has been validly done either under CAMA 2020, s288(1) – (3) or under the Articles of Association of the company but in violation of some express provisions in the employment/service contract which does not empower the company to dismiss him in that manner.<sup>48</sup> The claim of the Director in such instance will be for compensation damages for wrongful termination or dismissal under the employment/service contract under the common law of which the NICN will be said to have exclusive jurisdiction over such claim, having been founded strictly on the contract of employment. The Federal High Court will usually not have jurisdiction over such matters or at best the Federal High Court may exercise concurrent jurisdiction with the NICN over such a claim under CAMA 2020, s288(6).

#### *The Claim/Relief before the Court*

The claim before the court is a very vital factor for consideration as jurisdiction is not only determined by the claim of the plaintiff but the same is donated by it. The claim may relate to the following issues:

- a.) *A claim for remuneration and allowances for Non-executive Directors.* A company is not bound to pay remuneration to members of the Board of Directors but where the articles of the company

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<sup>46</sup> *Iwuchukwu v Nwizu & another (supra)* 403

<sup>47</sup> *Yalaju-Amaye v A.R.E.C. & others (supra)* at 444, para D

<sup>48</sup> *Iwuchukwu v Nwizu & another (supra)* 404 para D.

provide for such payment, it becomes a debt due to the Directors from the company for which they can sue to recover the same.<sup>49</sup> The amount of remuneration for members of Board of Directors is determined by the company either at a general meeting or as stated in the articles of the company and such remuneration is deemed to accrue from day-to-day. They may also be paid travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board and other engagements/business of the company.<sup>50</sup> The nature of this claim falls within the exclusive jurisdiction of the Federal High Court because this category of Directors has no employment contract with the company which can activate the jurisdiction of the NICN.

- b.) *A claim for remuneration and salary for Executive Directors.* This category of Directors are entitled to such remuneration (whether by way of salary, commission, participation in profits, or partly in one way or another) as may be determined by the Board of Directors or a Committee of the Board of Directors (Remuneration Committee).<sup>51</sup> Where the remuneration and salaries are provided for in a letter of appointment or service contract, an employment relationship with the company can be inferred upon which the jurisdiction of the NICN can be invoked over such matters. This however, does not deprive the Federal High Court from exercising its jurisdiction over the same since it pertains to the office of a Director as statutorily recognized in the operation of CAMA 2020.
- c.) *A claim involving a declaration of null and void and invalid removal of a Director from office and the consequent demand for reinstatement of the Director as sought in the aforementioned cases discussed above.* This relates to matters arising from the operation of the Companies and Allied Matters Act and are within the exclusive jurisdiction of the Federal High Court under CFRN, 1999 (as amended), s251(1)(e). The National Industrial Court of Nigeria will not have jurisdiction over such matters under any circumstances regardless of the provision of CFRN, 1999 (as amended), s254C (1).

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<sup>49</sup> CAMA 2020, s293(4) & (5)

<sup>50</sup> Ibid., s293(1) & (2)

<sup>51</sup> Ibid., s294(1)

- d.) *A claim for remuneration or compensation for loss of office either by retirement or valid removal.* The CAMA 2020 recognizes the right of entitlement of a retired Director or a removed Director to compensation for loss of office where such an appointment was terminated before the expiration of the term of office as specifically provided for.<sup>52</sup> A claim of this nature is usually not contesting the validity of the determination of the appointment but merely seeking compensation for loss of office as provided for in CAMA 2020. It has nothing to do with wrongful termination or dismissal from office. Thus, it is the Federal High Court that has exclusive jurisdiction as the NICN will have no jurisdiction over this kind of claim.
- e.) *A claim for damages suffered as a result of the wrongful termination or dismissal from office as a Director.* The CAMA 2020 recognizes the right of a removed Managing/Executive Director for any reason under s288 to claim for breach of contract if there is any or where a contract could be inferred from the terms of the Articles of Association. In an action founded on the removal of a Director or a Managing Director, pecuniary damages may be claimed and if proved, awarded in an action for wrongful dismissal. There is no doubt that the Federal High Court has jurisdiction over this kind of claim.<sup>53</sup> This jurisdiction may however not be exclusive to the Federal High Court. This will depend on whether there is an employment contract between the Director and the company which can be inferred from the Articles of Association of the company or whether there is a service contract which have been breached in the removal of the Director as to give the NICN concurrent jurisdiction with the Federal High Court over such a claim. In the case of *Yalaju-Amaye*, there was no employment contract whatsoever to be inferred from his appointment as a Director.

