**SKYE BANK PLC**

**V.**

**VICTOR ANAEMEM IWU**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 30TH DAY OF JUNE, 2017

SC. 885/2014

**LEX (2017 - SC. 885/2014**

**OTHER CITATIONS**

2PLR/2017/311 (SC)

(2017) LPELR-42595(SC)

**BEFORE THEIR LORDSHIPS**

MARY UKAEGO PETER-ODILI, J.S.C

MUSA DATTIJO MUHAMMAD, J.S.C

CLARA BATA OGUNBIYI, J.S.C

KUMAI BAYANG AKA'AHS, J.S.C

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN , J.S.C

CHIMA CENTUS NWEZE , J.S.C

EJEMBI EKO, J.S.C

**BETWEEN**

SKYE BANK PLC - Appellant(s)

AND

VICTOR ANAEMEM IWU - Respondent(s)

**ORIGINATING COURT**

1. COURT OF APPEAL, LAGOS JUDICIAL DIVISION

2. NATIONAL INDUSTRIAL COURT, LAGOS DIVISION [OBASEKI-OSAGHAE, J., Presiding]

**REPRESENTATION**

CHARLES D. MEKWUNYE with him, S. M. EMOJEGHWARE, Esq. and EKENE NWONU, Esq. - For Appellant

AND

FES EZE EKE, Esq. with S. C. ONUZURIKE, Esq. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMPANY LAW – SUCCESSOR COMPANY – EMPLOYMENT RELATED SUITS OF PREDECESSOR COMPANY:- Employment related suit brought against defunct company brought against successor company – Court with jurisdiction to hear matter – Whether National Industrial Court

CONSTITUTIONAL LAW - JUDICIARY – CASE STATED:- Referral of Constitutional question from the Court of Appeal to the Supreme Court – When would not constitute an abdication of the Court of Appeal’s adjudicatory functions – Necessity of the existence of a substantial question of law and parties with locu standi - Relevant considerations

CONSTITUTIONAL LAW – INTERPRETATION OF:- Where the words are clear and unambiguous - Where there is inherent ambiguity in any section – Where construing a section in a way will render other sections redundant or superfluous - Where the words of a section are ambiguous and the Law Maker's intention need to be sought – Duty of Court thereto - Proper approach to the construction of the Constitution – Whether one of liberalism

CONSTITUTIONAL LAW – INTERPRETATION OF:- Nature and essence of the Constitution – Status as the supreme law of the land - Mere technical rules of interpretation of statutes – When inadmissible in the interpretation of the Constitution

CONSTITUTIONAL LAW – INTERPRETATION OF:- Rules of interpretation of the Constitution – Holistic interpretation – When would be the best approach – Mischief Rule – When a Court should have a recourse to same

CONSTITUTIONAL LAW – JUDICIARY:- Court of Appeal as final appellate authority for decisions emanating from the National Industrial Court – Basis of - Sections 243(2) - (3), juxtaposed with Sections 240 and 243 (4) in review

CONSTITUTIONAL LAW – JUDICIARY:- Harmonious rendition of the general purpose of Sections 6(3) and 5 (a), (b), (c), (cc), (d), (e), (f), (g), (h) and (i) (supra) with Section 240; and Section 254D (1) of the Constitution – Whether the Third Alteration succeeded in vesting the National Industrial Court with a superior status just like the High Courts

CONSTITUTIONAL LAW – JUDICIARY:- 'person having interest' in the second clause of Section 243 (1) (a) of the Constitution – Meaning of – Right of appeal over decision of National Industrial Court – Scope - Whether right shared with named parties to the suit

CONSTITUTIONAL LAW – PROVISIONS:- Whether all provisions in a Constitution are of equal strength and constitutionality and no provision is inferior/superior to the other

CONSTITUTIONAL LAW AND HUMAN RIGHTDS – ACCESS TO COURT:- Fundamental essence of – Rule that same cannot be taken away by implication or speculation by the Courts – Implications for statutes purporting to take away right of appeal of decisions of trial courts – Attitude of court thereto

CONSTITUTIONAL LAW –JUDICIARY:- Section 240, 243 (1) and 254C(5) and (6) of the 1999 Constitution – Appellate jurisdiction of the Court of Appeal vis a vis decisions of the national Industrial Court – Extent of – Whether limited to issues of Fundamental Rights Enforcement Procedure and Criminal Proceedings

CONSTITUTIONAL LAW –Third Alteration Act – Intention of framers of the Constitution thereto – Implication for appellate jurisdiction of the Court of Appeal in relation to all decisions of the National Industrial Court

EMPLOYMENT AND LABOUR LAW – APPEAL OF DECISIONS OF THE NATIONAL INDUSTRIAL COURT:- Activation of the jurisdiction of the Court of Appeal under Section 240 of the Constitution - How a prospective appellant can come within the compass of Section 24 (1) of the Court of Appeal Act - Order 7 Rules 5 and 10(1) of the Court of Appeal Rules, 2011 pursuant to Section 18(1) of The Interpretation Act, Cap 123, LFN, 2004 – Procedural framework fot appeals either as of right or with the leave of Court from National Industrial Court to Court of Appeal

EMPLOYMENT AND LABOUR LAW – WRONGFUL TERMINATION AND UNPAID ACCRUALS ARISING THEREFROM:- Claims for wrongful termination of employment, unpaid accrued salaries and other benefits – When brought against successor-in-title of defunct employers – Whether National Industrial Court has jurisdiction to hear matter

EMPLOYMENT AND LABOUR LAW – WRONGFUL TERMINATION AND UNPAID ACCRUALS ARISING THEREFROM:- Where made against successor-in-title of a defunct company - Appeal arising therefrom – Whether Court of Appeal has jurisdiction to hear same

**PRACTICE AND PROCEDURE ISSUES**

– ACTION - SUBSTANTIAL QUESTION OF LAW: What amounts to a substantial question of law

ACTION - CASE ON REFERENCE: Position of the law as regards case stated/case on reference

APPEAL - RIGHT OF APPEAL: How right of appeal from the decision of the National Industrial Court to the Court of Appeal should be exercised

APPEAL - FORMULATION OF ISSUE(S) FOR DETERMINATION: Whether a court can reframe or re- formulate issues for determination in an appeal

APPEAL - RIGHT OF APPEAL:- Decision of the National Industrial Court - Whether appeal lies in all cases to the Court of Appeal

APPEAL - RIGHT OF APPEAL: Right of appeal from the decision of the National Industrial Court to the Court of Appeal – Ways of invoking same – Legal bases

APPEAL - RIGHT OF APPEAL: Importance of Constitutional right to appeal and whether its exercise can be fettered

COURT - JURISDICTION: Importance of jurisdiction in the process of adjudication

COURT - COURT OF APPEAL: Role of a Court of Appeal - The position of the law as to the finality of the decision of the Court of Appeal in respect of appeals from the National Industrial Court

JURISDICTION - JURISDICTION OF THE COURT OF APPEAL:- Exclusive appellate jurisdiction of the Court of Appeal – Courts subjected thereto under the Constitution

JURISDICTION - JURISDICTION OF THE COURT OF APPEAL: Extent of the jurisdiction of the Court of Appeal over appeals from the National Industrial Court

INTERPRETATION OF STATUTE - RULES OF INTERPRETATION OF CONSTITUTION: Cardinal principles governing the interpretation of constitutional provisions – When a Court can properly refer to the side/marginal notes

INTERPRETATION OF STATUTE - RULES OF INTERPRETATION OF STATUTE: Guiding principles in interpretation of statutes – Distinction from rules applicable to the Constitution

INTERPRETATION OF STATUTES – SIDE NOTES:- Historical attitude of courts to the effect that side notes or marginal notes to an enactment do not form parts thereof and do not generally, afford legitimate aid to its construction – Exception thereto – Modern attitude

INTERPRETATION OF STATUTES:- Titles of statutes – Historical attitude of Courts to the exclusion of titles of statutes when construing them – Modern attitude of the Nigerian Supreme Court – Whether the title of a statute is an important part of the enactment and may be referred to for the purpose of ascertaining its general scope

WORDS AND PHRASES:- “Any” – meaning of historically and as used in Section 243 (4) of the Constitution

WORDS AND PHRASES:- The expression "exercise of" – Meaning of as used in the marginal notes to Section 243 (1) of the Constitution

WORDS AND PHRASES:- ‘Constitution: - meaning of

WORDS AND PHRASES: “Substantial question of law” – What constitutes

**MAIN JUDGMENT**

**CHIMA CENTUS NWEZE, J.S.C. (Delivering the Leading Judgment):**

My Lords, the proximate impulsion to this matter was an order of the Court of Appeal (hereinafter, simply, referred to as "the Lower Court") contained in its Ruling of November 11, 2014. The said Ruling was sequel to a Motion on Notice of September 24, 2014 wherein the appellant implored it [that is, the Lower Court] to state a case for this Court in view of the constitutional issues and substantial points of law which arose before it.

The Lower Court's triadic formulations were expressed in these terms:

(1) Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

(2) Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?

(3) Whether the Court of Appeal's jurisdiction to hear civil appeals from the decisions of the National Industrial Court of Nigeria is limited to only questions of Fundamental rights?

Pursuant to the Rules of this Court, counsel for the parties filed and exchanged their briefs of arguments. At the hearing of this matter on April 3, 2017, Dr. Charles D. Mekwunye, learned counsel for the appellant, adopted the brief of argument filed on December 11, 2015 and the Reply brief filed on December 16, 2015. On his part, Fes Eze Eke, for the respondent, adopted the brief of argument filed on December 14, 2015.

As a preliminary point, I agree with the observation of counsel for the respondent that "the three questions [above] appear to be similar and a repetition of one another," [paragraph 2.1, page 5 of the Respondent's brief].

In the exercise of this Court's undoubted prerogative to prune down and accentuate issues in the interest of clarity and brevity, I have taken the liberty to isolate the first question as truly, determinative of the Trinitarian formulations of the Lower Court, Okoro v The State (1988) 12 SC 191; (1988) 12 SCNJ 191; Unity Bank Plc and Anor v. Bouari (2008) LPELR -3411 (SC) 21-22; A-B; Musaconi Ltd v. Aspinall (2013) LPELR-20745 (SC) 6-7; I.T.I.V. Ltd and Anor v. Anyesom Community Bank Ltd (2015) LPELR-24819 (SC) 20; B-D.

