

**SUPREME COURT OF NIGERIA**  
25TH FEBRUARY, 2010. SC. 62/2004  
**CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,**  
**W. S. N ONNOGHEN, C. M. CHUKWUMA-ENEH,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

NATIONAL UNION OF ELECTRICITY ..... APPELLANTS  
EMPLOYEES.

MR. PRECIOUS KIRI-KALIO

(Qua General Secretary, on his behalf  
and on behalf of all members of the  
National Union of Electricity Employees).

AND

BUREAU OF PUBLIC ENTERPRISES ..... RESPONDENT  
(Suing under the authority of the  
National Council of Privatization)

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LABOUR LAW - Trade disputes - Employer/Employee relationship -  
Necessity - In the absence of an employer/employee relationship -  
Between the parties herein - Disagreement between them - Cannot  
qualify as a trade dispute (H1)

LABOUR LAW - Trade disputes - Nature - Connection with employ-  
ment necessary - The dispute must be connected with employment -  
Not a dispute about some different subject matter - Non settlement  
of which may result in non-employment (H2)

JURISDICTION - State High Courts - Curtailment - Conflict of laws -  
The jurisdiction as conferred by the Constitution - Can only be cur-  
tailed by the Constitution itself - Not by an Act or law of the National  
or State House of Assembly (H3)

COURTS - National Industrial Court - Status - Whether a Superior  
Court of Record - Notwithstanding the provisions of Decree No. 47  
of 1992 - It remains a subordinate court to the High Court - As the  
Constitution does not recognize it as a superior court (H4)

CONSTITUTIONAL LAW - Conflict of laws - Trade Disputes (Amend-

ment) Decree - By conferring exclusive jurisdiction - On National Industrial Court - It detracts from the powers of the State High Court under s. 272 of the Constitution - And as such is null and void (H5)

JURISDICTION - Exclusivity - Federal High Court - Subject matter of action - This court's jurisdiction is not automatic in all matters - In which Federal Government is a party - Subject matter of action must also be recognized by s. 251 of the Constitution (H6)

FUNDAMENTAL RIGHTS - Right to freedom of association - S. 40 of the Constitution - Limits - The rights under the section are not absolute - But have to be exercised within the ambit of s. 45 of the Constitution (H7)

### **FACTS**

The plaintiff/respondent sued defendants/appellants before the High Court of Lagos State claiming sundry reliefs by which it sought to stop appellants and those they represent from embarking on a strike action in protest against the privatisation of National Electric Power Authority (NEPA), which was their employer. When the originating process were served on them, appellants entered a conditional appearance, whereupon respondent applied for interim injunction to restrain appellants from embarking on strike pending the determination of the interlocutory injunction. Appellants responded by raising a preliminary objection to the competence of the suit on the basis, *inter alia*, that the trial court lacked jurisdiction in view of the exclusive jurisdiction of Federal High Court over matters in which the Federal Government or its agency was a party and also in view of the provisions of Trade Disputes (Amendment) Decree No. 47 of 1992 which gave exclusive jurisdiction over trade disputes to the National Industrial Court.

After hearing the parties on the preliminary objection, the trial court ruled that it had no jurisdiction and struck out the suit without considering the other grounds of objection to the competence of the suit. Aggrieved, respondent appealed to Court of Appeal, appellants also cross-appealed on the failure of trial court to pronounce on the remaining grounds of objection. Court of Appeal allowed the appeal and dismissed the cross-appeal as it held that trial court had jurisdic-

tion. Dissatisfied, appellants have brought this appeal against the judgment of Court of Appeal.

### **ISSUES OF DETERMINATION**

*1. Whether by virtue of Sections 315(1) and 316(1) of the Constitution of the Federal Republic of Nigeria 1999, Decree No.47 of 1992 which ousted jurisdiction of a High Court from adjudicating a trade dispute and exclusively vested the jurisdiction thereof on the National Industrial Court was correctly struck down by the lower court, as being inconsistent with Section 272 of the Constitution of the Federal Republic of Nigeria, 1999 so that jurisdiction in trade disputes becomes concurrent as between National Industrial Court and Lagos State High Court for determination of the claims in this action. If the answers to issue No.1 is in the negative.*

*2. Whether a court that lacks jurisdiction to entertain a cause of action founded upon a trade dispute can exercise jurisdiction to declare rights of parties in respect of a trade dispute.*

*3. Whether the six additional grounds of objection not pronounced upon in the trial court comprising lack of reasonable cause of action lack of locus standi academicity and abuse of court process were rightly dismissed by the court of appeal on the merit.”*

**HELD** (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

#### ***Trade disputes - Employer/Employee relationship - Necessity***

1. It is noteworthy that there is no employer/employees relationship between the parties to this suit. The respondent is not the employer of the appellants. Nor are the appellants the workers in the respondent company. The pertinent question is whether in the absence of such relationship a trade dispute can result from the disagreement against privatizing NEPA. It is certain that where none of the relationships as outlined above i.e. as cognizable under Section 47 do not exist so as to bring the matter of the disagreement between the parties as here within its ambit of a trade dispute it goes without more that such disagreement as in this case cannot qualify- as a trade dispute. (p. 712 E/G)

#### ***Trade disputes - Connection with employment necessary***

2. The other side of the coin is to consider whether the subject matter

here is connected with the employment or non-employment or terms of employment and physical condition of work of any person. The words “connected with” in the above abstract from NURTW .V. OGBODO (supra) has also been judicially construed and as culled from the said cited case; his Lordship has stated that;

B “The expression ‘connected with’ has been a subject of some controversy in the English Courts. In *Valentine v Hyde* (1919) 2 Ch. 729, Ashbury J. held that the dispute must be connected with employment or non-employment, and not a dispute about some entirely different subject matter, non settlement of which may result in employment or non-employment.”

C In the light of the above pronouncement which has not been otherwise set aside by a superior court the contention that the subject matter of this dispute is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person which must be direct and unequivocal has not been established. (p. 713 B)

### ***JURISDICTION - State High Courts - Conflict of laws***

E 3. It is trite law that the jurisdiction of the State High Court as conferred by the Constitution can only be curtailed or abridged or even eroded by the Constitution itself and not by an Act or law respectively of the National Assembly or State House of Assembly, meaning that where there is conflict in that regard between the provisions of the Constitution and the provisions of any other Act or law of National Assembly or House of Assembly respectively the constitution shall prevail if I may emphasize excepting as I have observed above by direct and clear provision in the Constitution itself to that effect.

F

G (p. 717 E)

### ***National Industrial Court - Status - Whether a Superior Court***

H 4. By Decree No.47 of 1992 arrogating to the National Industrial Court a superior court of record as has been contended by the appellants does not by that token make the said National Industrial Court a superior court of record without due regard to the amendment of the provisions of Section 6(3) and (5) of the 1999 constitution which has listed the only superior courts of record recognized and known to the 1999 Constitution and the list does not include

the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court and I cite with approval the Court of Appeal decision in Attorney-General of Oyo State v. Nigeria Labour Congress (2003) 8 NWLR (pt. 821) 1 at 3. Indeed a case on all fours with the instant case to the same effect. (p. 719 C) B

***Conflict of laws - Trade Disputes (Amendment) Decree***

5. The implication of conferring exclusive jurisdiction in trade disputes on the National Industrial Court is to exclude the wide powers of the state High Court thus causing the conflict between Decree No.47 and Section 272 of the 1999 Constitution and as I have outlined above any inconsistency with Section 272 of 1999 Constitution in that regard is void to extent of the inconsistency. This conclusion has knocked the bottom off the defendants/appellants' case in that regard as I declare Decree No. 47 null and void being inconsistent with Section 272 of the 1999 Constitution. I therefore resolve issue 2 in favour of the respondent. (p. 719 F) C

***JURISDICTION - Exclusivity - Federal High Court***

6. The question arising from the above dicta and on which the defendants/appellants contention appears hinged upon is the automatic exclusive jurisdiction of the Federal High Court in matters in which the Federal Government or its agencies is a party notwithstanding the nature of the subject matter of the action. However in the concurring judgment of Tobi JSC at p.100 of the report, his Lordship said: E

*“In construing Section 230(11) of the 1979 Constitution as amended, two important matters arise. They are the parties in the litigation as well as the subject matter of the litigation. The court must consider both.”* F

I hold the view in unison with the above dicta, to the effect that parties and subject matter of litigation must be examined on the background of the provisions of Section 251 of the 1999 Constitution.