With the above in mind, it is correct to argue that the jurisdiction of the NICN under CFRN, 1999 (as amended), s254C(1)(a) and (k) has not encroached on the exclusive jurisdiction of the FHC over matters relating to CAMA 2020 as recognized under s251(1)(e). The NICN only enjoys

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<sup>52</sup> Ibid., ss297 – 299.

<sup>53</sup> *Iwuchukwu v Nwizu* and another (supra) 441 paras E-G

concurrent jurisdiction which is not at large but limited depending on the nature of the claim and relief sought.

The issue of jurisdiction between the NICN and the FHC came up for determination before the NICN in an unreported Judgment in *Omotosho & others v Akinwunmi & others*,<sup>54</sup> and in resolving the issue, the NICN held thus:

*This Court has evolved a principle that would help it determine whether it has jurisdiction to adjudicate on matters which fall within what has been described as borderline cases. In Oyebanji Julius Odeniyi & Ors. v. Shell Petroleum Development Company of Nigeria Limited, ....., my Lord, Justice B. B. Kanyip, PNICN, held, inter alia:*

*When in doubt as to jurisdiction especially in the hybrid/borderline cases, this Court has evolved a simple but effective expedient; and that is to ask the question: what legal rules would apply in resolving the issue at hand? If it is labour or employment law rules, then the Court would assume jurisdiction, but if it is some other rule of law then most probably the Court would have no jurisdiction.... But regarding other heads of liability in tort, which are all sui generis, the NIC has been reluctant to assume jurisdiction even when the “matters incidental thereto or connected therewith” argument has been raised. Towards this end, this Court had declined and still declines jurisdiction in claims for defamation even when the defamatory imputation was said to have arisen from the workplace. ... The fact that the right of a person is infringed in the workplace is not sufficient to confer jurisdiction on the court except an employment issue is involved.<sup>55</sup>*

The NICN in another unreported judgment in *Grilo v Learn Africa Plc & others*,<sup>56</sup> exercised its jurisdiction over a matter relating to the removal and

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<sup>54</sup> Suit No. NICN/LA/526/2018; delivered by Hon. Justice Ikechi Gerald Nweneka on 27 April 2020.

<sup>55</sup> Ibid., para 10

<sup>56</sup> Suit No. NICN/LA/240/2016; delivered by Hon. Justice J. D. Peters on 12 December 2019.

appointment of a Managing Director. The matter was originally filed at the Federal High Court, Lagos but the Court raised the issue of jurisdiction *suo motu* and after listening to arguments from the parties on the issue, transferred the matter to the NICN. The claim as filed before the FHC and which was finally determined by the NICN is summarized below:

- a.) A declaration that the plaintiff was and is still the Acting Managing Director/Chief Executive Officer and the Finance and Operations Director and remains, for all intents and purposes, a Director of the 1<sup>st</sup> Defendant having been validly elected in accordance with the provision of Companies and Allied Matters Act, 2004 and therefore entitled (...) and a declaration that the purported dismissal of the Plaintiff from the aforementioned office by the Board of Directors of the 1<sup>st</sup> Defendant at the instigation of the 2<sup>nd</sup> and the 3<sup>rd</sup> Defendants is wrongful and violates the Plaintiff's right to fair hearing under the constitution and is wrongful for failure to comply with the procedure as stipulated under Section 262 CAMA;
- b.) An order of the Honourable Court restoring the Plaintiff, with full powers and privileges, to his positions as the Acting Managing Director/Chief Executive Officer and the Finance and Operations Director of the 1<sup>st</sup> Defendant;
- c.) A declaration that the purported appointment of the 3<sup>rd</sup> Defendant as the Acting Managing Director of the 1<sup>st</sup> Defendant is illegal and that all acts done and all duties performed by the said 3<sup>rd</sup> Defendant are void by virtue of their contravention of the Code of Corporate Governance, 2011 and CAMA and an order removing the 3<sup>rd</sup> Defendant from the office being a non-executive director, contrary to the Code of Corporate Governance, 2011;
- d.) An order of perpetual injunction restraining the Defendants severally and jointly;
- e.) In the alternative the Plaintiff claims against the Defendants the sum of ₦250,000,000.00 as damages for the wrongful dismissal of the Plaintiff as Acting MD/CEO and Finance and Operations Director of the 1<sup>st</sup> Defendant;

- f.) An order of Court compelling the 1<sup>st</sup> Defendant to agree with the Plaintiff on the terms of a standard reference letter to be prepared jointly and for the 1<sup>st</sup> Defendant to attend positively to requests from third parties and other prospective employers to enhance the future career of the Plaintiff.

