Dignity of Labour and Labour Justice: Welcome Remarks and Setting the Tone for the Public Lecture on Dignity of Labour and Labour Justice Organised to Mark the 20202021 Legal Year Celebration of the National Industrial Court of Nigeria

By
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1. Protocols

2. I welcome you all to this public lecture marking the 2020/2021 legal year of the Court. The choice of today's speaker, the Catholic Bishop of Sokoto Diocese, Most Rev. Dr Matthew Hassan Kukah, was deliberate. We are interested to hear and learn from a non-lawyer what dignity and labour justice stand for. We are not unmindful of the fact that if there is a discipline where the influence and participation of non-lawyers is higher, it is industrial relations law and practice. As IT Smith in *Industrial Law* (Butterworths: London), 1996, 6th ed. at page 21 puts it: "keep the law out of industrial relations".

3. Nigeria is a developing economy; and so the twin issues of dignity of labour and labour justice are paramount if our development aspirations are to be met. The National Bureau of Statistics (NBS) is reported to put the number of unemployed Nigerians at 21.77 million as at the second quarter of this year. See https://allafrica.com/stories/202008150147.html as accessed on 3 October 2020. With this number of unemployed Nigerians, do we have the luxury of having to pick and choose the kind of work we do? Do we have the luxury to disrespect certain kinds of jobs or treat them as beneath our dignity?

4. The job market is saturated. And so two commentators, Alexa Clay and Kyra Maya Phillips, in their seminal book, *The Misfit Economy: Lessons in Creativity From Pirates, Hackers, Gangsters, And other Informal Entrepreneurs* (Simon & Schuster Paperbacks: New York), 2016 at page 67, though not talking about Nigeria, have this to say: "Without traditional jobs, many are seeking diverse and creative sources of income and are working to take advantage of

entrepreneurial opportunities". Given the number of unemployed Nigerians, how creative can we be as to kick out or reduce unemployment?

5. One problem is that the very jobs we often reject are indeed the jobs that really matter. So when we reject jobs on the basis that the jobs are beneath our dignity, we unwittingly promote jobs that really do not matter. It was David Graeber, a Professor of Anthropology at the London School of Economics, who had in his seminal work, *Bullshit Jobs: A Theory* (Penguin Books: UK), 2018, asked: how much of today's work is not "bullshit" job? By which he meant pointless work, which those involved and work "cannot justify its existence even though, as part of the conditions of employment, the employee feels obliged to pretend that this is not the case".

6. And so it is not for nothing that the very essence of dignity of labour finds expression in the International Labour Organization (ILO)'s decent work agenda. For instance, in expressing the essence of dignity of labour, the ILO acknowledges that labour is not a commodity that is bought and sold. See *Amamba Madubuike & anor v. Clifford Lota Okoye, Esquire & ors* unreported Suit No. NICN/LA/10/2014, the ruling of which was delivered on 17 November 2014. And that is predominantly why employment/labour law should never be treated or read within the prism of commercial. Arturo Bronstein in *International and Comparative Labour Law: Current Challenges* (Palgrave Macmillan), 2009 at pages 1 – 2 captures the context so well, and it is within that context that labour justice must be situated. In his words:

> …the goal of labour law is to ensure that no employer can be allowed to impose — and no worker can be allowed to accept — conditions of work which fall below what is understood to be a decent threshold in a given society at a given time. Thus labour law is…the principal means to operationalize…'decent work', which, in addition to protecting the worker, calls for the respect of democracy in overall labour relations, including at the work-place.

7. As a specialized Court, so long as justice is not sacrificed, the dictates of labour justice requires that we be guided by principles of flexibility and speed when adjudicating. Statutory provisions have been made to ensure this as can be seen in section 37(3) of the TDA and section 12 of the NIC Act 2006. The slogan, "it is better to get a bad judgment quickly than a good one too late", a

variant of the adage, "justice delayed is justice denied", typifies the basis upon which we adjudicate labour disputes. I am not unmindful of what our today's revered lecturer, Bishop Kukah, once said: while justice delayed may be justice denied, we should remember that speed kills. But I would add that in labour adjudication, speed may kill hopes/expectations, but it allows for a quick readjustment to the new reality. Belated legal expectations, even if are expressive of the litigant's rights, may in practice be insignificant and meaningless. A litigant in a labour dispute can easily readjust to a bad decision. A good decision coming years after makes little meaning to him. And cases such as *Obiuweubi v. CBN* [2011] 7 NWLR (Pt. 1247) 465 SC, where it took 23 years to resolve the issue of jurisdiction between the Federal High Court and the State High Court over an employment dispute, are a case in point. A dispute resolution system typified by this sort of justice system cannot be effective or mean much.