In that vein, although the plaintiff/respondent is an agency of the Federal Government the subject matter in this case involves using the union machinery to frustrate the statutory duty of the plaintiff/respondent to privatize NEPA. (p. 720 H) H

***Right to freedom of association - Limits***

7. The fundamental right under Section 40 as well as other rights i.e. under sections 37, 38, 39 and 41 has to be read subject to what is reasonable within a democratic society; in that regard I quote the said Section 45 that,

- B *“Nothing in Sections 37, 38, 39, 40 and 41 (i.e. in regard to the provisions under the fundamental rights as entrenched in the 1999 Constitution) of this Constitution shall invalidate any law which is reasonably justifiable in a democratic society in the interest of defence of public safety, public order, public morality or public health”*  
C (word in brackets and underlining mine).”

That is to say, the defendants/appellants’ rights under Section 40 amongst other fundamental rights under the 1999 Constitution are not absolute. They have to be exercised to the limits of the ambit of  
D Section 45 of the 1999 Constitution. As can be seen the curtailment of the defendants/appellants’ rights under Section 40 is by direct and clear provisions of the 1999 Constitution itself and therefore they have to abide the consistency test. (p. 722 C)

E ***REPRESENTATION***

Mr. A. J. Owonikoko, with him Austin J. Otah, Felix Eki, and Miss Sotonye G.A. Hart for the Appellants.

Mr. Adeboyo Oyagbola, with him O.M. Giwah for the Respondent

F ***CASES OF REFERRED TO***

CONWAY V. WADE (1909) AC 506 at 512

NEPA v EDEGBORO (2000) 18 NWLR (Pt 798)79

IBWA V. PAVEX (2000) 7 NWLR (pt.663) 105 at 126

- G Labiyi v. Auretiola (1992) 8 NWLR (Pt.258) 139 at 170

AMADI V. NNPC (2000) 10 NWLR (Pt.674) 76 at 110

NURTW V. OGBODO (1998) 2 NWLR (Pt.537) 189 at 201

Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt.82)

- H Udo v. Orthopedic Hospital Management Board (1993)7 NWLR (pt.304) 139

NATIONAL ASSEMBLY V. PRESIDENT (2003) 9 NWLR (Pt.824) 104 at 133

GURANTY TRAVEL COMPANY OF NEW YORK V. HANNAY & CO.

(1915) 2 KB 536 at 573

Obada v. Military Governor of Kwara State (1990) 6 NWLR (Pt. 157) 482 at 496- 497

OWODUNMI V. REGISTERED TRUSTEES OF C.C.C. (2000) 10 NWLR (Pt.675) 315 at 345 - 346

ATTORNEY GENERAL OF OYO STATE V. NIGERIA LABOUR B CONGRESS (2003) 8 NWLR (pt. 821) 1 at 3

ONYENUCHEYA V MILITARY ADMINISTRATOR OF IMO STATE (1997) 1 NWLR (Pt 482) 429 at 456

WESTERN STEEL WORKS LTD. V. IRON AND STEEL WORKERS C UNION OF NIGERIA AND ANOR. (1987) 1 NWLR (Pt. 49) at P. 284

### **STATUTES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999, ss. 272, 315 & D 316

Trade Disputes (Amendment) Decree No. 47 of 1992

National Electric Power Authority Act, Cap 256, L.FN., 1990, s. 1

Trade Union Act, s. 43

Trade Disputes Act, Cap 432, L.FN., 1990, s. 19 E

Trade Disputes (Essential Services) Act, Cap 433, L.FN., 1990, s. 5

### **LEAD JUDGMENT BY CHUKWUMA-ENEH JSC**

The plaintiffs in this action at the trial court claims against the F defendants jointly and severally the following reliefs as per paragraphs 24(1) to (3) of the Statement of Claim:

*“(1) A declaration to the effect that having regards to its juristic character as a Registered Trade Union within the meaning of Section 1 (1) of Trade Unions Act, Cap. 437 Laws of the Federation of Nigeria 1990 being such a juristic entity that has duly been issued by the Ministry of Employment, Labour and Productivity with a Certificate of Registration pursuant to Section 5 also of the Trade Unions Act (supra) neither the National Union of Electricity Employees, nor any of its members they together being collectively and in combination a H body of persons engaged in the provision of an essential service within the meaning of Section 47 of the Trade Disputes Act and of Section 9(1) of the Trade Disputes (Essential Services) Act, Cap 432 and Cap 433 respectively of the Laws of the Federation 1990 is entitled either*

*to contrive, or to declare, or to embark upon, or to proceed with, or to implement and carry into subsistence and effect any strike action either within the contemplation of or as defined by Section 47(1) of the Trade Disputes Act (supra) or any strike action of any other kind without first pursuing, fulfilling, exhausting and otherwise ensuring strict compliance with and faithful adherence to all the strict mandatory procedures/conditions precedent prescribed by all diverse Federal Legislation currently prevailing and in force, in regulation of the lawful conduct of 'essential service'. Trade Unions before they may be at liberty. Lawfully to declare and to embark upon any prospective or threatened strike action of any sort.*

*(2) An Order of perpetual injunction restraining Mr. Precious Kiri-Kalio, the 2<sup>nd</sup> Defendant above named Qua General Secretary and also restraining all other functionaries or persons whomsoever who either presently occupy or at any other previous relevant time have occupied either offices, portfolios or positions of authority/responsibility on or within the executive organs of the National Union of Electricity Employees the first (1st) Defendant sued from giving any further instructions, or issuing any further directives, or passing and implementing any further resolutions, or from effectuating any other measures and otherwise from taking any steps, or any further steps of all and any kinds to cause, or to instigate, or to compel, encourage and persuade or in any other manner to enable all or any members of the National Union of Electricity Employees anywhere throughout Nigeria to carry the threat of proceeding with and embarking upon a nation-wide strike from Monday 7<sup>th</sup> January 2002 or as from any other earlier or later date into implementation, force and effect unless and until after they have first pursued, fulfilled exhausted and otherwise ensured strict compliance with and faithful adherence to all the mandatory procedures/conditions precedent prescribed by all diverse Federal Legislation currently prevailing and in force in regulation of the Lawful conduct of 'essential service' Trade Union or alternatively unless and until otherwise directed by specific Court Order.*

*(3) A further Order of perpetual injunction directed against all members of and against every member of the National Union of Electricity Employees the first Defendant sued in these proceedings wherever in Nigeria such member or members of the within named*



*Union may presently be, restraining them all from acting upon, or from acting in compliance with, or from acting in obedience to any instructions, directive or resolution given, issued, passed or taken for any purpose or objectives that do or may pertain to, or that do or may be connected with any prospective strike action with the consequential effect of withholding or withdrawing them from the performance of their usual daily job, duties and likewise restraining them all by any other means, whatsoever from carrying the threat of proceeding with and embarking upon a nation-wide strike action as from Monday 7<sup>th</sup> January 2002 or as from any other earlier or later date into implementation, force and effect unless and until after they have first pursued, fulfilled, exhausted and otherwise ensured strict compliance with and faithful adherence to all the mandatory procedures/conditions precedent prescribed by all diverse Federal Legislation currently prevailing and in force in regulation of the lawful conduct of essential service Trade Union or alternatively unless and until otherwise directed by specific Court Order.”*

After entry of a conditional appearance by the defendants/appellants, the plaintiff/respondent has applied for interim injunction to restrain the appellants not to carry out their threat of striking pending the hearing of the interlocutory injunction. It is to be noted that it has also sought and obtained leave of court to sue the 2<sup>nd</sup> defendant/appellant both in his personal and official capacity. The defendants/appellants picking up the gauntlet from there have raised by a notice of preliminary objection pursuant to Section 251 of the 1999 Constitution and Order 23 Rule 4 of the Lagos State High Court (Civil Procedure) Rules 1994 a number of issues with regard to the competence of the suit as follows:

*“1. That the Plaintiff/Respondent lacks locus standi to institute this action.*

*2. That there is no Employer/Employee relationship between the Plaintiff and the Defendant whatsoever and no contract of any kind between the parties.*

*3. That this Honourable Court lacks jurisdiction to entertain the suit in view of the provision of Section 251 (1) (n) and (p) of the 1999 Constitution.*

*4. That the suit itself is an infringement of the Constitutional rights of the Defendants as enshrined in Section 40 of the 1999 Con-*

stitution.