I must quickly point out that the said issue is, sufficiently, commodious such that it embraces the other outstanding two issues in its canopied ambience. Accordingly, the only issue that calls for the decisive response of this Court is the catholic question couched thus:

Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

Before dealing with it, however, a restatement of the factual background of the trajectory of this matter to this Court would not, in my humble view, be out of place.

**FACTUAL BACKGROUND**

At the National Industrial Court, Lagos Division, (throughout this judgment, subsequently, referred to as "the trial Court”), the party designated herein as the respondent, on February 2, 2012, took out an action against the now extinct bank, namely, Afri Bank Nigeria Plc. His claims were inter alia, for wrongful termination of employment; unpaid accrued salaries and other benefits, allegedly due to him in the course of his employment in the said bank. Although, the mutations in nomenclature from Afri Bank Nigeria Plc to Mainstream Bank Ltd and Skye Bank Plc would not delay us here, it has to be noted that Mainstream Bank, as successor-in-title to Afri Bank Nigeria Plc, bore the weight of the forensic contest.  
  
Pleadings were filed and exchanged, as dictated by the Rules of the trial Court. Thereafter, precisely, on July 10, 2012, the said bank, that is, Mainstream Bank Ltd, by Notice of Preliminary Objection, entreated the trial Court to determine the matter *in limine* on the ground of want of jurisdiction as according to the tenor of the objection, the action was predicated on employer and employee relationship.

Sequel to the exchange of the relevant processes, the trial Court, [Coram Obaseki-Osaghae, J], in its Ruling, dismissed the said objection, finding in favour of the trial Court's jurisdiction to hear and determine the matter.

Aggrieved by that ruling, the applicant/bank approached the Lower Court through its Notice and Grounds of Appeal of November 19, 2012. What actually, prompted the Lower Court's statement of the above constitutional questions for this Court was the respondent's objection to the appellant's application for the amendment of its Notice of Appeal: an objection that queried the Lower Court's jurisdiction to entertain the appeal.

Upon the adoption of the written addresses, the Lower Court, duly adjourned for its Ruling: a Ruling which was put in abeyance since the appellant, on September 24, 2014, beseeched it to state a case for this Court's opinion on the said constitutional issues. On November 11, 2014, as shown above, the Lower Court, finding sufficient merit in the said application, ordered as prayed. In consequence, it formulated the said questions, as already indicated above.

**ARGUMENTS OF COUNSEL**

The first issue, which is so commodious that it embraces the other outstanding two issues, is the question couched thus:

Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

**CONTENTION OF THE APPELLANT'S COUNSEL**

The arguments of Dr. Mekwunye, learned counsel for the appellant, come to this. The Lower Court, which exercises both original and appellate jurisdiction, Sections 239, 249, 241, 242 and 243 of the Constitution of the Federal Republic of Nigeria, 1999, (amended) [hereinafter simply referred to as "the 1999 Constitution"], was created to hear and determine appeals from specified trial Courts, Section 237 of the 1999 Constitution and the Court of Appeal Act, Cap C36, Laws of the Federation of Nigeria, 2004.

In the exercise of its appellate jurisdiction, it entertains appeals from High Courts, that is, the Federal High Court; the trial Court [National Industrial Court]; High Court of the Federal Capital Territory and the State High Courts (sic, the Customary Court of Appeal of a State; Sharia Court of Appeal of a State etc), Sections 240; 241; 242 and 243, 1999 Constitution; Gafar v. Government of Kwara State [2007] 4 NWLR (Pt 1024) 375; Nwaigwe v. Okere [2008] 13 NWLR (pt 1105) 445; SPM Ltd v. Adetunji [2009] 13 NWLR (Pt 1159) 647; Moses v State [2006] LPELR-1915 (SC) 38; A-C.

He contended that on a holistic interpretation of Sections 240; 242 and 243 of the 1999 Constitution, appeals lie from the trial Court to the Lower Court, that is, all decisions of the trial Court are appealable to the Lower Court, citing the Lower Court's decision in Local Government Service Commission, Ekiti State and Anor v. Jegede (2013) LPELR-21131 (CA) 18-19; C-A; Section 36, 1999 Constitution.

He returned a negative answer to the question whether there exists any constitutional provision which expressly divests the Lower Court of its appellate jurisdiction over all civil decisions of the trial Court, citing Local Government Service Commission, Ekiti State and Anor v. Jegede (supra) 18-19; C-A.

He canvassed the view that, as a constitutional right, a right of appeal can only be curtailed as approved by the Constitution, Ugwuh v. A-G, ECS [1975] 6 SC 13; Adigun v. A-G, Oyo State [1987] 2 NWLR (Pt.56) 197; Ajomale v. Yaduat (No. 1) [1991] 5 NWLR (Pt.191) 257; Obikoya v. Wema Bank Ltd (1989) LPELR -2176; [1989] 1 SC (Pt. 1) 12; Imegwu v. Okolocha and Ors (2013) LPELR -1986 (SC); Global Excellence Comm. Ltd v. Duke (2007) LPELR-1323; [2007] 16 NWLR (Pt. 1059) 22.

Counsel further submitted that, by virtue of Sections 240 and 242 of the 1999 Constitution; Section 24 of the Court of Appeal Act, 2004 and Order 7 Rules 5 and 10 (1) of the Court of Appeal Rules, 2011, a right, exercisable over decisions of the trial Court to the Lower Court, may be either as of right or with the leave of the Lower Court, Local Government Service Commission, Ekiti State and Anor v. Jegede (supra) 16-17; E-E.

He maintained that, while a general right of appeal eventuates from Sections 240; 243 (4); 243 (2) and (3) against all decisions of the trial Court to the Lower Court by virtue of Sections 240 and 243 (4) (supra), the rights in Sections 243 (2) and 243 (2)-(4) may be typologized into two categories, viz, appeal as of right in respect of decisions of the trial Court on matters that impinge on fundamental rights, Section 243(2) (supra). As a corollary, Section 243, Subsections (2)-(4) consecrate a right of appeal against the decisions of the trial Court to the Lower Court, albeit, with leave of the latter Court.

Against the above background, he canvassed the view that, upon a community interpretation of Section 243, Subsections (2) and (3) with other kindred provisions such as Sections 240 and 243 (4), there inures a right of appeal against the decisions of the trial Court to the Lower Court, although, with the latter's leave. This, in his view, must be so because it is impermissible to construe Sections 240 and 243 dis-jointly, Elelu-Habeeb v A-G, Federation [2012] 40 WRN 1, 66-68; AG, Federation v Abubakar [2007] All FWLR (Pt. 383) 1264, 1289-1291; I.N.E.C. v. Musa [2003] 3 NWLR (Pt. 806) 72, 102; E.

Explaining the logic on which the above submissions are anchored, he observed that, since there is only one apex Court, the trial Court cannot be seen to be jockeying for primacy with the final Court recognised by the organic law, the Constitution, Local Government Service Commission, Ekiti State and Anor v. Jegede (supra) 20-21; F-C; Local Government Service Commission, Ekiti State and Anor v. Bamisile (2013) LPELR-20407 (CA) 17-19; B-B.

In his submission, the Constitution could not have stripped the Lower Court of its appellate jurisdiction against the background of the inalienability of the right of access to Court against any person or government for the vindication of civil rights or obligations, Global Excellence Comm. Ltd v. Duke (supra);Section 24 (1) of the Court of Appeal Act; Order 7 Rules 5 and 10 (1) of the Court of Appeal Rules, 2011.

In his submission, therefore, in the exercise of the right of appeal against the decisions of the trial Court, which Section 240 (supra) bequeaths to him, all a prospective appellant needs do is to amble within the compass of the above Court of Appeal Act and its Rules which have already, set out the procedure of appeals either as of right or with the Lower Court's leave. On the above premise, he contended that there is no procedural lacuna on the mode of exercise of a right of appeal against the decisions of the trial Court.

In all, he invited the Court to hold that since the Constitution brooks appeals from the trial Court to the Lower Court by virtue of Sections 240 and 243 (4) (supra), a prospective appellant's right of appeal ought to be guarded and protected rather than being impeded or curtailed, Ugba v. Suswan [2014] 14 NWLR (Pt. 1427) 264, 341; F-G; Engineering Enterprises v. A-G, Kaduna State [1987] 2 NWLR (Pt 57) 381, 400; also, 341; E; Amaechi v. I.N.E.C. (2008) LPELR - 446 (SC) 3. He urged the Court to hold that the Lower Court has the jurisdiction to hear and determine all appeals arising from decisions of the trial Court on civil matters.

Finally, on the issue whether the Lower Court's jurisdiction to hear appeals from decisions of the trial Court is limited only to questions of fundamental rights, Counsel instantiated cases of erroneous decisions of the trial Court that ought to impel their review by the Lower Court so as to vouchsafe to litigants their right of access to Court, K.S.U.D.B. v. Franz Const. Ltd [1990] (sic) NWLR (Pt. 142) 1, 49-52; A-B.

**RESPONDENT’S ARGUMENTS**

As indicated earlier, Fes Eze Eke, for the respondent, adopted the brief of argument filed on December 14, 2015. Making copious or ample references to Sections 240; 241; 242; 243 (2) -(4); 254 C (5) and 254 C (6) (supra), learned counsel contended that their community reading would yield the view that the Constitution did not make provisions for the exercise of rights of appeal, whether as of right or with leave, in Sections 241(1)(a)-(f) (i)-(v) and (2)(a)-(c); 242(1) and 243 (1). He therefore, expressed the view that the Lower Court's appellate jurisdiction is limited to the mode in Section 243(2)-(4) (supra); citing Section 241(1)(a)-(f) (i)-(v).

Pointing out that the right of appeal is granted by the Constitution or Statute, and not by statutory interpretation, Nemgia Ltd v Uchey (1973) 4 SC 1; Inigbedeb v. Balogun (1973) 1 All NLR 233, he observed that the framers of the Constitution, clearly intended to rob the Lower Court of appellate jurisdiction over decisions of the trial Court. The only exception, in his view, is with respect to fundamental rights under Chapter IV of the Constitution and criminal matters as provided in Section 254C (6). He equally, drew attention to Section 243(3) on the power of the National Assembly to make laws for the exercise of the Lower Court's appellate jurisdiction over decisions of the trial Court.

Claiming that no such law has seen the light of day, he submitted that the Lower Court can only exercise appellate jurisdiction over the trial Court's decision under the following categories, on questions of fundamental rights; specific appellate jurisdiction contingent on the conferment of such jurisdiction by an Act of the National Assembly and in appeals as of right in criminal matters.