The learned trial Judge in resolving the dispute formulated two issues for determination: (1) Whether the Claimant's employment was properly determined by the Defendants; and (2) Whether the Claimant is entitled to his claims or any relief at all. On the first issue, the learned trial Judge held:

How was the Claimant in the instant case removed from office? Claimant was the Director of Finance & Operations and at the same time the acting Managing Director of the 1<sup>st</sup> Defendant at the time. The Claimant in the instant case was not given a notice of his removal, neither was he given an opportunity to defend himself when the decision to revoke his appointment was made. Exh. E9 is the Minutes of the meeting of the 1<sup>st</sup> Defendant's Board of Directors where Claimant was removed as Director. In paragraph 12.1 of that exhibit, it was recorded thus – 'The Executive Directors were requested to excuse the meeting while the Non-Executive Members of the(sic) deliberated on the following ...' In the immediate paragraph following that, 12.2 the Board deliberated on the removal of the Claimant as acting Managing Director of the 1<sup>st</sup> Defendant. His appointment was so brought to an end. Secondly, the Board also deliberated on and removed the Claimant as Director of Finance & Operations. It was after all these decisions had been taken that Claimant and other Executive Directors were invited back to the meeting. See paragraph 12.4 of Exh. E9. In all this, there is no evidence that the notice of his intended removal as acting Managing Director/Chief Executive as well as Director of Finance & Operations was served on the Claimant. Claimant was denied opportunity to make representations respecting his intended and eventual removal. Claimant was not present at the meeting when vote was passed for his removal. He was merely informed of the adverse decision taken against him. He was denied fair

hearing. All the steps taken by the Board of Directors of the 1<sup>st</sup> Defendant was a clear violation of the statutory provisions of CAMA on the removal of Directors. I so find and hold.<sup>57</sup>

On the second issue, the learned trial Judge dismissed all the main reliefs of the Claimant by holding thus:

*This is 2019. The wrongful removal of the Claimant was in September of 2011. That is a space of about 8 years. I have evidence that that position has since been filled by the 1<sup>st</sup> Defendant. It means therefore that if the Court grants this head of claim, that office is no longer available for the Claimant to occupy. A Court of law should not and must not make an order that cannot be enforced. The prayer sought if granted cannot be enforced. Same is therefore refused and dismissed.<sup>58</sup>*

The learned trial Judge, however granted the alternative claims by holding thus:

*Indeed the intervention of CAMA completely took the employment of the Claimant outside the realm of master/servant relationship and the entire Exh. AG2, See *Yalaju-Amaye v. Associated Registered Engineering Contractors (1990) LPELR-3511 (SC)*. CAMA clothes the employment of the Claimant with some form of statutory protection. The wrongful removal of the Claimant is a wrong for which the Court must and have power to find remedy. (...). The Companies & Allied Matters Act indeed envisaged a situation wherein a director is wrongfully removed from office and provides that such a wrongfully removed director is entitled to compensation or damages. In this respect, Section 262(6) of CAMA provides thus – (...).<sup>59</sup>*

*Claimant's appointment was terminated in violent breach of the provisions of the CAMA on removal of directors. That*

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<sup>57</sup> Ibid., para 15

<sup>58</sup> Ibid., para 18.

<sup>59</sup> Ibid., para 23.

*was in September of 2011. This action was filed on 16/9/16. I hold that for all intents and purposes, Claimant remained a Director of the 1<sup>st</sup> Defendant till the date of filing this suit and that upon the filing of this suit, his appointment with the 1<sup>st</sup> Defendant came to an end. I hold that the employment of the Claimant is deemed terminated on 16/9/16 and is therefore entitled to all his salaries and allowances from September 2011 to September 2016. I find that by Exh. AG2, the total annual compensation of the Claimant was ₦21,000,000.00. From September 2011 to September 2016 is about 61 months. I thus here award to the Claimant the sum of One Hundred and Six Million, Seven Hundred and Fifty Thousand Naira (₦106,750,000.00) only being his compensation for 61 months as damages for his wrongful removal as Director of Finance & Operations & Acting Managing Director & Chief Executive of the 1<sup>st</sup> Defendant.<sup>60</sup>*