5. *That the suit itself discloses no cause of action against the Defendants.*

6. *That the jurisdiction of the Honourable Court to entertain this suit is suspect in that the provision of Section 1 of cap.432 Laws of the Federation as amended by Section 2 (1) a (1) and (2) of Decree No.47 of 1992 as it relates to the rights of the Defendants to embark on industrial action as a Trade Union oust the jurisdiction of the court, the said provision of the law being an existing Law by virtue of Section 315 of the 1999 Constitution.*

7. The joinder of the 2<sup>nd</sup> Defendant is improper in law, thereby rendering the suit incompetent.

8. The cause of action as endorsed on the Writ of Summons and in the Statement of Claim has lapsed and at best is an academic exercise and an abuse of court processes.

The notice of preliminary objection is supported by an affidavit of 8 paragraphs deposed to by one Yemi Alao, a Legal Practitioner.

The trial court having carefully considered the above processes before it and the submissions rendered on behalf of the parties with regard to issues 3 and 6 above as pertinent as they are to the trial court's jurisdiction to entertain this case decided that it has no jurisdiction and struck out the plaintiffs suit but without ruling on the remaining 6 issues properly raised in the notice of preliminary objection. In other words, the trial court upheld grounds 3 and 6 of the objection by concluding that:

*"All other issues raised by the defendant/applicant in the preliminary objection become academic."*

The plaintiff being dissatisfied with the decision has appealed the same to the Court of Appeal Lagos (court below) and so also the defendants have cross-appealed on the failure of the trial court to pronounce on the other 6 issues as raised in the notice of preliminary objection. The court below on its part having held that the trial court has the jurisdiction to entertain the claim in its entirety, allowed the appeal to that extent; it however has dismissed the cross-appeal as devoid of merit and has observed thus:

*"As..... all unconsidered issues are subsumed in the two considered and since an appeal is a re-hearing of the case by a supe-*

rior court the exercise I have embarked upon is not out of place.”

The Defendants dissatisfied with the decision have now appealed to this court by a Notice of Appeal dated 4/6/2003 containing 5 grounds of appeal. The appellants and Respondents in this appeal before this court respectively are the defendants and the plaintiff at the trial court.

In the brief of argument in support of the appeal dated 24/05/2004 the appellants have raised three issues for determination as follows:

*“1. Whether by virtue of Sections 315(1) and 316(1) of the Constitution of the Federal Republic of Nigeria 1999, Decree No.47 of 1992 which ousted jurisdiction of a High Court from adjudicating a trade dispute and exclusively vested the jurisdiction thereof on the National Industrial Court was correctly struck down by the lower court, as being inconsistent with Section 272 of the Constitution of the Federal Republic of Nigeria, 1999 so that jurisdiction in trade disputes becomes concurrent as between National Industrial Court and Lagos State High Court for determination of the claims in this action. If the answers to issue No.1 is in the negative.*

*2. Whether a court that lacks jurisdiction to entertain a cause of action founded upon a trade dispute can exercise jurisdiction to declare rights of parties in respect of a trade dispute.*

*3. Whether the six additional grounds of objection not pronounced upon in the trial court comprising lack of reasonable cause of action lack of locus standi academicity and abuse of court process were rightly dismissed by the court of appeal on the merit.”*

*The Respondent in its brief of argument filed on 2/6/2005 has also raised three issues as follows:*

*“1. Whether the claim in this suit is a trade dispute and is conquerable exclusively in the National Industrial Court.*

*2. Whether Decree 47 of 1992 which vests exclusive jurisdiction in the National Industrial Court to hear and determine trade disputes (including inter and intra union disputes) is inconsistent with Section 272 of the 1999 Constitution?*

*3. Whether the Lower Court correctly dismissed the six additional grounds of objection, which were not pronounced by the trial court?”*

*Arguing issues 1 and 2 together, the appellants, firstly, on the*

*backdrop of a crucial finding by the court below to the effect that the disagreement between the instant parties is not a trade dispute, have taken to a detailed expositions on the meaning and ramification of trade dispute. In that regard, they have adverted to the respondent's pleadings in paragraphs 4 and 12 which they contend have conceded the appellants' right to embark on the planned industrial action/strike to register their objection to the privatization of the National Electric Power Authority (NEPA) - their employer but as contended by the respondent without complying with due process that is, in accordance with the relevant pre-conditions dealing with trade disputes in regard to essential services as prescribed under the Trade Union Act and in the Trade Disputes Cap.432 and more specifically Trade Disputes (Essential Services) Act Cap.433. Having examined the provisions of Section 47 of the Trade Disputes Act with regard to the meaning of "strike" they have posited that the right to strike or not and even the procedure of embarking on strike action are recognized as fundamental statutory terms of employment in the industry where there is a right to unionize and has therefore been made non-actionable as per Section 43 of the Trade Union Act. It is also contended that privatization of NEPA if carried through will convert the nature of their employment with the 1<sup>st</sup> respondent from public service as defined in Section 318 of the 1999 Constitution and as per Section 1(1) of the National Electric Power Authority Act Cap.256 Laws of the Federation of Nigeria 1990 to private employees of the purchasers of NEPA. In the circumstances, they urge that privatization per se is a trade activity and that its disapproval thereof by the appellants constitutes a trade dispute under Section 47 of the Trade Disputes Act and without more that the disagreement amounts to an industrial dispute and so, is non-actionable under Section 43 of the Trade Union Act. And for all this, they submit that the instant industrial dispute has qualified in every respect as a trade dispute notwithstanding that they are not the employees of an employer i.e. the plaintiff they have disagreement with.*

H The second leg of the appellants' attack of the decision of the court below stems from its holding that the instant claim being of declaratory in nature coupled with injunction it does not fall to be exercised within the ambit of judicial power of the exclusive jurisdiction of the National Industrial Court as per the Trade Disputes Acts.

They submit that this has arisen from misconstruing the case of HANSON V. RADCLIFFE U.D.C. (1922) 2 Ch. 507 per Sterndale M. R. - and the distinction between power and jurisdiction in that judicial power can only be exercised where there is jurisdiction. See: Section 6(6) of the 1999 Constitution and OWODUNMI V. REGISTERED TRUSTEES OF C.C.C. (2000) 10 NWLR (Pt.675) 315 at 345 - 346 paragraphs G-C. They also have submitted that the court below has not appreciated the limits of the principle underlining Hanson's case in this regard. See: GURANTY TRAVEL COMPANY OF NEW YORK V. HANNAY & CO. (1915) 2 KB 536 at 573, EKUNO V. IFEKA (1960) SCNLR 320, EWARAMI V. ACB LTD. (1978) 4 SC. 99 per Irikefe JSC at 108-109, NATIONAL ASSEMBLY V. PRESIDENT (2003) 9 NWLR (Pt.824) 104 at 133-4 paragraphs. E-B and in that wise they have further urged that given the exclusive jurisdiction conferred on the National Industrial Court on trade disputes, the said above finding of the court below as to the reliefs sought (be it injunction or declaration) will not be sufficient in this regard to confer jurisdiction on a court as the Lagos State High Court to determine the instant trade dispute between the instant parties and that,

*"The jurisdiction sought being ancillary did not confer jurisdiction on the court. The jurisdiction of the court cannot be determined by the effect of a successful claim."*

Per Karibi-Whyte JSC (in his dissenting opinion in Western Steel case (supra), I shall come to this question later.