He urged for a community rendition of Sections 243 (2) and (3) with Sections 240; 241 and 242. For him, anything outside that approach would amount to an absurdity and a negation of the doctrine of interpretation, Babatunde v. P.A.S.T.A. Ltd (2007) 13 NWLR (Pt. 1050) 113, 149; Dapialong v. Dariye [No. 2] (2007) 8 NWLR (Pt. 1936) 322; Fawehinmi v. I.G.P. (2002) 7 NWLR (Pt. 767) 606; Gafar v. Government of Kwara State [2007] 4 NWLR (Pt. 1024) 375, 1444; A-G, Fed v. Abubakar (2007) 10 NWLR (Pt. 1041) 1, 120-121; F-G.

In an obvious espousal of the literal interpretation, he cited Magor and St. Mellers Rural District Council Newport Corporation (1912) AC 189, 191; 192; Okumagba v. Egbe (1965) 1 All NLR 62, 65; Richard v. MC Bride (1881) B QB 119, 122; I.T.S.P.C. v. Persel (1891) AC 531, 549; C. A. Ilegbune, "Statutory Interpretation: The Impregnable Reign of Literalism," in Nig. J.R. Vol. 3 (1978-1988). On the strength of the above authorities, he canvassed the view that from the provisions of Sections 243 (2) - (4) and 254 C (6) (supra), the intention of the framers of the Constitution was to make decisions of the trial Court final except on fundamental rights matters and on cases of the exercise of its jurisdiction in criminal matters in labour/employment matters, citing, Coca-Cola Nig Ltd v. Akinsanya (2013) 18 NWLR (Pt. 1386) 225 and Lagos Sheraton Hotels and Towers v. H.P.S.S.A. (2014) 114 NWLR (Pt. 1426) 45.

On the question whether there exists any constitutional provision divesting the Lower Court of its appellate jurisdiction over the decisions of the trial Court, he referred, once more, to Sections 243(2) - (4) and 254C(6). He maintained that the Lower Court's appellate jurisdiction conferred by Sections 241(1) (a) - (f) (i) -(v); 242 (2) (a) - (c); 242 (1) and (2) and 243 (1) (a) and (b) are not applicable to the trial Court's decisions, citing Section 243(2) - (4) and 254C (6) which, in his submission, specifically, provided for the appellate jurisdiction of the Lower Court over the decisions of the trial Court.

He contended that any contrary interpretation, particularly, any view that Sections 241(1) (a) - (f) (i) - (v); 242(2) (a) - (c) apply to the decisions of the trial Court, would mean that the Lower Court, being famished, was craving for additional jurisdiction to quench its juridical rapacity.

He pointed out that the Constitution would have explicitly, conceded supervisory jurisdiction to the Lower Court over the trial Court, if it had intended that consequence. That, in his submission, accounts for the dichotomy between Section 243 (2) - (a) and 241(1) (a) - (f) (i) - (v). Accordingly, he argued that, if the Constitution had wanted to grant unlimited and unhindered appellate jurisdiction to the Lower Court with respect to civil appeals from the trial Court's decisions, it would have done that in Section 241(1) (a) - (f) (i) - (v) without the necessity creating a distinct section, namely Section 243(2) - (4).

He submitted that, in the event of any conflict between Section 240 which, in his view, deals with "general appellate jurisdiction of the Court of Appeal" and Section 243 (2) - (4), this latter provision [Section 243 (2) - (4)] would prevail over the former, citing Abubakar v. Nasamu [No. 2] [2012] 17 NWLR (Pt. 1330) 523, 587; G-H; F.B.N. Plc v. Maiwada [2013] 5 NWLR (Pt.1348) 444, 497; C- E for the view that, while Section 240 is a general provision, Section 243 (2) - (4) is a special provision designed to cater for appeals from the trial [Court] to the lower Court in civil appeals; hence, the latter provisions [Section 243 (2)-(4)] would prevail over the former [Section 240].

Counsel further pointed out that, since Section 240 is made subject to the provisions of the Constitution, it must be subject to Section 243(2) - (4), citingLovleen Toys Ind. Ltd v. Komolafe [2013] 14 NWLR (Pt. 1375) 542, 543-555; hence, upon a juxtaposition of both provisions, it would be obvious that the latter Section 243(2) - (4) curtailed appeals from the decisions of the trial Court in civil causes and matters.

He relied on A-G, Federation v. A-G, Lagos State [2013] 16 NWLR (Pt. 1380) 249, 302for the view that Courts must lean in favour of giving unambiguous words in statutory provisions their ordinary and natural meaning; also,N.E.W. Ltd v. Denap Ltd [1997] 10 NWLR (Pt 527) 481; Ojokolobo v. Alamu [1987] 3 NWLR (Pt. 61) 377; Olanrewaju v. Governor of Oyo State [1992] 9 NWLR (Pt.255) 335; Egbe v. Yusuf [1992] 6 NWLR (Pt. 245) 1; Yarokun v. Adeleke [1960] SCNLR 267; Ahmed v. Kassim [1958] SCNLR 28.

He urged the Court to hold that, a community interpretation of Sections 240; 241(1) (a) - (f) (i) - (v) and 243(2) - (4) would show that the Lower Court has been expressly, divested of its appellate jurisdiction over all civil decisions of the trial Court. He re-iterated his earlier submission that Section 243 Subsections (2)-(4) circumscribe the Lower Court's appellate jurisdiction to the decisions of the trial Court on fundamental rights matters, Dangana v. Usman [2013] 6 NWLR (Pt. 1349) 50, 79.

Finally, with respect to the third question, he re-iterated the submission that the appellate jurisdiction of the Lower Court is circumscribed to fundamental rights issues, contending that Section 243 (3) is yet to be activated, citing Dangana v. Usman (supra); African Newspapers of Nigeria v. F.R.N. (1985) 2 NWLR (Pt. 6) 137. In his submission, the fundamental issues must be in relation to labour matter matters.

**APPELLANT’S REPLY**

As noted earlier, the learned counsel for the appellant, equally adopted the Reply brief filed on December 16, 2015. In response to the respondent's submission, he canvassed the view that there are both constitutional and statutory provisions empowering the Lower Court to exercise appellate jurisdiction over all decisions of the trial Court: a jurisdiction exercisable either as of right or with leave, Section 240; 243(1) - (4); Section 24(1) of the Court of Appeal Act and Order 7 Rules 5 and 10 (1), Court of Appeal Rules (supra).

He advocated that neither a literal interpretation of Sections 240 and 243(2) - (4) nor an isolated construction of Section 243 (2)-(4) would convey their legislative rationale vis-a-vis the question of the appellate jurisdiction of the Lower Court over decisions of the trial Court. On the contrary, he opined that only a holistic interpretation of the constitutional provisions could illuminate the ambiguity therein, Marwa and Ors v. Nyako (2012) LPELR -7837 (SC); A.T. Ltd v. A.D.H. Ltd (2007) 15 NWLR (Pt. 1056) 118, 166 -167; Nobis-Elendu v. I.N.E.C. [2015] 16 NWLR (Pt.1485) 197, 223; Mobil Oil (Nig) Plc v IAL Inc. (2000) 6 NWLR (Pt. 659) 146.

In his submission, such a literal interpretation of Section 243(2) - (3) would even lead to an absurdity since it would, effectively, tantamount to a denial or curtailment of the aggrieved person's vested right of appeal, Nobis-Elendu v. I.N.E.C. (supra) 224; C-D; Savannah Bank (Nig) Ltd v. Ajilo (1988) LPELR-3019 (SC); [1989] 1 NWLR (Pt. 97) 305. He invited the Court's attention to another absurd consequence of the literal interpretation and isolated construction of Section 243(2) - (4). He explained that such approach would elevate the trial Court to the status of a Supreme Court from which no appeal could lie, a situation that would negate the hierarchy of Courts in Section 6 (5) (a) - (k) and that would be contrary to Section 254C and D (1) of the 1999 Constitution.

Learned counsel citedThe A-G of Ekiti State and Ors v. Adewumi & Anor [2002] 1 SC 47, 51 for the view that if the words of a statute are ambiguous, then the Law Maker's intention must be sought, first, in the statute itself, then in other legislation and contemporary circumstances and by resort to the mischief rule; Ugwu v. Ararume [2007] 12 NWLR (Pt. 1048) 365.

He disagreed with the interpretation which the respondent's counsel gave to Sections 241(1) (a) - (f) and 243(1) (a) - (b). He contended that, having been mentioned in the marginal note of 243(1) (a) - (b), the trial Court cannot be sequestered from the other Courts therein, that is, the Federal High Court and State High Courts. In effect, the section is equally, applicable to the trial Court.

In his submission, the framers could not have intended to grant an interested party the right to appeal with the leave of the Lower Court, citing 243(1) (a) - (b) juxtaposed with Sections 240 and 243(2) - (4) while curtailing or denying a named party such a right of appeal with the Lower Court's leave in Section 243(2) - (3). Such a situation would, he contended, amount to an absurdity.

He further debunked the submission that Sections 243 (2) - (4) prevail over Section 240 and that Section 240 was made subject to Section 243(2) - (4) since all constitutional provisions enjoy the same potency, hence, none is superior to the other, I.N.E.C. v. Musa (supra). Above all, he pointed out that while Section 240 guarantees a litigant's vested right of appeal against the trial Court's decision, Section 243(2) - (3) merely shows the mode of exercising or invoking that the said vested right of appeal.

He observed that, since Section 243 (4) is a latter provision, it would, following respondent's submissions, prevail over Section 243(2) - (3) which are earlier and seem to curtail a litigant's right of appeal, even then being specific, it should therefore prevail over Section 243(2) - (3), Nobis-Elendu v I.N.E.C. (supra) 224; A-C. He, nevertheless urged the Court to adopt a purposive interpretation of the sections under consideration, citing F.B.N. Plc and Ors v. Maiwada and Ors (2012) LPELR-9713 (SC).

**COURT'S OPINION ON THE CASE STATED**

My Lords, as indicated at the outset of this judgment, what prompted the Lower Court's decision to state a case for the opinion of this Court were the divergent views of its two divisions on the constitutional question whether the decisions of the trial Court, that is, the National Industrial Court of Nigeria, were appealable or not.