8. For us, the disputes calling for resolution often end up determining the competing interests of the disputing parties. But our role, especially as a specialized court, is not solely the enforcement of mere contractual rights. Preventing unfair labour practices is one area where our jurisdiction can be invoked. And here, we apply principles of justice, equity and good conscience. Sand we made this point in *Mr Kurt Severinsen v. Emerging Markets Telecommunication Services Limited* [2012] 27 NLLR (Pt. 78) 374 NIC, relying on the decision of the Supreme Court of India in *NTF Mills Ltd v. The 2nd Punjab Tribunal*, AIR 1957 SC 329.

9. As an Industrial Court we are a one-subject matter court dealing with only labour and employment disputes. And that is why one of the requirements for appointment to the Bench of this Court is knowledge in industrial relations law and practice. Accordingly, we pride ourselves as an industrially informed court that understands workplace issues. We are not alone on this. Yesterday, at the special court sitting to mark the legal year, I referred to His Lordship Hon. Justice Nonyerem Okoronkwo, JCA (of blessed memory) who at our February 2020 Retreat in his "Understanding the True Import of the National Industrial Court NICN: Misconceptions and Myths; Views from an Appellate Judge", acknowledged that we are a special purpose or designated court and so enjoined that we "must be abreast of numerous changes in the industry and apply the dynamic standards to the ever changing situation within the industry or work place".

10. The English appellate courts, for instance, even defer to their industrially informed employment judges. Hear them:

> Employment judges have a good knowledge of the world of work and a sense, derived from experience, of what is real there and what is window-dressing.

And then urged employment tribunals to be 'realistic and worldly wise', and 'sensible and robust…in order to prevent form undermining substance'. See *Uber B.V. (UBV) & ors v. Yaseen Aslam & ors* [2018] EWCA Civ 2748 (19 December 2018) at paragraphs 48 and 49, and *Autoclenz Ltd v. Belcher* [2011] UKSC 41; [2011] ICR 1157. At the NICN, we are not only realistic and worldly wise, we do take a sensible and robust view of the competing interests that call for adjudication.

11. And so, we have expressed the twin concepts of dignity of labour and labour justice in terms of the right to work, which is not just about the right to be employed, but to be given work when employed. See *Adesanya Adeyemi Joachim v. Union Registrars Limited* unreported Suit No. NICN/LA/139/2014, the judgment of which was delivered on 17th December 2019, especially at paragraph 65. We equally expressed the point that rights also inure as to working conditions especially in terms of decent service conditions. This is because the ILO's concept of decent work includes the content and decency of the work itself, wherefrom the notion of dignity of labour derives. In a number of cases we have upheld especially the dignity of the female employee in the workplace. And so we have ruled against harassment, bullying and discrimination of especially the female employee in the workplace as was the case in *Dorothy Adaeze Awogu v. TFG Real Estate Limited* unreported Suit No. NICN/LA/262/2013, the judgment of which delivered on 4th June 2018.

12. We have never ceased to stress that an employer cannot treat an employee shabbily and expect a pat on the back from this Court. *Afrab Chem Ltd v. Pharmacist Owoduenyi* [2014] LPELR-23613(CA) — see also *Clement Abayomi Onitiju v. Lekki Concession Company Limited* unreported Suit No. NICN/LA/130/2011, the judgment of which was delivered on 11th December 2018 — was emphatic that courts should not allow the imposition by employers of servile conditions on employees. We have, on the basis of our unfair labour practices jurisdiction, struck out conditions of service that we found to

be unfair. We draw support for this from section 34(1)(c) of the 1999 Constitution, section 73(1) of the Labour Act and the ILO Convention Concerning Forced or Compulsory Labour, 1930 (No. 29). As my colleague Hon. Justice Arowosegbe puts it in *Dr Awkadigwe Fredrick Ikenna v. Dr Olusegun Olaopa & 2 ors* unreported Suit No. NICN/EN/26/2019, the judgment of which was delivered on 27th February 2020; available at https://nicnadr.gov.ng/judgement/details.php?id=4528&party=Dr%20Awkadigwe%20Fredrick%20Ikenna%20-VS-%20Dr.%20Olusegun%20Israel%20Olaopa%20&%202%20Ors as accessed on 2 October 2020: the NICN "has the sacred duty to prevent unfair labour practice".

13. In fact, Hon. Justice Nonyerem Okoronkwo, JCA (of blessed memory) at our February 2020 Retreat succinctly put it to us thus:

> Unlike the regular court, the National Industrial Court can act as an interventionist Court and apply nascent labour standards though not claimed.

14. As I draw the curtains in these welcome remarks, I invite you to savour the lecture of today and the commentary from the array of choice discussants.

15. I thank you all for your attention.