It has debunked the proposition that the National Industrial Court cannot grant declarations and injunctions because the Trade Disputes Act has not provided for that power and thus has depreciated the contention that declaratory reliefs in regard to trade disputes fall outside the jurisdiction of the National Industrial Court but within the jurisdiction of the Lagos State High Court in this matter as per the case of WESTERN STEEL WORKS LTD. V. IRON AND STEEL WORKERS UNION OF NIGERIA AND ANOR. (1987) 1 NWLR (Pt. 49) at P.284 per Oputa JSC, The appellants submit that Oputa's said opinion in the cited case on that point, is no longer good law as a lot of recent decisions have shown.

Moving on to next issue of whether the State High Court has the jurisdiction to entertain trade disputes by virtue of Section 272 of the 1999 Constitution as has been opined by the respondent the

appellants refer to and I rely on MADUKOLUM V. NKEMDILEMU (1962) 1 ANLR 587 to submit that the National Industrial Court has met all the conditions set out in the cited case as regards the necessary legal machinery competence wise to exercise jurisdiction over the instant action notwithstanding not being listed among the superior courts of record under Section 6(3) and (5) (i) of the 1999 Constitution which has listed exhaustively all the superior courts of record in Nigeria. And that the National Industrial Court, it is submitted has become one of such courts by virtue of Section 19 of the Trade Disputes Act as amended by Section 5 of the Trade Disputes (Amendment) Decree No.47 of 1992 - an existing law by virtue of Section 315 of the 1999 Constitution, that is, by a combined reading of the aforesaid Trade Disputes Acts along with Section 316 of the said Constitution. And that clearly they have borne out that a State High Court does not have the requisite statutory machinery and competence to hear and determine trade disputes. In support of this proposition the appellants have referred to and relied on NDIC v. FMB (1997) 2 NWLR (Pt. 490) although overruled but not on this point; IBWA V. PAVEX (2000) 7 NWLR (pt.663) 105 at 126 paragraphs E-G; M.D. YUSUF & ANOR. V. OLUSEGUN OBASANJO & ORS. SC. 143/1993 (unreported judgment delivered on 7/5/2004 per Kutigi JSC (as he then was), and AMADI V. NNPC (2000) 10 NWLR (Pt.674) 76 at 110 paragraphs B-D.

The appellants have also re-examined this issue from the angle of the contrast between unlimited jurisdiction of a State High Court under Section 236 of the 1979 Constitution as re-enacted as Section 272 of 1999 Constitution without the word “unlimited”. The appellants have posited that here again, the examination of both sections is sequel to the finding by the court below that,

*“From the combined effect of Section 251 and 272 of the Constitution the jurisdiction of a State High Court is not ousted such that it cannot entertain the present suit since the Constitution is supreme law of the land. See: ADISA V. DYINWOLA.....”*

The appellants have argued that this pronouncement suffers from a restrictive interpretation of the decree No.47 vis-a-vis Section 272 of the 1999 Constitution and that it has not considered other constitutional provisions confirming the consistency of Decree No. 47 with the provisions of the 1999 Constitution based on the principle

of liberal interpretation as espoused in the case of RAFIU RABIU V. KANO STATE (1980) 8-11 SC.130. They submit that before 1999 the case UDO V. O.H.M.B. (1993) 7 NWLR (Pt. 304) 189 decided by this court construing Section 1 (A) (1) of the Trade Disputes (Amendment) Decree No.47 of 1992 has recognized that the said decree ousted the jurisdiction of State High Courts to entertain trade disputes and that a number of cases have followed Udo's case (supra), such as NURTW V. OGBODO (1998) 2 NWLR (Pt.537) 189 at 201, DANET V. FADUGBA (1998) 13 NWLR (Pt 582) 482 at 497 paragraph H, SEA TRUCKS (NIG.) LTD. V. ANIGBORO (2001) 2 NWLR (Pt. 696) 159. B  
C

I must pause here to advert to paragraphs 4.38 and 4.39 of the appellants brief of argument and the necessary deductions to be drawn therefrom vis-a-vis the above cited cases as they have underscored to my mind the fundamental error pervading in the appellants' reasoning in this matter. They state as follows: D

*"4.38 Given the above history of lack jurisdiction of High Court on trade dispute before the Constitution of the Federal Republic of Nigeria, 1999 came into force, AND GIVEN THE EXPRESS saving provision of section 316(1) of the Constitution which we have reproduced above nothing has changed to reverse the exclusive jurisdiction of the NIC in adjudicating trade disputes."* E

*"4.39 We respectfully submit, that the High Court of a state has not since the coming into force of the 1999 Constitution been conferred with any jurisdiction in respect of trade disputes inter/intra union disputes that it previously lacked. Only the Federal High Court has been conferred with additional jurisdiction by virtue of section 251 of the Constitution. Even so, the expansion did not include trade disputes. The lower court were therefore in error to have reasoned as they did, that the unlimited jurisdiction of the State High Court under the 1979 Constitution was restored by the 1999 Constitution mutatis mutandi."* F  
G

I shall come back to take the issues raised in these paragraphs later in the course of this judgment. H

It is also argued that since the Federal High Court has been vested exclusively with the jurisdiction over matters covered by virtue of Section 251 of the 1999 Constitution, the unlimited jurisdiction of a State High Court as the instant one here has been curtailed mutatis

mutandi and so a State High Court has not expressly been vested with unlimited jurisdiction and that the cases of WESTERN STEEL WORKS LTD. (supra), ADISA V. OYINWOLE (supra) and SAVANNAH BANK V. PAN ATLANTIC SHIPPING AND TRAVEL AGENCIES LTD. & ANOR. (1987) 1 NWLR (Pt. 49) are no longer helpful

B in construing matters as the instant case.

They submit therefore that the jurisdiction of the State High Court is no longer unlimited and so, the jurisdiction of the State High Court, cannot be co-extensive with the jurisdiction of the National Industrial Court over trade disputes. And even then by the combined reading of the provisions of Section 4(3), 6(3) and (4) (a) and (b), 36(2), 240 and 251(1) of the 1999 Constitution they have opined that Section 272(1) and 286(1) of 1999 Constitution vesting jurisdiction on the State High Court have to be read subject to Decree D No.47 of 1992 on the backdrop of Section 315 of the 1999 Constitution as an existing law.

Finally, they have urged this court to affirm that part of the trial court's pronouncement that by virtue of Section 2 of the Trade Disputes (Amendment) Decree No.47 of 1992 a State High Court as E the Lagos State High Court lacks the jurisdiction to entertain the instant claim as the jurisdiction in regard to trade disputes as here is vested exclusively on the National Industrial Court.

On the 6 issues not ruled upon by the trial the appellants have F argued that their submissions before the court below on those 6 issues, that is to say, for lack of locus standi, lack of reasonable cause of action, improper joinder and abuse of court process have been erroneously dismissed by the court below. It is contended that the cumulative effect of having upheld those issues would have been the G dismissal of the instant suit instead of striking it out.

The court is urged to revisit those issues with a view to setting aside the decision of the court below. On the whole, this court is prayed to reverse the decision of the court below and in its stead allow the cross-appeal which has been dismissed in the court below H thereof in toto.

The respondent submitting in its brief has conceded that central to this matter is whether the instant claim is a trade dispute. It is the contention of the respondent that the claim does not involve a trade dispute even though it is proposed to use strike action to fore-



stall the statutory duty of the plaintiff in privatizing the National Electric Power Authority (NEPA).