On the one hand, its Ekiti Division, in four judgments: Local Government Service Commission, Ekiti State and Anor v. Jegede (2013) LPELR-21131 (CA); Local Government Service Commission, Ekiti State and Anor v. Bamisaye (2013) LPELR-20407 (CA); Local Government Service Commission, Ekiti State and Anor v. Olamiju (2013) LPELR-20409 (CA) and Local Government Service Commission and Anor v. Asubiojo (2013) LPELR-20403 (CA) (hereinafter, simply, referred to as the Ekiti LGA cases) returned an affirmative answer to the said question.

On the other hand, two recent decisions of the Lower Court, Coca-Cola Nig Ltd v. Akinsanya (2013) 18 NWLR (Pt. 1386) 225 and Lagos Sheraton Hotels and Towers v. H.P.S.S.A. (2014) 114 NWLR (Pt. 1426) 45, reasoned per contra, holding that the trial Court's decisions, other than decisions on fundamental rights, and criminal matters, are final.

When the instant case came before the Abuja Division of the Lower Court, the appellant implored it [that is, the Lower Court] to state a case for this Court in view of the constitutional issues and substantial points of law which arose in the appeal: constitutional issues that had generated conflicting decisions of various Divisions of the Lower Court. It ordered, as prayed, in its Ruling of November 11, 2014; hence, this Court was entreated to offer its opinion on the Lower Court's triadic formulations which were expressed in these terms:

1. Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

2. Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?

3. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decisions of the National Industrial Court of Nigeria is limited to only questions of Fundamental rights?

In the exercise of this Court's undoubted prerogative to prune down and accentuate issues in the interest of clarity and brevity, I have taken liberty to isolate the first question as truly, determinative of the Trinitarian formulations of the Lower Court. Indeed, the said issue is sufficiently, commodious such that it embraces the other outstanding two issues in its canopied ambience.

Accordingly, the only issue that calls for the decisive response of this Court is the catholic question couched thus:

Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria, 1999(as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

For clarity of reasoning, I shall proceed to disaggregate the sub-questions interwoven in this compound issue. Since this opinion is woven around the correct interpretation of a host of provisions of the 1999 Constitution [particularly, Sections 240 and 243 (1) - (4); and generally, Sections 242; 254C(5) etc], which would appear to be inconsistent with one another, it would, in my humble view, be proper to commence with an elucidation on the established principles for the interpretation of constitutional provisions.

That would be followed by a reconstruction of the architecture of the hierarchy of Courts prior to the Third Alteration. In the process, it would be demonstrated how this Court's decision in N.U.E.E. and Anor v. BPE (2010) LPELR-1966 (SC), 62/2004 prompted the Third Alteration to pitch-fork the trial Court into this architectural framework of the Judicature.

Next, the judgment would disambiguate the intention of the draftsperson in enacting the new provisions in the Third Alteration relevant to this opinion by resort to certain canons of interpretation. Sequel to this approach, it would employ sections of the Constitution in the heady task of the decodation of the said intention of the draftsperson in relation to the provisions on the appellate jurisdiction of the Lower Court, Sections 240; and the exercise of the right of appeal, Section 243 (1) (a) and (b); (2)- (3).

The question whether all decisions of the trial Court are appealable will then be tackled and resolved. In particular, it would attend to the effervescent contention of respondent's counsel that the exercise of rights of appeal with leave of the Lower Court is contingent on the enactment of an Act of the National Assembly to that effect. These sub-questions will now be taken seriatim; first the interpretation of the Constitution.

**THE INTERPRETATION OF THE CONSTITUTION**

This Court, like other commonwealth Courts which operate a written Constitution, has admirably warehoused a robust corpus of what may be termed "the jurisprudence of constitutional interpretation." The decisions are truly legion - they are numerous. Examples include: A-G, Bendel State v. A-G, Federation and Ors [1981] N.S.C.C. 314, 372-373. Buhari v. Obasanjo [2005] 13 NWLR (Pt. 941) 1, 281; F.R.N. v. Osahan [2006] All FWLR (Pt. 312) 1975, 2019; Savannah Bank Ltd Ajilo [1989] 1 NWLR (Pt. 97) 305, 326; A.D.H. Ltd v. A.T. Ltd (No. 2) [2007] ALL FWLR (Pt. 392) 1781; A-G, Abia State v. A-G, Federation [2005] All FWLR (Pt. 275) 414, 450; A-G, Ondo State v. Ekiti State [2001] FWLR (Pt. 79) 1431, 1472-1473, etc

They include: Ndoma Egba v. Chukwuogor and Anor (2004) 2 S.C. (Pt. 1) 107; A-G, Ogun v. Aberuagba [1985] LPELR-3164 (SC); A-G, Federation v. A-G, Lagos State [2013] LPELR-SC. 340/2010; Obi v. I.N.E.C. (2007) All FWLR (Pt. 378) 1116, 1213; Ifezue v. Mbadugha & Anor. [1984] All NLR 256; Kalu v. Odili [1992] 6 SCNJ 76; Ojukwu v. Obasanjo (2004) All FWLR (Pt. 222) 1666; N.U.R.T.W. v. R.T.E.A.N. [2012] 10 NWLR (Pt. 1307) 170; Governor of Kwara State v. Dada ([2011) All FWLR (Pt. 592) 1638.

Courts, elsewhere in the commonwealth, have espoused the same approaches, Martin v. Hunter 1 Wheat 304, 4 L. Ed 97; Cooper v. Telfair 4 Dal 14, 1 L. Ed; United States v Lefkowitz 285 US 452, 52 S, Ct. 420, 76 L. Ed. 877; United States v Classic 313 US 299, 61, S. Ct, 1031, 85 L. Ed. 1368; Lake County v. Rollins 130 US 662, 9 S. Ct. 651; Fairbank v. United States 181 US 283, 21 S. Ct. 648, 45 L. Ed, 862; United States v. Sharpnack 355 US 286, 78 S. Ct. 291, approvingly, cited in A-G, Bendel State v A-G, Federation and Ors (supra); A-G For North South Wales v. B.E.U.N.S.W. (1908) 6 C.L.R. 469, 611-612, approvingly, adopted in Bank of New South Wales v. The Commonwealth (1947-1948) 76 C.L.R. 1, 332.

From an intimate reading of the alluring reasoning in these decisions, the following broad rules, among others, may be concreted:

(a) there is the very fundamental prescription that, in interpreting the Constitution - which is the supreme law of the land - mere technical rules of interpretation of statutes are, to some extent, inadmissible in a way so as to defeat the principles of government enshrined therein, Nafiu Rabiu v. State [1980] N.S.C.C. 292, 300; A-G for North South Wales v. B.E.U.N.S.W. (supra), approvingly, adopted in Bank of New South Wales v. The Commonwealth (supra).

Accordingly, where the question is whether the Constitution "has used an expression in the wider or in the narrower sense... this Court should, whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will best carry out the objects and purpose of the Constitution,Nafiu Rabiu v State (supra).

(b) as a corollary, all sections are to be construed together and hence, it is impermissible to construe sections in isolation, A-G, Federation v. Abubakar (2007) All FWLR (Pt. 389) 1264, 1289-1291; Elelu-Habeeb v. A-G, Federation (2012) LPELR-SC.281/2010; I.N.E.C. v. Musa [2003] 3 NWLR (Pt. 806) 72, 102; A.T. Ltd. v. A.D.H. Ltd [2007] 15 NWLR (Pt. 1056) 118, 166-167; Marwa and Ors v. Nyako (2012) LPELR-7837 (SC).

(c) where the words are clear and unambiguous, a literal interpretation will be applied, that is, they will be accorded their plain and grammatical meaning; N.E.W. Ltd v. Denap Ltd (supra); Ojokolbo v Alamu (supra); Olanrewaju v. Governor of Oyo State (supra); Egbe v. Yusuf (supra); Yarokun v. Adeleke (supra); Ahmed v. Kassim (supra).

(d) however, where there is inherent ambiguity in any section, a holistic interpretation would be resorted to in order to arrive at the intention of its framers, A-G, Federation v. Abubakar (supra); Elelu-Habeeb v. A-G, Federation (supra); I.N.E.C. v. Musa (supra); A.T. Ltd. v. A.D.H. Ltd (supra); Marwa and Ors v. Nyako (supra); Obi v. I.N.E.C. (supra); Ojukwu v. Obasanjo (supra).

(e) since the draftsperson is not known to extravagate words or provisions, it is anathematic to construe a section in such a manner as to render other sections redundant or superfluous, N.U.R.T.W. v. R.T.E.A.N. (supra) 212;

(f) as a follow-up to the rule against "ambiguity," if the words of a statute are ambiguous, then the Law Maker's intention must be sought, first, in the statute itself, then in other legislation and contemporary circumstances and by resort to the mischief rule. The A-G of Ekiti State and Ors v. Adewumi and Anor [2002] 1 SC 47, 51; Ugwu v. Ararume [2007] 12 NWLR (Pt. 1048) 365;

(g) in all, the proper approach to the construction of the Constitution "should be...one of liberalism; a variation on the theme of the general maxim *ut res magis valeat quam pereat*. As such, it would be improper to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction, equally, in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends, Nafiu Rabiu v. State (supra) 300-301; A-G of North South Wales v. B.E.U.N.S.W. (supra) 611-612; Bank of New South Wales v. The Commonwealth (supra) 332.

Only recently, this Court summed up these prescriptions in Saraki v. F.R.N. [2016] 3 NWLR (Pt. 1500) 531, 631-632, in these words [per Nweze, JSC]:

"...one of the guiding posts in the interpretation of the provisions of the Nigerian Constitution is that the principles upon which it [the Constitution] was established, rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions, Global Excellence Communication Ltd v. Duke [2007] 16 NWLR (Pt. 1059) 22; A-G, Bendel v. A-G, Federation [1982] 3 NCLR 1.

Above all, the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which theConstitution, read as a whole, has set out to regulate, is to be preferred, Dapianlong v. Dariye [2007] 8 NWLR (Pt. 1036) 239.

The principle that underlies this construction technique is that the Legislature would legislate only for the purpose of bringing about an effective result, I.M.B. v. Tinubu [2001] 15 NWLR (Pt. 740) 690; Tukur v. Government of Gongola State [1999] 4 NWLR (Pt. 117) 517, 579; Aqua Ltd v. O.S.S.C.[1985] 4 NWLR (Pt. 91) 622; Ifezue v. Mbadugha and Anor [1984] 15 NSCC 314; Nafiu Rabiu v. The State [1980] 8 -9 SC 130.