Considering the above case and the decision of the trial Court to the effect that: ‘Indeed the intervention of CAMA completely took the employment of the Claimant outside the realm of master/servant relationship and the entire Exh. AG2’;<sup>61</sup> there is no doubt that the FHC was wrong to have transferred the suit to the NICN on ground of lack of jurisdiction (with respect to the learned trial Judge of the FHC). The finding of this research is that the NICN has no jurisdiction whatsoever on the said claim although it may be argued that the NICN has jurisdiction on the ground that the provisions of CFRN, 1999 (as amended), s254C(1)(a) and (k) takes precedent/priority over s251(1)(e). This argument is based on the fact that s245C(1) introduced a beginning phrase, ‘Notwithstanding the provisions of sections 251, 257, 272’. This argument is founded on the principle of interpretation of the word ‘notwithstanding’. The Supreme Court in defining the word in a plethora of cases has held thus: ‘When the term ‘notwithstanding’ is used in a section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself’.<sup>62</sup>

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<sup>60</sup> Ibid., para 24

<sup>61</sup> Ibid., para 23

<sup>62</sup> See Ladoja v I.N.E.C. (2007) All FWLR (Pt. 377) 934 (SC) at 995 para G; Adedayo v P.D.P. (2013) All FWLR (Pt. 695) 203 (SC) at 240 paras A-B

What this means in effect is that no other provision in the statute shall be capable of undermining the said section. The word has also been defined by the Black's Law Dictionary,<sup>63</sup> to mean despite; and inspite of. The Oxford Advanced Learner's Dictionary,<sup>64</sup> defines it to mean: without being affected by; and inspite of.<sup>65</sup>

The word was held to mean 'inspite of' in the case of *Emesim v Nwachukwu*.<sup>66</sup> However, it is noteworthy that CFRN, 1999 (as amended), s251(1) conferring exclusive jurisdiction on the Federal High Court has the same phrase of 'Notwithstanding' and 'in addition to' at the beginning of the section as used in s254C(1). This has also been interpreted to mean that no provision of the Constitution shall be capable of undermining the said section.<sup>67</sup> The Court of Appeal in pronouncing on this in favour of the Federal High Court in *S.P.D.C. (Nig.) Ltd v Ezeukwu*.<sup>68</sup> held thus:

*It is thus clear that the combination of "notwithstanding" and "in addition to" as used in Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 meant that nothing shall derogate in the jurisdiction of the Federal High Court as contained in both section 251(1) and section 7 of the Federal High Court Act in its entirety.*

Despite the use of the word 'notwithstanding' in the section creating the two courts, the argument in favour of the NICN is further strengthened by the fact that section 254C(1)(a) & (k) specifically mentioned section 251(1), thereby making the former special and thus, giving it priority over the latter. The argument is further supported by two points. First is the fact that s254C(1)(a) & (k) is a new introduction into the Constitution unlike s251(1)(e).

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<sup>63</sup> 10<sup>th</sup> edn, 1231

<sup>64</sup> 6<sup>th</sup> edn, 799

<sup>65</sup> See also *A.G. Federation and 2 others v Abubakar* (2007) All FWLR (Pt. 389) 1264 (CA) at 1298 para B

<sup>66</sup> (1999) 6 NWLR (Pt. 605) 154 (CA) at 167.

<sup>67</sup> See *Obi v I.N.E.C.* (2007) All FWLR (Pt. 378) 1116 (SC) at 1166 para C; *A.G. Lagos State v A.G. Federation & others.* (2014) All FWLR (Pt. 740) 1296 (SC) at 1335 para B; *Ladoja v I.N.E.C.* (2007) All FWLR. (Pt. 377) 934 (SC) at 995 para G.

<sup>68</sup> (2010) All FWLR (Pt. 541) 1501 (CA) at 1530 para C

Second is the fact that s254C(1) is subsequent in sequence to s251(1) in the order of their arrangement in the Constitution. The Supreme Court has pronounced on the effect of this in the interpretation of statutes in *A.G. Lagos State v A.G. Federation & others*. (*supra*), where it was held thus:

*Both sections 232(1) and 251(1)(a), (b) and (q) are authorised by the same legislators and make up the same 1999 Constitution. It outrightly hits an effective interpreter of these constitutional provisions that section 251(1)(a), (b) and (q) is not only subsequent in sequence to but more specific and special in tenor than section 232(1) of the Constitution. A reasonable construction of these provisions also admits the finding that the framers of the Constitution in providing for the first of the two provisions, had contemplated the subsequent provision and in providing the subsequent one, had not forgotten that the earlier provision had already been put in place.*