Furthermore, based on the clear provision of Section 47 of the Trade Disputes Act Cap.432 Laws of the Federation of Nigeria it has posited that there is no employer/employee relationship to take the disagreement to the next level of employees/employer relationship so as to translate the instant disagreement to a trade dispute and even moreso that the nature of the dispute as disclosed in the plaintiff's pleadings is not connected either with the terms of employment or non-employment, or terms of employment and physical conditions of work of any person as would otherwise be the case with trade disputes. In the absence of the above factors that it is not a trade dispute cognizable under the Trade Union Act as to sustain the proposed strike action and has referred to the case of NWL LTD. V. WOODS (1979) 3 AER 614 per Lord Diplock to buttress the point. The Respondent has demonstrated that it is not every strike although a veritable tool of industrial action that qualifies as a trade dispute in the true sense of the Trade Disputes Acts. See: BRITISH BROADCASTING CORPORATION V. HEARN (1978) 1 AER 11; (1977 1 WLR 1004). They have contended that the instant privatization exercise of NEPA and the Appellants' objection of it without more cannot constitute a trade dispute.

On the proposition that the appellants are nonetheless protected against a claim as the instant one under Section 43 (b) of Trade Union Act Cap. 437 LFN 1990, the respondent has submitted that as the proposed industrial act i.e. strike action in this instance is not done pursuant to a trade dispute the protection otherwise provided under Section 43 (b) cannot avail them - the defendants. See: CONWAY V. WADE (1909) AC 506 at 512 per Lord Loreburn L.C as particularly here where the acts of the defendants have in fact not been done or in contemplation or furthermore of a trade dispute.

They have submitted that the submissions made in regard to the National Industrial Court being vested with the exclusive power to hear and determine trade disputes based on its special statutory set up go to no issue as this matter is not a trade dispute. And has underscored the issue that the court below has not found that the National Industrial Court has no jurisdiction to grant declarations but that the High Court has the power to grant declarations since its power

is so to speak limitless in that regard.

On Issue 2; The respondent has forthrightly submitted that the Trade Disputes (Amendment) Decree No.47 of 1992 is clearly in conflict with Section 272 of the 1999 Constitution. Having examined the provisions of Section 272(1) and 315(1), (2), (3) & (4) and 316(1) of the 1999 Constitution and Section 1A (1) and (2) of the Trade Disputes (Amendment) Decree No.47 of 1992 side by side and also having examined them against the backdrop of this matter, the point has been made that by virtue of Section 315 of the 1999 Constitution the Trade Disputes (Amendment) Decree No.47 is an existing law and deemed an Act of the National Assembly; besides, that by virtue of Section 316 of the 1999 Constitution the National Industrial Court is an existing court. The respondent has argued that the conferment on the National Industrial Court of the status of superior court of record with exclusive jurisdiction in trade dispute is in conflict with the jurisdiction of the State High Court vis-a-vis Section 272 of the 1999 Constitution. In taking this contention further, the respondent has made the point that any other law in conflict with the Constitution excepting by the express provision of the Constitution, the provisions of the Constitution shall prevail. See Section 1(3) of the 1999 Constitution and the decision in ADISA V. OYINWOLE (supra). And so, that subjecting the State High Court to Section 251 which has conferred exclusively jurisdiction over certain matters therein contained on the Federal High Court has not altered the wide jurisdiction of the State High Court. Having referred to Section 6(4) (a) of the 1999 Constitution on the power of the National Assembly to create new courts, the respondent has conceded that the National Assembly has the power to create courts but of such subordinate jurisdiction albeit to the High Court, and that such exercise cannot affect or derogate from the jurisdiction of the High Court on the matters within its competence. It therefore, follows according to the respondent that although the Trade Disputes (Amendment) Decree 47 has created the National Industrial Court as a superior court of record it cannot be properly so designated without an amendment of Section 6(3) and (5) of the 1999 Constitution which has listed exhaustively all the superior courts of record known to the 1999 Constitution. See: ATTORNEY GENERAL OF OYO STATE V. NIGERIA LABOUR CONGRESS (2003) 8 NWLR (Pt. 821) 1 at 3. The

court is urged to resolve issue 2 in the respondents' favour

The respondent in further answer to the above has emphasized the point that the Constitution being the supreme law to that extent it cannot be made subject to any other law excepting by express provision of the constitution. See: ADISA V. OYINWOLE (SUPRA), WESTERN STEEL WORKERS LTD V IRON AND STEEL WORKERS UNION OF NIGERIA AND ANOTHER (1987), NWLR (Pt 49) 284 PER COKER, JSC. The respondent submits that what has changed has been the removal of matters covered by section 251 of the 1999 constitution from the jurisdiction of the State High Court. Again, it is submitted that according to the status of superior Court of record the National Industrial Court without amending section 6(3) and (5) of the 1999 constitutional is to no effect. See ATTORNEY-GENERAL OF OYO STATE V NIGERIA LABOUR CONGRESS (2003) 8 NWLR (Pt 821) 1 at 3.

The Court is urged to approve the decision in the said cited case as well as affirm the decision of the Court below.

On issue 3: The Court below having exercised its powers under section 16 of the Court of Appeal Act has examined the 6 grounds of the preliminary objection raised but not considered by the High Court; it has formally dismissed them as lacking in merit.

On the question of Locus Standi: the respondent has contended that considering paragraphs 1, 3, 4, 5, 6, 7, 8, 12, 14 and 15 of its pleadings setting out its interest in the matter that paragraph 12, 17 and 18 of the pleadings particularly, have disclosed the proposed industrial action which would otherwise adversely affect its function and relies on OWODUNMI V. REGISTERED TRUSTEES OF CELESTIAL CHURCH OF CHRIST (2000) 10 NWLR (Pt 675) at 355 and that it is not an industrial action the President or the Minister of Labour has the locus to intervene in the matter.

On Cause of Action: The respondent submits that a reasonable cause of action has been disclosed; it has arisen from the acts of the appellants' proposed industrial action to frustrate the respondent's privatization exercise.

On the breach of section 40 of the 1999 constitution i.e. the right to peaceful assembly and association; the respondent has contended that none of the three reliefs sought in the statement of claim infringes section 40 which otherwise is restricted by section 45 and

which has validated them under the Trade Disputes (Essential Services) Act. The appellants having been engaged in essential services they cannot be heard to say that the Act is in breach of section 40.

B On the improper joinder of the 2<sup>nd</sup> Appellant to this action, the respondent has submitted that the 2<sup>nd</sup> Appellant is a necessary and desirable party to the suit as he is likely to be affected by the decision. See: ONYENUCHEYA V MILITARY ADMINISTRATOR OF IMO STATE (1997) 1 NWLR (Pt 482) 429 at 456 and more so as the 3<sup>rd</sup> relief is directed against the 2<sup>nd</sup> appellant who is the General Secretary and the person issuing the strike threats.

C On academic nature of action and abuse process. This questions as raised under this head of the objection have been answered in the argument on issue 1.

D On section 251 (1) (n) of (p) of the constitution and the contention that the suit should have been commenced in the Federal High Court as decided in NEPA v EDEGBORO (2000) 18 NWLR (Pt 798) 79. The respondent has submitted that the subject matter falls outside section 251 (1) (n) (p) of the 1999 constitution which deals with mines and minerals. It is the respondent's submission that the subject matter has not fallen within the jurisdiction of the Federal High Court as the claim does not concern the management and control of the Federal Government; or any of its agencies for example NEPA.

F Finally, the respondent submits that the Court below has rightly dismissed the appeal. The Court is urged to dismiss the appeal and to affirm the decision of the Court of Appeal.

G The issues for determination in this appeal as raised by the parties on both sides are substantially the same that I should proceed to deal with the fundamental question in the matter of whether the claim in this suit is a trade dispute and so within the exclusive jurisdiction of the National Industrial Court (NIC). The said crucial question is sequel to the peculiar facts and circumstances of this matter as conceded on both sides of the matter. If I may recap, the trial Court has held at the conclusion of arguments on the preliminary objection that the subject matter of this suit is a trade dispute and that by virtue of Decree 47 of 1992 jurisdiction over such matters lies exclusively in the National Industrial Court hence it has struck out the matter. On appeal, the Court of Appeal on other hand has reversed the trial

Court's decision holding inter alia that the subject matter of the suit is not a trade dispute; moreover that Decree 47 of 1992 on which the exclusive jurisdiction of the NIC is predicated is inconsistent with Section 272 of the 1999 Constitution and therefore void.