This approach is consistent with the 'living tree' doctrine of constitutional interpretation enunciated in Edward v. Canada [1932] AC 124 which postulates that the Constitution 'must be capable of growth to meet the future,' N. K. Chakrabarti, Principles of Legislation and Legislative Drafting, (Third Edition) (Kolkata: R., Cambray and Co. Private Ltd, 2011) 560, citing Graham, "Unified Theory of Statutory Interpretation," in Statute Law Review Vol. 23, No.2, July, 2002 at 91-134.

I, therefore, endorse the position that the construction of any document [and this includes the construction of the precious and organic document known as the 1999 Constitution] is a holistic endeavour, United Sav. Ass'n of Tex v. Timbers of In wood Forest Assocs Ltd 484 U.S. 365, 371 (1988) (per Scalia, J), see, generally, A. Scalia and G. Garner, Reading Law: The Interpretation of Legal Texts (St, Paul, MN: Thomson/West, 2012) 167-168; also, Abegunde v. The Ondo State House of Assembly [2015] Vol. 244 LRCN 1, 374."

As hinted earlier in this judgment, what prompted this reference to this Court was the worrisome dissonance in the approaches of two Divisions of the Lower Court to the interpretation of Sections 240, 241, 242, 243(2) - (4); 254C(5) and 254C(6) of the 1999 Constitution (as amended). In particular, the Lower Court, in Lagos Sheraton Hotels and Towers v. H.P.S.S.A. (supra), held that, having regard to the Third Alteration, it can only exercise appellate jurisdiction over the decisions of the trial Court on Fundamental rights matters. It further held that unless the National Assembly enacts an Act to that effect, it is bereft of appellate jurisdiction over decisions of the trial Court.

Unarguably, the above views could seldom, shield their progeny, namely, the literal interpretivist approach. In other words, the Court, not only accorded the provisions a literal interpretation; it also, construed them dis-jointly. With profound respect, the vacuity of that reasoning would become evident anon.

Consistent with this Court's unremitting abhorrence of the isolated interpretation of constitutional provisions, A-G, Federation v. Abubakar (supra); Elelu-Habeeb v. A-G, Federation (supra); I.N.E.C. v. Musa (supra); A.T. Ltd. v A.D.H. Ltd (supra); Marwa and Ors v Nyako (supra), it cannot be gainsaid that an isolated construction of Section 243 (2) - (3) (supra), would only succeed in further obfuscating the heady question whether the intention of the draftsperson in these provisions was to impinge on, or nibble at, the Lower Court's appellate jurisdiction in Section 240 or only the "exercise of [that] right of appeal [donated in Section 240] from, [inter alia], the National Industrial Court" or not.

I now turn to the re-construction of the architecture of the hierarchy of Courts prior to the Third Alteration (supra).

**ARCHITECTURE OF THE HIERARCHY OF COURTS**

Now, prior to the promulgation of the said Third Alteration Act, Section 6 (3) (5) (1) (a) -(i) of the 1999 Constitution, expressly recognized only the "superior Courts of record" listed therein and vested them with the judicial powers of the Federation and of the States, Saraki v. F.R.N. (supra); Olaleye-Ote and Anor v. Babalola (2012) LPELR-SC.197/2004; Dingyadi and Anor v. I.N.E.C. and Ors (2011) LPELR-SC.32/2010; Anakwenze v. Aneke and Ors (1985) LPELR-SC.90/1984; N.U.E.E. and Ors v. BPE (2010) LPELR-SC.62/2004; C.C.T. and S. Ltd v. Ikot (1999) LPELR-SC.249/1993; Ezeakabekwe v. Emenike (1998) LPELR-SC.85/1991; Egharevba v. Eribo and Ors (2010) LPELR-SC.132/2009; [2010] 9 NWLR (Pt. 1199) 411; Olaolu v. F.R.N. (2015) LPELR-SC.163/2011; Shyllon v. Asein (1994) LPELR-SC.110/1989.

Under that constitutional framework, appeals went from the High Courts (described in Section 240) to the Court of Appeal (in this judgment, simply referred to as the Lower Court) and, thence, to this Court. That was the principle or foundation on which the architecture of the judicature was erected in Section 6(1); (2); (3); (5); Sections 230-284 and 295 (1) of the 1999 Constitution.

Every other Court not found therein was therefore, characterized as an "inferior Court of record," N.U.E.E. and Anor v. BPE (2010) LPELR-SC.62/2004; [2010] 7 NWLR (Pt. 1194) 538; Nwora and Ors v. Nwabueze and Ors (2013) LPELR-SC.418/2010; Erisi and Ors v. Idika (1987) LPELR-SC.95/1987. This indeed, explains why this Court, in N.U.E.E. and Anor v. BPE (supra) pointed out that the trial Court [National Industrial Court] fell into the latter category, that is, inferior Courts of record.

N.U.E.E. and Anor v. BPE (supra): the impulsion to the Third Alteration.

This decision [N.U.E.E. and Anor v. BPE (supra)]would appear to have triggered off the concatenation of efforts that led to the promulgation of the Third Alteration to remedy this situation. Put differently, the Third Alteration was, inter alia, prompted by the need to elevate that Court [the trial Court] to the prestigious category of superior Courts within the architecture of the judicial hierarchy of Courts under the Constitution.

To plumb the intention of the draftsperson, therefore, I invite attention to the phraseology of the Long Title of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, (Act No 3), 2010 (hereinafter, simply, referred to as "the Third Alteration"). It is couched thus "An Act to alter the Constitution of the Federal Republic of Nigeria Cap. 23, Laws of the Federation of Nigeria, 2004, *for the establishment of the National Industrial Court under the Constitution."* [italics supplied for emphasis].

Indubitably, therefore, the intention of the framers of the Third Alteration was to incorporate the trial Court [that is, the National Industrial Court] into the category of superior Courts under the Constitution.

A further insight into that intention could be gleaned from Section 2 of the Third Alteration which altered Section 6 of the 1999 Constitution "in Subsection (5) by inserting immediately after the existing Paragraph (c) a new Paragraph (cc) - 'the National Industrial Court.” By this alteration, the superior Courts under the Constitution are now catalogued as shown in Section 6 (3) and 5 (a), (b), (c), (cc), (d), (e), (f), (g), (h) and (i).

To put it beyond argument that the intention was to rank the trial Court equi-pollently, as a Court of coordinate jurisdiction with the High Court in the judicial hierarchy, the draftsperson, in Section 4 of the Third Alteration, superimposed the said Court after the Federal High Court in line 3 of Section 240.

For further effect, Section 254D (1) confers the trial Court with "all the powers of a High Court" for the purpose of exercising any jurisdiction conferred upon it. That is not all.**Section 5** thereof altered Section 243 by inserting, immediately, after the words 'Federal High Court' in the marginal note, the words 'National industrial Court.'

Although, side notes or marginal notes to an enactment do not form parts thereof and do not generally, afford legitimate aid to its construction; at least, it is permissible to consider the general purpose of a section and the mischief at which it is aimed with the marginal notes in mind; and as a signpost to what the section sets out to provide, Idehen v Idehen (1991) LPELR-1416 (SC) 55; F-G; [1991] 6 NWLR (Pt. 198) 382; Oloyo v. Alegbe [1983] 2 SCNLR 35, 57; Uwaifo v. A-G, Bendel State [1982] 7 SC 124, 187-188; O.S.I.E.C. and Anor v. A.C. and Ors (2010) LPELR-2818 (SC) 55; B-C; Yagube v. C.O.P. (1992) LPELR-3505(SC) 17-18.

By the said alteration, the appellate jurisdiction of the Lower Court was expanded, "subject to the provisions of [the] Constitution," to include *the hearing and determination of appeals from, among the other Courts therein, the National Industrial Court,* Section 240 (Section 4 of the Third Alteration). It therefore becomes obvious that, since the draftsperson is not known to extravagate words or provisions of an enactment, it would be anathematic to construe any other section or sections [and here, I have Section 243(2) - (3) in mind] in such a manner as to render the above provisions of Section 240 [on the appellate jurisdiction of the Lower Court over the National Industrial Court] superfluous or redundant, N.U.R.T.W. v. R.T.E.A.N. (supra).

It is the interpretation of the chiaroscuro of these provisions brought about by the Third Alteration that yielded this constitutional conundrum which this Court has been called upon to demystify: a conundrum, aggravated by the divergent responses of the two Divisions of the Lower Court.

Like the dissonance in the decisions of the Lower Court, the respective counsel for the parties herein, equally clung stridently to their divergent conceptions of the intention of the draftsperson in enacting the above sections. In other words, their divergent responses have only but accentuated the obvious ambiguity in the above provisions.

Against the above background and consistent with the established principle of the interpretation of ambiguous constitutional provisions, one fact emerges. It comes to this. The general purpose of Sections 6(3) and 5 (a), (b), ( c), (cc), (d), (e), (f), (g), (h) and (i)(supra) has to be considered with the mischief, which they were aimed at, in mind, namely to remove the trial Court from the category of inferior Courts and, a fortiori, to elevate it to a superior Court of record.

This done, the above provisions should be mutually conflated with the framer's intention in enacting Section 4 of the Third Alteration: a section which, as shown above, superimposed the trial Court after the Federal High Court in line 3 of Section 240; and Section 254D (1) which confers it with "all the powers of a High Court."

What emerges from this exercise [of a harmonious rendition of the general purpose of Sections 6(3) and 5 (a), (b), (c), (cc), (d), (e), (f), (g), (h) and (i) (supra) with Section 240; and Section 254D (1) (supra)] is that the Third Alteration succeeded in vesting the trial Court with a superior status just like the High Courts which were, hitherto, under the appellate jurisdiction of the Lower Court, the Court of Appeal.

In other words, for the purpose of the hierarchy of Courts under the Constitution, the trial Court is now a Court of coordinate jurisdiction with the said High Courts. As such, the Lower Court [Court of Appeal] has jurisdiction, to the exclusion of any other Court in Nigeria, *“to hear and determine appeals from [them],”* Section 240 (supra).

The only difference is that, unlike the Federal High Court and the other categories of High Courts, its [National Industrial Court] decisions are deliberately made appealable only to the Lower Court, the Court of Appeal; there being no further appeal beyond that Court, Section 243(4). In fact, by the most thoughtful insertion of Section 243 (4) (supra), the draftsperson achieved two things.

Firstly, the apex Court was insulated or shielded from the armada of appeals it would have, without this ouster provision in Section 243 (4) (supra), been inundated with having regard to the range of persons under the trial Court's jurisdiction (rationae personae) and the range and diversity of the subject matters over which it exercises jurisdiction (rationae materiae) in Section 254C(1) - (5) of the 1999 Constitution (as amended).