*The specific jurisdiction vested in the Federal High Court under section 251(1)(a), (b) and (q) is exercisable 'notwithstanding anything to the contrary in the Constitution', including the original jurisdiction conferred on the Supreme Court under the earlier section 232(1) of the same Constitution. The applicable principle of interpretation in this instance remains what Bairamian J (as he then was) in delivering the Judgment of the then West African Court of Appeal in *Mrs. F. Bamgboye v. Administrator-General* (1954) 14 WACA 616 at page 619 stated thus: (...)<sup>69</sup>*

### **Conclusion**

We are now being faced with a new issue of jurisdictional conflict between the Federal High Court and the National Industrial Court of Nigeria (NICN)<sup>70</sup> while the same issue of jurisdictional conflict persists between the Federal High Court and the State High Courts. In the words of My Lord

<sup>69</sup> Per Muhammad JSC 1334 – 1335 paras. G-G

<sup>70</sup> See the Unreported decision of the Court of Appeal, Lagos Division in the case of *The Vessel MT Sam Purpose (Ex Mt.Tapti) & another v Amarjeet Singh Bains & others* (judgment delivered on March 05, 2021) in Appeal No. CA/LAG/CV/419/2020.

Justice Nnaemeka-Agu, J.S.C. of blessed memory as far back as 1990, when he expressed the view: ‘I must emphasize that the jurisdiction of the Federal High Court vis-à-vis the High Court of States has been a most controversial question in many cases decided by this Court. Mention may be made of just a few. See (...)’.<sup>71</sup> This position has since not changed after more than 3 decades.<sup>72</sup>

The argument that favours the NICN’s exercise of jurisdiction over matters relating to the removal of Managing Directors from office and thereby encroaching into the historical exclusive jurisdiction of the FHC over such matters though strong, is not as valid as the argument in favour of the FHC retaining its exclusive jurisdiction on such matters. The argument in favour of NICN would have been valid if there was a conflict in both provisions of s251(1)(e) and s254C(1)(a) and (k) of the CFRN, 1999 (as amended). But there is no conflict at all since the latter section is framed to cover labour and employment relationship while the former section is framed to cover contract and other relationship founded on CAMA. The NICN can exercise limited concurrent jurisdiction in respect of the former depending on the relief sought. One of such reliefs is claim for damages for wrongful termination or dismissal from office of an Executive Director/General Manager which can be founded on breach of Letter of Appointment or Service Contract. The law is settled that a subject matter may very well give rise to various rights. Also, an act can give rise to different suits. In other words, different suits can emanate from the same subject matter but with different rights and reliefs.<sup>73</sup>

<sup>71</sup> Yalaju-Amaye v A.R.E.C. Ltd. (supra)

<sup>72</sup> See T. A. Francis, and K. O. Ogbe, ‘Exclusive Jurisdiction of the Federal High Court: an Analysis of Inconsistencies and Controversies through the Supreme Court Cases’ [2018] *University of Port Harcourt Journal of Private Law*; 4, 135-152 wherein the Authors pointed out the inconsistencies in the following decisions of the Supreme Court: *Inegbedion v Selo-Ojemen & another* (2013) 8 NWLR (Pt. 1356) 211 (SC); *N.P.A. v Aminu Ibrahim & Co.* (2018) 12 NWLR (Pt. 1632) 62 (SC); *R.O.E. Ltd v U.N.N.* (2018) 6 NWLR (Pt. 1616) 420 (SC); *Essi v Nigeria Ports Plc* (2018) 2 NWLR (Pt. 1604) 361 (SC); *ABIEC v Kanu* (2013) 13 NWLR (Pt. 1370) 69 (SC); *Ogbebor v I.N.E.C.* (2018) 6 NWLR (Pt. 1614) 1 (SC); *Ikpekpe v W.R. & P. Co. Ltd.* (2018) NWLR (Pt. 1648) 280 (SC); and *Osakue v. Federal College of Education, Asaba* [2010] 10 NWLR (Pt. 1201) 1 (SC)

<sup>73</sup> *Iiyasu v Rijau* (2019) 16 NWLR (Pt. 1697) 1 (SC) at 22 para F; *NDIC v UBN Plc & another* (2015) 12 NWLR (Pt. 1473) 246 (CA) at 302 – 303 paras H-A; *Fasakin Foods (Nig.) Co. Ltd. v Shosanya* (2003) 17 NWLR (Pt. 849) 237 (CA) at 248.