The central point from which to start discussing this matter is whether the suit is a trade dispute. The Court below on this question has pronounced from lines 16 to 24 at page 243 of the record as follows:

*"For the provisions of the Trade Dispute Cap. 432 and Trade Disputes (Essential Services) Act cap 433 to apply there must be a clear case of employers, employee relationship between the parties and cause of disagreement between them must point unequivocally to a trade dispute.....so the relationship of employer/employees or employer/workers or even workers/workers does exist between them."*

In a succinct attack of the above finding by the appellants who claim that their proposed industrial action is protected under section 43 (b) of the Trade Union Act and as the instant privatization is a trade activity which is vehemently opposed by them, that the instant disagreement of the parties arising from their opposition to the privatization exercise qualifies as a trade dispute. The respondent has contended to the contrary submitting that the proposed strike action by appellants is aimed at frustrating its privatization activity of NEPA. What is the meaning of trade dispute? The term "trade dispute" has been statutorily defined by section 47 of the Trade Dispute Act Cap 432 thus:

*"trade dispute means any dispute between employers and workers or between workers and workers, which is connected with employment or non-employment, or the terms of employment and physical conditions of any person"* underlining mine for emphasis.

The foregoing provision has been judicially construed in the case of NATIONAL UNION OF ROAD TRANSPORT WORKERS V. OGBODO AND OTHERS (1998) 2 NWLR (Pt 537) 189 per Tobi JSC (as he then was) as follows:

"From the wordings of section 47, it is clear that the following ingredients are not only necessary but inevitable:

- (a) there must be a dispute
- (b) the dispute must involve a trade

© 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

B (ii) the terms of employment and physical condition of workers of any person.”

His Lordship then proceeded to analyze the above factors thus:

C “The third classification concerns the parties in the trade dispute. The dispute must either be between employers and workers or between workers and workers, or although the former is much more regular in terms of commencement of actions in Courts. The act does not provide for the definition of employer. It simply means a body of  
D persons who employs a worker. The act defines ‘worker’ as any employee, that is to say, any public officer or any individual or (other than a public officer) who has entered into or works under a contract with an employer whether the contract is for manual labour, clerical work or otherwise express or implied, oral or written or whether it is  
E contracted to render services or of apprenticeship.

“Applying the foregoing analysis which with respect I uphold, mutatis mutandi to this case, it goes beyond argument that it is inapplicable vis-a-vis the facts and circumstances here. The reasons are not too far fetched. **It is noteworthy that there is no employer/employees relationship between the parties to this suit. The respondent is not the employer of the appellants. Nor are the appellant the workers in the respondent company.** This state of  
F affairs is common to the parties; so that the instant dispute is not between employer/employees. Even then the dispute is not also between workers and workers in the plaintiff Company or in NEPA neither is it an inter/intra union dispute. **The pertinent question is whether in the absence of such relationship a trade dispute can result from the disagreement against privatizing NEPA. It is certain that where none of the relationships as outlined above i.e. as cognizable under Section 47 do not exist so as to bring the matter of the disagreement between the parties as here within its ambit of a trade dispute it goes without more that such disagreement as in this case cannot qualify- as a**  
G  
H

**trade dispute.** In my view compliance with the provisions of Section 47 (supra) is indispensable not only to making an industrial action qualify as a Trade dispute but also to enable the employees claim a right to strike and so non actionable within the provisions of Section 43(1) of the Trade Union Act.

***The other side of the coin is to consider whether the subject matter here is connected with the employment or non-employment or terms of employment and physical condition of work of any person. The words “connected with” in the above abstract from NURTW .V. OGBODO (supra) has also been judicially construed and as culled from the said cited case; his Lordship has stated that;***

***“The expression ‘connected with’ has been a subject of some controversy in the English Courts. In Valentine v Hyde (1919) 2 Ch. 729, Ashbury J. held that the dispute must be connected with employment or non-employment, and not a dispute about some entirely different subject matter, non settlement of which may result in employment or non-employment.***

***”In the light of the above pronouncement which has not been otherwise set aside by a superior court the contention that the subject matter of this dispute is connected with the employment or non-employment or the terms of employment and physical conditions of work of any person which must be direct and unequivocal has not been established.*** In this court it is not borne out by the averments in the Statement of Claim. And so the instant trade dispute has no connection with the subject matter of this case. There can be no basis therefore, for the proposed threatened strike as the privatization activity is not a trade dispute as the factors constituting trade disputes as stated above are totally absent in the said privatization activity and so the strike called in that regard cannot fall within the ambit of Section 43 (b) of the Trade Union Act. It would, with respect, approximate to a wildcat strike.

For all this, it is my considered view that as there does not exist between the parties - the essential factor of employer/employees relationship in this matter as in cases of this nature the instant disagreement as to the privatization of NEPA cannot constitute a trade dispute between the parties. In this respect, I agree with the court below. I therefore resolve issue one in both briefs in the respondent’s

favour.

On Issue 2: that is whether Decree 47 of 1992 which vests jurisdiction in the National Industrial Court to hear and determine trade disputes (including inter and intra Union disputes) is inconsistent with the section 272 of 1999 Constitution. One feature of these enactments on trade disputes is that they have been enacted during the Military era when the fundamental law is the Decree (i.e. the Grundnorm) made by the Federal Military Government. See: *Military Governor of Ondo State v. Adewunmi* (supra). *Labiya v. Auretiola* (1992) 8 NWLR (Pt.258) 139 at 170, *Obada v. Military Governor of Kwara State* (1990) 6 NWLR (Pt. 157) 482 at 496- 497. In promulgating these enactments of the Trade Disputes Decrees that is Decree No.7 of 1976 and Trade Disputes (Amendment) Decrees No.47 of 1992 the jurisdiction of the ordinary court has been ousted completely by the said Decrees and as the fundamental laws they are valid and subsisting to that extent. See *Nwosu v. Imo State Environmental Sanitation Authority* (1990) 2 NWLR (pt. 15) 688. This position climaxed in the case of *Udo v. Orthopedic Hospital Management Board* (1993)7 NWLR (pt.304) 139. Where this court held that the said Decree ousted the jurisdiction of State High Court to entertain trade disputes. What I am trying to say here is that during military regimes Decrees are the effective “grundnorms” but when Democratic Governments come back to power as in this country the Constitution becomes the grundnorm.

As an aside the Trade Disputes (Amendment) Decree No. 47 of 1992 and even the Trade Disputes Decree No.7 of 1976 both have defined the jurisdiction of the National Industrial Court in regard to trade disputes. Although, the Trade Decree of 1976 has made certain provisions under Section 20(4) to the effect that nothing in subsection (1) or (3) of this section shall affect the jurisdiction of the Supreme Court in Nigeria under Section 259 or 213 (2)(2) of the Constitution of the Federal Republic of Nigeria or the jurisdiction of the High Court under Section 42 of the 1979 Constitution, all the same, it has provided that the decision of the National Industrial Court will not lie on appeal to any other organ - thus conferring on it original and appellate jurisdictions. The Trade Dispute (Amendment) Decree NO. 47 1992 has, however, repealed subsection 20(4) of Decree of 1976 by substituting Subsection 3 which provides for appeal



from the decision of the National Industrial Court to the court of Appeal as of right on questions of Fundamental Rights as per Chapter IV of the 1979 Constitution it however retained the exclusive jurisdiction of the National Industrial Court and has created an offence for failing to commence an action on trade disputes in any other but the National Industrial Court by Section 1A (1) and (3). B

The above resume is to put my discussion in perspective. To discuss any inconsistencies between Decree 47 and the provisions of Section 272 of the 1999 Constitution in the context of this matter as contended on both sides, I have to set out the following relevant enactments. C

Section 2 of the Trade Disputes (Amendment) Decree No. 47 of 1992 provides thus:

*"Immediately after the existing Section 1 of the Principal Act there shall be inserted the following new Section 1 A. D*

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

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

Section 272(1) of 1999 Constitution provides as follows:

*"Subject to the provision of Section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction G to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment and other liability in respect of an offence by any person. H*

Section 315 of 1999 Constitution provides as follows:

(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of the constitution and

shall be deemed to be:

- a. An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws ; and
- B a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.
- (2) Not copied.
- (3) Nothing in the Constitution shall be construed as affecting
  - C the power of a Court of law or any tribunal established by law to declare invalid any provision of an existing law on the ground of inconsistency with the provisions of any other law, that is to say:
    - a. any other existing law
    - b. a law of a House of Assembly
    - D c. an act of the National Assembly; or
    - d. any provision of this Constitution.