Secondly, the said Section 243(4) (supra) spares the litigants before the trial Court the forensic drudgery and weariness associated with agitating matters from trial Courts to the apex Court, often spanning decades, UBN Plc v. Astra Builders (W/A) Ltd (2010) 5 NWLR (Pt. 1186) 1.

Although, not strictly relevant to the opinion of this Court in this case stated, it may be noted in passing that the draftsperson, equally, made similar provisions insulating the apex Court from appeals against the decisions of the Court of Appeal in respect of certain categories of election matters from election tribunals. Here, reference may be made to Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which confers finality on the judgments of the Court of Appeal in respect of appeals from the National and State Houses of Assembly Election Tribunals.  
Case Law has dealt with this matter, Opara and Anor v Amadi [2013] 6- 7 SC (pt 2) 49; Madumere v. Okwara [2013] 6-7 SC (Pt. 2) 95; Okadigbo v. Emeka and Anor (2012) LPELR-7839 (SC) 17; Emordi v. Igbeke [2011 4 SC (Pt. 11) 107, 145; Salik v. Idris [2014] 15 NWLR (Pt. 1429) 36; Dangana v. Usman (2012) LPELR-7827 (SC).

The above conclusion, [that the trial Court is now a Court of coordinate jurisdiction with the said High Courts over which the Court of Appeal exercises appellate jurisdiction], naturally, leads to the next sub-question, that is, whether, a litigant has an unlimited right of appeal to the Lower Court [the Court of Appeal] over all decisions of the trial Court.

Sections 240; 243 (2) - (3): LITERAL INTERPRETATION AND AMBIGUITY OF LEGISLATIVE INTENTION

In the appellant's Reply brief, counsel contended that

"the literal interpretation of only Section 243(2) - (3) has led to an ambiguous interpretation of the sections given that one may tend to look at the provisions vis-a-vis the provisions of Section 240 and 243 (4) [ ] to mean that the legislature intended to grant a person an unlimited right of appeal over all decisions of NIC under Section 240 and S 243(4) [ ] and then turn around in Section 243(2) - (3) [ ] to circumscribe and limit that same right of appeal without [expressly] saying so...."

Section 240 provides thus:

"Subject to the provisions of the Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court, *the National Industrial Court*, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a Court martial or other tribunals as may be prescribed by an Act of the National Assembly.” [Italics supplied]

On the other hand, Section 243 Subsections (2) and provide thus:

"243

(2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An appeal shall only lie from the decisions of the National Industrial Court to the Court of Appeal *as may be prescribed by an Act of the National Assembly.*

Provided that where *an Act* or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.  
[Italics supplied]

I entirely agree with Dr. Mekwunye that the respondent's counsel's espousal of a literal interpretation of the said sections would conduce to ambiguity in the intention of the draftsperson. Accordingly, I take the view that, in order to ascertain the scope of the Third Alteration, in this regard, in this judgment, I am under obligation to resort to the long title for the general explanation of the purposes of Sections 243(2) - (3), juxtaposed with Sections 240 and 243 (4).

Although, from a historical perspective, Courts excluded titles of statutes when construing them, Salked v. Johnson (1848) 2 Exh, 256; R. v. Wilcock(1845) 7 QB 317; that approach now belongs to the past. The current trend is that the title of a statute is an important part of the enactment and may be referred to for the purpose of ascertaining its general scope.

The cases on this point are numerous and so, only a handful will be cited here to illustrate this point,Jones v. Sherrington (1908) 2 KB 539, 547; Jeremiah Ambler and Amp; Sons Ltd. v. Bradford Corporation (1902) 2 Ch. 585, 594; Haines v. Herbert (1963) 1 WLR. 1401, 1404; Osawaru v. Ezeiruka (1978) LPELR -2781 (SC) 17; A-F; Bello and Ors v. A-G, Oyo State (1986) LPELR-SC.104/1985; Ogbonna v. A-G, Imo State (1992) LPELR-SC.27/1990; [1992] 2 SCNJ 26; A-G, Abia State v. A-G, Federation [2005] All FWLR (Pt. 275) 414, 450; AG, Ondo v. A-G, Ekiti State [2001] FWLR (Pt. 79) 1431, 1472-1473.

As shown earlier, the long title of the Third Alteration announces the raison detre for its promulgation, in this phraseology "An Act to alter the Constitution of the Federal Republic of Nigeria Cap. 23, Laws of the Federation of Nigeria, 2004, *for the establishment of the National Industrial Court under the Constitution*." (italics supplied for emphasis).

In one word, the Third Alteration was prompted by the need to overcome the trial Court's handicap which this Court pointed out in N.U.E.E. and Anor v. BPE (supra), namely, to pluck it from the juridical nadir of inferiority to the superior status enjoyed by the pantheon of Courts in Section 6(3) and (5) (a) -(i).

Having thus been elevated to the status of a superior Court, ranking in judicial hierarchy with the High Courts, vide, Sections 2, 3, 4, 5 (a), 7, 8, 9, 10, it [the trial Court, that is, the National Industrial Court] cannot, at the same time, navigate out of the Lower Court’s circumambient appellate constitutional jurisdiction over all the Courts, now consecrated in Section 240 [as altered by Section 4 of the Third Alteration]. After all, an appellate Court (such as the Lower Court) derives its jurisdiction from the statutory provisions creating it, including the Constitution, Adelekan v. Ecu-line NV (2006) LPELR-113 (SC) 13; E-G; A-G, Oyo State and Anor v. Fairlakes Hotels Ltd (infra); Odofin and Anor v. Agu and Anor (1992) LPELR-2225 (SC) 16; C.

In the instant case, the Court of Appeal derives its appellate jurisdiction over all the Courts catalogued in Section 240 (supra) from the said constitutional provision. In this regard, I endorse the views of the prolific and erudite Senior Advocate of Nigeria, S. T. Hon, who, in his S. T. Hon's Constitutional and Migration Law in Nigeria (Port Harcourt: Pearl Publishers Ltd 2016) 1101, contended that:

"...it accords more with 'common sense, order and good system,' whereby the Court of Appeal, an intermediate appellate Court, has been given jurisdiction to sit on appeal over decisions of all Lower Courts that fall immediately under the Court of Appeal in terms of judicial hierarchy. The National Industrial Court, which belongs to that lower rung of Courts cannot be an exception, save when the Constitution expressly states so, which is not the case."

The eminently, erudite author prayed in aid the decisions of this Court in A.D.H. Ltd v. Amalgamated Trustees Ltd (No. 2) [2007] All FWLR (Pt. 392) 1781; Savannah Bank Ltd v. Ajilo (supra).

In my humble view, a contrary interpretation, as urged by respondent's counsel, would not only wreak havoc to the settled notion of hierarchy of Courts under the Constitution, Buhari v Obasanjo [2005] 13 NWLR (Pt. 941) 1, 281; it would also eventuate to a hermeneutic quagmire -a quagmire which is capable of muddling up the settled hierarchy in the appellate process, Savannah Bank Ltd. v. Ajilo (1989) 1 NWLR (Pt. 97) 305, 326; A.D.H. Ltd v. A.T. Ltd (No. 2) [2007] All FWLR (Pt. 392) 1781.

Surely, if such a literal approach is endorsed, it would, as learned counsel for the appellant brilliantly contended, be "contrary to the hierarchy of Courts as provided under Section 6 (5) (a) - (k) ...and contrary to Sections 254C and D (1)," [paragraph 2. 19; page 6 of the Reply brief].

A fortiori, such an approach would surely, be violative of a cardinal principle in Anglo-Nigerian jurisprudence, namely, the right to resort to a higher Court to review the decision of a Lower Court with a view to determining whether, on the facts placed before it, and applying the relevant and applicable law, the Lower Court came to a right or wrong decision, Watt (or Thomas) v. Thomas (1947) 1 All E.R. 582, 584; Powell and Wife v. Streathani Manar Nursing Home (1935) A.C. 243, 255; Ponnamma v. Arumogam (1905) A.C. 390; A-G, Oyo State and Anor v. Fairlakes Hotel Ltd (L988) LPELR-624 (SC) 130-131; F-E.

This formidable principle stems from the avowed concern to avoid injustice if trial Court decisions were to be final. Indeed, Irikefe, JSC, (as he then was), once voiced his concerns on such a situation in Rabiu v. Kano State (supra), although in the context of criminal cases.

Hear the distinguished jurist who later became a Chief Justice of Nigeria:

"I would shudder to think that the framers of our present Constitution would have intended, by one fell-swoop, to deny a prosecutor [read, litigant] the right to appeal against an acquittal [read, judgment of a trial Court] on any ground. To my mind, *a greater invitation to chaos and or instability there cannot be.* It seems to me that, if this were the intention of our law makers, it would be impossible to stem or dam the tide of mischief that would thereby arise. *In short, all that a misguided or mischievous bench of first instance need do, is to go to sleep while evidence is being given* in a criminal case [read, in a matter] and, at the end thereof, to pronounce the magical words - 'I acquit...' [read, judgment for the plaintiff] and there the matter would rest. *This could also be an invitation to corruption at its worst. Indeed, a surer way to discredit the entire judicial process may be difficult to find; and when this happens, the alternative is a total and complete break-down of law and order. The possibility that a decision by an inferior Court may be* *scrutinised on appeal by a higher Court, at the instance of an aggrieved party, ... is, by itself a safe-guard against injustice, by acting as it were, as a curb against capriciousness or arbitrariness.*[parenthesis and italics supplied]

If the draftsperson intended Sections 243(2) - (3) to wield or exert such a revolutionary impact, she/he would have said so in provisions that would have rendered Sections 240 and 243 (4) nugatory. I am therefore, bound to jettison that approach for, in the American-Nigerian construct of constitutional interpretation, the draftsperson has never been known as an exponent of contrarieties or contradictory results,Awolowo v. Shagari (1979) LPELR-653 (SC) 46-47.

Even then, a recourse to the long title, A-G, Abia State v A-G, Federation [2005] All FWLR (Pt. 275) 414, 450; A-G, Ondo v. A-G, Ekiti [2001] FWLR (Pt. 79) 1431, 1472-1473, would reveal that Sections 3 and 5 (1) (a) - (i) have cured the mischief and indeed remedied the trial Court's limitation by elevating it to a superior Court which exercises all the powers of a High Court, Section 254D (1). I shall, in resolving the divergent submissions of Dr. Mekwunye and Fes Eze Eke, align with the effervescent view of the former [Dr. Mekwunye] that the purposive interpretation which is consistent with the long title, A-G, Ondo v. A-G, Ekiti (supra); Ogbonna v. A-G, Imo State (supra), is that Sections 243(2) - (3) cannot, by any stretch of interpretive logic, supplant Sections 240 and 243 (4).

Indeed, I agree with Dr. Mekwunye, for the appellant, that the legislature could not have intended that Section 243(2) - (3) could validly curtail or circumscribe the right, expressly, consecrated by Section 240 and 243 (4) for to do so would mean that its intendment was to render the latter provisions redundant and ineffectual: a state of affairs which is anathematic in Anglo-Nigerian jurisprudence, Nokes v. Doncaster Amalgamated Collieries Ltd [1940] AC 1014, 1022; Awolowo v. Shagari (1979) LPELR-653 (SC); [1979] 6-9 SC 37.

I, equally, endorse his view that decisions of the trial Court are not final but, on the other hand, are subject to the appellate jurisdiction of the Lower Court, either as of right [Section 243 (2)] or with the Lower Court's leave, [Section 242; 243 (1) (a)]: an issue that will be dealt with, subsequently, in this judgment.

Having said this; I must quickly observe that, while the long title could be prayed in aid (as I have done here) to find the scope and intendment of this enactment, it would have been otherwise if the language employed in these sections was sufficiently plain and unambiguous, Re: Wykes, (decd.) (1961) Ch. 229, 242; Osawaru v. Ezeiruka (supra); Bello and Ors v. A-G, Oyo State (supra); Ogbonna v. A-G, Imo State [1992] 2 SCNJ 26; Adisa v. Oyinlola (2000) LPELR-186 (SC); Afolabi and Ors v. Gov. of Oyo State (1985) LPELR-SC.251, 1984; Mobil Oil (Nig) Ltd v. F.B.I.R. (1977) LPELR-SC.488/75; Abegunde v. OSHA (2015) LPELR-SC.643/2014; Ugu v. Tabi (1977) LPELR-SC.241/1992; Utih and Ors v. Onayivwe and Ors [1991] 1 SCNJ 25; Fawehinmi v I.G.P. and Ors [2002] 5 SC (Pt. 1) 63; A-G, Abia State v. A-G, Federation [2005] All FWLR (Pt. 275) 414, 450; A-G, Ondo v. A-G, Ekiti State [2001] FWLR (Pt. 79) 1431, 1472-1 473.

Now, since by Section 254 D (1), the trial Court ranks equi-pollently, as a Court of coordinate jurisdiction with the High Court, its inclusion in Section 240, as a logical corollary, means that it comes within the categories of trial Courts over which the Lower Court exercises appellate jurisdiction. Above all, I even take the view that, since the Constitution has conceded rights of appeal to litigants in one section, the draftsperson could not have been minded to strip them of such rights in another section of the Constitution.

In effect, Sections 243 (2) and (3) cannot validly, strip litigants of the rights, expressly, conferred on them by Sections 240 and 243 (4) without an express provision to wreak that kind of, unjustifiable, denudation of the latter right, that is, the right in Section 240 and 243 (4) (supra), Gassol v. Tutare and Ors (2013) LPELR -20232 (SC); A-G, Fed v. Abubakar (2007) All FWLR 1264, 1300; A-B; F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361.

SECTIONS 240 AND 243 (2) - (3): SECTION 243 (1) GUIDE TO THE INTENTION ON THE APPEAL PROVISIONS

Respondent's counsel, citing Sections 240, 241, 242, 243(2) - (4), 254C(5) and 254C(6) (supra), contended that the Constitution did not make provisions for the exercise of rights of appeal, whether as of right or with leave, in Sections 241(1) (a) - (f) (i) - (v) and (2) (a) - (c); 242 (1) and 243 (1). In his submission, the Lower Court's appellate jurisdiction is limited to the mode in Section 243 (2) - (4) (supra), citing Section 241 (1) (a) - (f) (i) - (v).

With respect, nothing could better expose the vacuity or poverty of the above submission than a reference to Section 243 (1) (supra). That section provides:

"243 (1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a *High Court* conferred by this Constitution shall be –

(a) Exercisable in the case of civil proceedings at the instance of a party thereto, or *with the leave of the Federal High Court or High Court or the Court of Appeal at the instance of any other person having an interest n the matter..."*  
(italics supplied for emphasis)

In the first place, as has already been demonstrated earlier, the superior Courts under the Constitution are now catalogued as shown in Section 6(3) and 5 (a), (b), ( c), (cc), (d), (e), (f), (g), (h) and (i), see, Section 2 of the Third Alteration, which altered Section 6 of the 1999 Constitution, by the insertion of a new paragraph (cc) - 'the National Industrial Court.'

By simple logic, under the architecture of hierarchy of Courts for the exercise of the appellate jurisdiction of the Court of Appeal in Section 240 (supra), the trial Court [National Industrial Court] ranks in judicial hierarchy with the High Courts, vide, Sections 2, 3, 4, 5(a), 7, 8, 9, 10 of the Third Alteration.

As a Court that now, exercises "all the powers of a High Court," by virtue of Section 254D (1) (supra), it [the trial Court, that is, the National Industrial Court] cannot, at the same time, navigate out of the Lower Court's circumambient appellate constitutional jurisdiction over all the Courts, now, consecrated in Section 240 [as altered by Section 4 of the Third Alteration]. Even then, as indicated earlier, Section 5 thereof altered Section 243 by inserting, immediately, after the words 'Federal High Court' in the marginal note, the words 'National Industrial Court.'

Admittedly, while marginal notes do not form part of, and do not generally, afford legitimate aid to the construction of an enactment; at least, it is permissible to consider the general purpose of a section with them [marginal notes] in mind, Oloyo v. Alegbe (supra); Uwaifo v. A-G, Bendel State (supra); O.S.I.E.C. and Anor v. A.C. and Ors (supra); Yagube v. C.O.P. (supra).

Having the said marginal notes in mind, I hold that by the said alteration, the appellate jurisdiction of the Lower Court was expanded, "subject to the provisions of [the] Constitution," to include the hearing and determination of appeals from, among the other Courts therein, the National Industrial Court.

Fes Eze, did not contest the validity of the above section, that is, Section 243 (1) (a), which affords a party interested, that is, one who was not originally a party to the decision complained of, Chukwu v. I.N.E.C. [2014] 10 NWLR (Pt. 1415) 385, 439, the opportunity of appealing with leave of the Lower Court. Indeed, as this Court explained in Charles Odedo v. P.D.P. and Ors (2015) LPELR-24738 (SC) 71-72 [per Nweze, JSC]:

"When the Draftsperson of the 1999 Constitution (as amended) speaks of 'person having interest' in the second clause of Section 243 (1) (a) (supra), he uses the phrase synonymously with the phrase a 'person aggrieved;' that is, a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully, deprived him or her of something or wrongfully refused him or her of something or wrongfully affected his or her title to something.

Such an aggrieved person includes a person who has a genuine grievance because an order has been made which prejudicially, affects his interests, L.S.D.P.C. v. Dakur [1992] 11-12 SCNJ 217, 224; Ojukwu v. Government of Lagos State [1985] 2 NWLR (Pt. 10) 806; "K" Line Inc. v. K. R. INT'L [1993] 3 NWLR (Pt. 292) 159; Funduk Eng v. MacArthur [1990] 4 NWLR (Pt. 143) 266; Society-General Bank v. Afereko [1999] 7 SCNJ 171, 187; Ezeagu v. Ufuanya [1996] 7 NWLR (Pt. 456) 226, 231; Funduk v. Madaki (1976) 7 KLR (Pt. 43) 1319; Yusuf v. Adeyemi [2009] 15 NWLR (Pt. 1165) 616; Opekun v. Sadiq (2003) 5 NWLR (Pt. 814) 475."

If the submission of the respondent's counsel were to prevail, the question would be: could the draftsperson have intended to denude a named party's right of appeal with leave of the Lower Court, while beneficently according "a party interested" such a right of appeal with leave?

In other words, if a party interested could appeal with the Lower Court's leave, could the draftsperson have intended that the same indulgence did not avail a named party, that is, a party to the action, Otapo and Ors v. Sunmonu and Ors [1987] 2 NSCC 677? Surely, the espousal of such a view would be a warped interpretivist equivalent of the logical fallacy of *reductio ad absurdum:* a situation which this Court has always looked with askance.

This cannot be! While the draftsperson has never been a protagonist of absurd or contradictory results, Awolowo v. Shagari (supra); even when the Court is confronted with such an inherent ambiguity in any section, it would legitimately, resort to a holistic interpretation of all the kindred sections in order to arrive at the intention of their framers,A-G, Federation v. Abubakar (supra); Elelu-Habeeb v. A-G, Federation (supra); I.N.E.C. v. Musa (supra); A.T. Ltd. v A.D.H. Ltd (supra); Marwa and Ors v. Nyako (supra); Obi v. I.N.E.C. (supra); Ojukwu v. Obasanjo (supra).

Above all, for the purpose of deconstructing such inherent ambiguity, this Court has always endorsed the invocation of, among others, the mischief rule of interpretation of enactments. The A-G of Ekiti State and Ors v. Adewumi and Anor (supra); Ugwu v. Ararume (supra). From my earlier survey of the mischief which the Third Alteration was intended to suppress, I had taken the humble view that the draftsperson intended to pluck the trial Court from the juridical nadir of inferiority to the superior status enjoyed by the pantheon of Courts in Section 6 (3) and (5)(a) - (i).

Thus, as shown above, the purpose of enacting the Third Alteration was to elevate the National Industrial Court to the status of a superior Court, ranking in judicial hierarchy with the High Courts. The draftsperson did not therefore, intend that the said Court, upon its elevation, would navigate out of the Lower Court's circumambient appellate constitutional jurisdiction over all the Courts now consecrated in Section 240 [as altered by Section 4 of the Third Alteration].

Neither did he, the draftsperson, contemplate that the said Court's elevation would wreak havoc on the settled notion of hierarchy of Courts under the Constitution, Buhari v. Obasanjo (supra) 1, 281; in other words, the elevation of the National Industrial Court was not intended to muddle up the settled hierarchy in the appellate process, Section 6 (5) (a) - (k); Sections 254C and D (1), Savannah Bank Ltd v. Ajilo (supra); A.D.H. Ltd v. A.T. Ltd (No. 2) (supra).