Section 316(1) of the 1999 Constitution provides as follows:

- “Any office, court of law or authority which immediately before the date when this section comes into force was established and*
- E *charged with any function by virtue of any other constitution or law shall be deemed to have been duly established and shall continue to be charged with such function until other provisions are made, as if*
  - F *the function by virtue of this constitution or in accordance with the provisions of a law made there under” (Underlining mine)*

- I have placed the above provisions of various enactments very handy and for ease of reference in discussing the constitutionality of the exclusive jurisdiction vested in the National Industrial Court to
- G hear and determine trade disputes under the Decree No. 47 of 1992, and so determine whether Decree No. 47 of 1999 being an existing law and deemed to be an Act of the National Assembly by virtue of Section 315 (l) (a) of the 1999 in conferring exclusive jurisdiction over trade disputes as in this matter to the National Industrial Court is
  - H in conflict with Section 272 of the 1999 Constitution.

The appellants have as above submitted that the jurisdiction of the State High Court under Sections 272 of 1999 Constitution has been subject to both Section 251 of the 1992 Constitution and other provisions of the said Constitution and that by “other provisions of

the Constitution" in Section 272 of the 1999 Constitution that an Act of the National Assembly as the instant Decree No. 47 of 1992 can confer exclusive jurisdiction on a court over a matter within its legislative list or competence and so oust the jurisdiction of the State High Court. The respondent in debunking the submission has acknowledged the supremacy of the Constitution as the Supreme Law of the land which cannot be subject to any other enactments excepting by its express provision. See *Adisa v. Oyinwole* (supra). So that all laws have to be made in compliance with it. B

It is trite law that under the consistency test that the validity of any law is determined by its consistency with the provisions of the Supreme Law, that is, the Constitution. So that where any law is inconsistent with any provisions of the Constitution, such other law shall to the extent of the inconsistency be void, in support of this proposition see *Military Governor of Ondo State v. Adewunmi* (1988) 3 NWLR (pt.82). Also, see Section 1(3) of the 1999 Constitution and also *Adisa v. Oyinwole* (supra) and Attorney General of Ondo State v. Attorney General of the Federation & Ors. (2002) 9 NWLR (Pt. 772) 222 per Uwaifo JSC. C D

Again, ***it is trite law that the jurisdiction of the State High Court as conferred by the Constitution can only be curtailed or abridged or even eroded by the Constitution itself and not by an Act or law respectively of the National Assembly or State House of Assembly, meaning that where there is conflict in that regard between the provisions of the Constitution and the provisions of any other Act or law of National Assembly or House of Assembly respectively the constitution shall prevail if I may emphasize excepting as I have observed above by direct and clear provision in the Constitution itself to that effect.*** I have made the foregoing pronouncements bearing in mind that it has come to be so since our return to Constitutionalism again particularly since the return of democratic dispensation to this country and the end of the Military era. So that Decrees are no longer the fundamental laws of the land. E F G H

The implication of coming into force of the 1999 Constitution on the backdrop of the foregoing reasoning is that the constitution now takes precedence over and above all other laws and Decrees as clearly provided in Section (1) and (3) of the 1999 Constitution and

it provides:

*“1. This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”*

*“3. if any other law is inconsistent with the provisions of this constitution, this Constitution shall prevail and that other law shall be the extent of the inconsistency be void.*

These provision are clearly unambiguous and have been judicially construed in *Attorney-General of Abia State v. Attorney-General of the Federation* (2002) 6 NWLR (pt. 763) 264 which construction 1 adopt in toto in deciding this matter.

On the backdrop of the foregoing, therefore, Decree No.47 of 1992, now deemed on Act of the National Assembly is an existing law under Section 315 (l) (a) of the 1999 Constitution. Before I come to the consistency test, the appellants have argued and rightly so that the jurisdiction of the State High Court under the 1999 Constitution is radically different from its jurisdiction under 1979 Constitution in that the word “unlimited” has been dropped in outlining its jurisdiction under Section 272 and so cannot entertain any matter specifically given to the National Industrial Court or other courts by an Act of the National Assembly. I find this argument as submitted by the appellants completely flawed. The only difference between the jurisdictions of the State High Court as conferred by the Constitutions of 1979 and 1999 is that the jurisdiction of the State High Court has been made subject to Section 251 of the 1999 Constitution giving exclusively to the Federal High Court that is, over matters listed therein. That removal notwithstanding it is still my view that the State High Court is the court with the widest jurisdiction and has the power to grant declarations and injunctions in matters as this matter, I shall advert to that question later.

I now proceed to decide whether the provisions of the Trade Disputes Act (as Amended) that is, Decree No. 47 of 1992 is inconsistent with any of the provisions of the Constitution. I have before now set out in extenso the provisions of Section 272(1) of the 1999 Constitution as well as Decree No.47 of 1992. The provisions of Section 272(1) are plain and the phrase “subject to the provisions of this Constitution” is used to the effect that the jurisdiction of the State High Court can only be restricted by the provisions of the 1999 Con-

stitution and not as is being urged by the appellant by any Act of the National Assembly otherwise specifically conferring exclusive jurisdiction to a court or whatever to override the jurisdiction of the State High Court.

I digress to say that I have in my reasoning above taken due care of the implication of the said paragraphs 4.38 and 4.39 of the appellants' brief of argument. I do not agree with them that nothing has changed. The least that has changed is that the State High Court under S.272 now has the power to deal with trade disputes it has previously lacked.

It means therefore that **by Decree No.47 of 1992 arrogating to the National Industrial Court a superior court of record as has been contended by the appellants does not by that token make the said National Industrial Court a superior court of record without due regard to the amendment of the provisions of Section 6(3) and (5) of the 1999 constitution which has listed the only superior courts of record recognized and known to the 1999 Constitution and the list does not include the National Industrial Court; until the Constitution is amended it remains a subordinate court to the High Court and I cite with approval the Court of Appeal decision in Attorney-General of Oyo State v. Nigeria Labour Congress (2003) 8 NWLR (pt. 821) 1 at 3. Indeed a case on all fours with the instant case to the same effect.**

In summary, **the implication of conferring exclusive jurisdiction in trade disputes on the National Industrial Court is to exclude the wide powers of the state High Court thus causing the conflict between Decree No.47 and Section 272 of the 1999 Constitution and as I have outlined above any inconsistency with Section 272 of 1999 Constitution in that regard is void to extent of the inconsistency. This conclusion has knocked the bottom off the defendants/appellants' case in that regard as I declare Decree No. 47 null and void being inconsistent with Section 272 of the 1999 Constitution. I therefore resolve issue 2 in favour of the respondent.**

I now come to examine the 6 issues raised in the preliminary objection which the court below rightly in my view dismissed as unmeritorious.

Flowing from my reasoning in this matter, it has become much clearer the basis for the respondent's stance that the National Industrial Court does not have the jurisdiction to grant the reliefs sought in this matter hence the plaintiff/respondent has commenced this action in the Lagos State High Court. The appellant has contended that by virtue of Section 251(1) (n) (p) of the 1999 Constitution one of the parties i.e. the plaintiff/respondent is an agency of the Federal Government that the action should have been instituted in the Federal High Court if the National Industrial Court has no jurisdiction and has relied on the case of this court i.e. NEPA v. Edegboro (2002) 18 NWLR (Pt. 798) 79. I think with respect, that the plaintiffs/respondents have misconceived the basis of the action. Firstly, Section 251(1) (n) and (p) without setting out the provisions deals with the questions of mines and minerals and administration and management or control of the Federal Government or its agencies. From the plaintiff/respondent's Statement of Claim, the cause of action lies in the act of the defendants/appellants invoking their union machinery to frustrate the privatization of NEPA thus interfering with the statutory duty of the plaintiff/respondent. Secondly, the defendants/appellants have misapplied the case of NEPA v. Edegboro in which this court has examined the jurisdiction of the State High Court in entertaining an action by NEPA employees challenging the action of their management's decision to dismiss them from their employment. In that wise, this court has interpreted the provisions of Section 251(1) (p) (q) (r) and (s) of the 1999 Constitution which upon the facts and circumstances of this case is inapplicable. However in that case this court per Ogundare JSC in the lead judgment at p.95 paragraph E said:

*"A careful reading of paragraphs (q) (r) and (s) reveals that the intention of the lawmakers was to take away from the jurisdiction of the State High Court and confer same exclusively on the Federal High Court actions, in which the Federal Government or any of its agencies is a party."*

***The question arising from the above dicta and on which the defendants/appellants contention appears hinged upon is the automatic exclusive jurisdiction of the Federal High Court in matters in which the Federal Government or its agencies is a party notwithstanding the nature of the subject matter of the***

**action. However in the concurring judgment of Tobi JSC at p.100 of the report, his Lordship said:**

***“In construing Section 230(11) of the 1979 Constitution as amended, two important matters arise. They are the parties in the litigation as well as the subject matter of the litigation. The court must consider both.”***

***I hold the view in unison with the above dicta, to the effect that parties and subject matter of litigation must be examined on the background of the provisions of Section 251 of the 1999 Constitution.***

***In that vein, although the plaintiff/respondent is an agency of the Federal Government the subject matter in this case involves using the union machinery to frustrate the statutory duty of the plaintiff/respondent to privatize NEPA.***

***As rightly pointed out by the respondent the instant action to privatize NEPA is not a challenge as to the question of mines or minerals nor of executive or management decisions as contemplated under Section 251(1) (n) and (p) of the 1999 Constitution and so the principles of construction that guided the decision in Edegboro’s case is not helpful in the circumstances. The claim before Lagos State High Court is properly founded just as the reliefs of declarations and injunctions are also properly grounded. See Hanson’s case (supra).***

***On the issue of locus standi and whether there is subsisting a reasonable cause of action by competent parties; these issues from the averments in the Statement of Claim are clearly well established. My reasoning here has showed that the plaintiff has the locus standi in the matter and also that the cause of action consists in the defendants/appellants using its union machinery to frustrate the plaintiff/respondent’s performance of its statutory duty of privatizing NEPA that is having regard to the statutory provision regulating the defendants/appellants embarking on strike actions. See: the Trade Dispute (Essential Services) Act. The instant action as I have discussed in this judgment has not impinged in any way on the defendants/appellants’ right as guaranteed as per Section 40 particularly against the background of the provisions of Section 45 of the 1999 Constitution. A combined reading of the two provisions shows that this action has not infringed the defendants/appellants’ rights to peaceful assembly and freedom of Association as members of a trade union,***

which the defendants/appellants rightly otherwise enjoy. That the NEPA employees have come together to protect their interests as a trade union (even though an essential service) is a fundamental right although they must recognize it is not absolute.

The promulgation of the Trade Disputes (Essential Services) Act, is to see to it that such essential services as stated therein including NEPA for electricity are not disrupted without due compliance with due process. In putting their case in the matter, the defendants/appellants appeal- not to have given due cognizance to the import of the provisions of Section 45 of the 1999 Constitution which more or less restricts and derogates from such rights given under Section 40 however liberally construed. ***The fundamental right under Section 40 as well as other rights i.e. under sections 37, 38, 39 and 41 has to be read subject to what is reasonable within a democratic society; in that regard I quote the said Section 45 that,***

***“Nothing in Sections 37, 38, 39, 40 and 41 (i.e. in regard to the provisions under the fundamental rights as entrenched in the 1999 Constitution) of this Constitution shall invalidate any law which is reasonably justifiable in a democratic society in the interest of defence of public safety, public order, public morality or public health”*** (word in brackets and underlining mine).”

***That is to say, the defendants/appellants’ rights under Section 40 amongst other fundamental rights under the 1999 Constitution are not absolute. They have to be exercised to the limits of the ambit of Section 45 of the 1999 Constitution. As can be seen the curtailment of the defendants/appellants’ rights under Section 40 is by direct and clear provisions of the 1999 Constitution itself and therefore they have to abide the consistency test.*** Coming to the instant matter, the 1<sup>st</sup> defendant/appellant is more or less the sole provider of electricity power a crucial essential service to the whole nation. The chaos and total confusion talkless of the economic damage that would be inflicted on the people and the nation as a whole should the 1<sup>st</sup> defendant/appellant as the sole provider of electricity power proceeded on an industrial action/strike could only be imagined. Such an action if not check-mated timeously would bring the entire nation to its economic knees



and standstill. To allow that stage of catastrophe to be reached would, with respect, amount to unpardonable naivety. It is in this light that the Trade Disputes (Essential Services) Act had to be promulgated to empower the President to proscribe any Trade Unions or Associations whose members have embarked in threatening industrial unrest/strike actions that would otherwise tend to and thus disrupt the running of any of the Essential Services mentioned in the said Act. B

Without deciding the point as it has not been taken as such before this court nor more importantly as the point has not been otherwise sufficiently canvassed before the court, however, on a community reading of the provisions of Sections 40 and 45 of the 1999 Constitution together, I am minded, all the same against the mischief that it is directed to checkmate to hold that the provisions of the Trade Disputes (Essential Services) Act is a piece of legislation reasonably justifiable in a democratic society and made to protect the interest of public safety and order and therefore not inconsistent with Section 40 of the 1999 Constitution. C D

Finally, having found that the cause of action is not based on trade dispute, the contention that it is otherwise academic and an abuse of process fizzles out completely as having no basis. Besides, the parties before the court as can be seen from my reasoning and findings in this case are necessary and desirable parties for the effective and effectual resolution of the issues between the parties. E

In the final analysis even as I find no merit in the appeal I must have to go out of my way to commend the brilliant effort on both sides of the divide. It has been a well fought case. F

In conclusion, therefore, I dismiss the appeal and I make no order as to costs. G

### ***KATSINA-ALU JSC***

I have had the advantage of reading in draft the judgment of my learned brother Chukwuma-Eneh JSC, I entirely agree with his reasoning and conclusion. I too dismiss the appeal, I make no order as to costs. H

**MUKHTAR JSC**

The lead judgment delivered by my learned brother Chuwkuma-Eneh JSC, has been read by me. I agree with him that the appeal is devoid of merit and substance and ought to be dismissed. In this wise, I dismiss the appeal and make no order as to costs

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**ONNOGHEN JSC**

- C I have had the benefit of reading in draft, the lead judgment of my learned brother *CHUKWUMA-ENEH JSC*, just delivered.
- I agree with his reasoning and conclusion that the appeal has no merit and should be dismissed.
- D I accordingly dismiss same and abide by the consequential orders made in the said lead judgment including the order as to costs. Appeal dismissed.
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**MUNTAKA-COOMASSIE JSC**

- E I have had the opportunity of reading in draft the lead judgment just rendered by my learned brother Chuwkuma-Eneh JSC, I entirely agree with his Lordships reasoning and conclusion which I adopt as mine. The appeal before us I agree lacks merit and it deserves to be dismissed. I also dismiss this appeal. I make no order as to costs.
- F
- G
- H