Accordingly, I find, and hold, that, on a harmonious construction of Sections 240; 242(1); 243(1) (a) and 243(4), a litigant who is aggrieved by a decision of the trial Court, in other civil matters, can exercise a right of appeal with the leave of the Lower Court. The only innovation in this regard is that it makes the Lower Court the final Court with respect to such appeals, Section 243(4).

Interestingly, Section 243 (4) employs the adjective "any" twice in conferring finality to the decisions of the Lower Court. It provides:

"243 (4) Without prejudice to the provisions of Section 254(5) of this Act, the decision of the Court of Appeal in respect of *any* appeal arising from *any* civil jurisdiction of the National Industrial Court..."   
[Italics supplied for emphasis]

Now, the adjective "any" is a word of enormous amplitude which admits of no limitation or qualification,Duck v. Batey 1 QBD 79and indeed, has been construed to mean "as wide as possible,"Becket v. Sutton 51 LJ CH; "some, out of many, an indefinite number; one indiscriminately of whatever kind or quantity," Federal Deposit Ins. Corporation v. Winton C.C.A. Tenn 131, F2 780, 782, Texaco Panama Inc. v. S.P.D.C. (Nig.) Ltd (2002) LPELR-3146 (SC) 28; A-C.

Put differently, the word "any" has a diversity of meanings and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject matter of the statute." I take the view that, in the context of the appellate jurisdiction of the Lower Court, the word "any" in Section 243 (4) means any appeal in respect of the exercise of the civil jurisdiction of the trial Court. Hence, a litigant who is aggrieved by a decision of the trial Court in other civil matters can exercise a right of appeal with the leave of the Lower Court.

One final point on this, from the chapeau or opening words of Section 243 (1) (supra), vis, *"Any right of appeal* to the Court of Appeal..." [italics supplied], it is evident that the section does not deal with the appellate jurisdiction of the Lower Court. From its tenor, the draftsperson acknowledges an extant "right of appeal to the Court of Appeal," obviously, in Section 240.

Employing the marginal note, only, as a signpost to what the Section 243 (1) sets out to provide, Idehen v. Idehen (1991) LPELR-1416 (SC) 55; F-G; [1991] 6 NWLR (Pt. 198) 382; Oloyo v. Alegbe [1983] 2 SCNLR 35, 57; Uwaifo v. A-G, Bendel State [1982] 7 SC 124, 187-188; O.S.I.E.C. and Anor v. A.C. and Ors (2010) LPELR-2818 (SC) 55; B-C; Yagube v. C.O.P. (1992) LPELR-3505 (SC) 17-18,I take the view that the said Section [243 (1)] only relates to the exercise of the right of appeal [already donated by Section 240].

The expression "exercise of" is defined as "the use of power ...or right to make something happen," Oxford Advanced Learner’s Dictionary (International Student’s Edition) 510. Against this background, it would seem obvious that, as a sign post, the general purpose of the expression "exercise of" in the marginal notes to Section 243 (1) is to explain that the draftsperson's intention in enacting the section is to provide for an aggrieved litigant's power to effectuate or set in motion the right of appeal, already donated in Section 240 against, inter alia, the trial Court, the National Industrial Court.

**FUTURISTIC LEGISLATIVE ACTION BY THE NATIONAL ASSEMBLY**

Fes Eze Eke, for the respondent, fell into the temptation of interpreting Section 243 (3) as making the right of appeal with leave contingent on the futuristic exercise of the powers of the National Assembly. However, this cannot be! Here, I, entirely endorse the submission of Dr. Mekwunye, for the appellant, that there is no procedural lacuna on the mode of exercise of a right of appeal, with leave, against the decisions of the trial Court.

In my humble view, in the exercise of the right of appeal against the decisions of the trial Court, which Section 240 (supra) bequeaths to him and with respect to Section 243 (4), "any appeal from *any civil jurisdiction*", all a prospective appellant needs to do is to amble within the compass of Section 24 (1) of the Court of Appeal Act, an extant enactment of the National Assembly; an existing Act of the National Assembly.

Section 24 (1) (supra) provides thus:

"24. Time for appealing

(1) Where a person desires to appeal to the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within the period prescribed by the provision of Subsection (2) of this section that is applicable to the case."

He needs equally, to rely on Order 7 Rules 5 and 10(1) of the Court of Appeal Rules, 2011, a subsidiary legislation, whose potency traces its pedigree to the Constitutive Act, Section 18(1) of The Interpretation Act, Cap 123, LFN, 2004; Din v. A-G, Fed. [1986] 1 NWLR (Pt. 17) 471; Ishola v. Ajiboye (1994) 6 NWLR (Pt. 352) 506; Olarenwaju v. Oyeyemi [2001] 2 NWLR (Pt. 697) 229. These two enactments have already set out the procedure of appeals either as of right or with the Lower Court's leave.

In effect, within the framework of the extant enactment, namely, Section 24 (1) of the Court of Appeal Act (supra) and Order 7 Rules 5 and 10 (1) of the Court of Appeal Rules, an aggrieved litigant can exercise the right of appeal against, inter alia, the trial Court, the National Industrial Court.

Contrary to the submission of Fes Eze Eke, for the respondent, Section 241(1) (a) - (f) (i)- (v) and Section 241 (2) (a) - (c) and Section 242 (1) and (2) are completely irrelevant to these proceedings since the former Section 241 (1) (a) - (f) (i) - (v) and Section 241 (2) (a) - (c) deals with appeals as of right from the Federal High Court or a High Court and the latter, Section 242 (1) and (2) deals with appeals with leave from the said Courts.

In all, then on a holistic interpretation of Section 240 and 243 (1) of the 1999 Constitution, appeal lie from the trial Court to the Lower Court, that is, all decisions of the trial Court are appealable to the Lower Court: as of right in criminal matters, [Section 254C(5) and (6)], and Fundamental rights cases. [Section 243 (2)]; and with the leave of the Lower Court, in all other civil matters where the trial Court has exercised its jurisdiction, Sections 240 read conjunctively with Section 243 (1) and (4).

The answers to the questions posed to this Court in this case stated, therefore, are (a) the Lower Court, that is the Court of Appeal has the jurisdiction, to the exclusion of any other Court in Nigeria, to hear and determine all appeals arising from the decisions of the trial Court, that is, the National Industrial Court; (b) no constitutional provisions expressly divested the said Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the trial Court, the National Industrial Court and (c) as a corollary, the jurisdiction of the Court to hear and determine civil appeals from the decisions of the National Industrial Court is not limited, only, to fundamental rights matters.

These shall be the opinions of this Court to be transmitted to the Court of Appeal, Lagos Division, for its guidance in determining the appeal before it.

**MARY UKAEGO PETER-ODILI, J.S.C.:**

I agree with the judgment and reasoning therefrom delivered by my learned brother, Chima Centus Nweze and to register my support I shall make some comments.

This action is in respect of the case stated for the decision of the Supreme Court upon the following constitutional questions framed by the Court of Appeal or Lower Court or Court below which questions I shall recast hereunder as thus:

*i. Whether the Court of Appeal as an appellate Court created by the Constitution of the* *Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?*

*ii. Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria.*

*iii. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?*

**FACTS**

The respondent’s claim in the National Industrial Court of Nigeria (trial Court) is that he was formerly in the employment of Afribank Nigeria Plc (Now the Defunct Bank) which employment was determined on the 6th July, 2011 and he sued the applicant/applicant (Mainstream Bank Limited, a distinct legal personality from the Defunct Bank) on the basis that it is the predecessor in title of Afribank Nigeria Plc for wrongful termination of his employment.

Amongst other reliefs, it is also the claim of the respondent that whilst he was in the employment of the defunct bank, he contributed the unremitted total sum of N636,287.55 under the Pension Fund Scheme and the unremitted total sum N1,690,498.82 under the National Housing Scheme and therefore he seeks to recover personally those sums of money he allegedly contributed under the pension fund scheme and National Housing Scheme from the appellant as the predecessor in title of defunct bank.

A month after the determination of this employment relationship which the respondent had with the Defunct Bank on the 6th July, 2011, the Central Bank of Nigeria (C.B.N.) in accordance with its statutory powers revoked the banking license of the Defunct Bank and in accordance with the Nigerian Deposit Insurance Corporation (N.D.I.C.) Act, CAP N102, 2007, Nigerian Deposit Insurance Corporation assumed the management and control of the assets and liabilities of the Defunct Bank and/or was appointed as the official/provisional liquidator of the Defunct Bank.

The appellant was incorporated on the 3rd of August, 2011 under the relevant laws in Nigeria to inherit some assets and some liabilities of the defunct bank and as a separate legal entity from the defunct bank (the respondent's actual employer), the appellant did not takeover, acquire nor merge, with the Defunct Bank.

Furthermore, at the time the respondent instituted this matter on the 27nd February, 2012 against the appellant, the defunct bank still existed and had not been wound up, liquidated or dissolved.

Upon being served with the originating process in this matter, the appellant filed its statement of defence and thereafter proceeded to challenge the jurisdiction of the trial Court to entertain this matter via its Notice of Preliminary objection filed on the 10th July, 2012 which was responded to by the respondent with a Counter Affidavit filed on the 23rd July, 2012.

In response to the respondent’s counter affidavit, the appellant filed a further affidavit on the 1st August 2012 together with a reply on points of law.

The crux of the appellant’s preliminary objection is that this matter is improperly constituted for lack of proper parties and that the remedy and/or action sought by the respondent under Relief C (iii) and (iv) as contained in the respondent's complaint and the averments in paragraphs 36, 37, 38 and 39 (c) (iii) and (iv) in the respondent's statement of facts before the trial Court are incompetent and liable to be struck out and therefore robs the trial Court the jurisdiction to entertain this matter.

On the 5th of November, 2012, the trial Court in its Ruling per Honourable Justice O. A. Obaseki-Osaghae held that it had jurisdiction to hear this matter and dismissed the said appellant’s preliminary objection. Also in the said Ruling, the trial Court as a preliminary point, sou motu and without calling the parties in this matter to address it, discountenanced the appellant’s further affidavit of 1st August, 2012 on the ground that the Rules of the National Industrial Court 2007 did not make provisions for a further affidavit.

The appellant upon being dissatisfied with the said ruling of the trial Court appealed to the Lower Court (Court of Appeal) vide its Notice of Appeal dated and filed on the 19/11/2012.

Sometime on the 25th March, 2013, the applicant filed a Motion on Notice (Application) to amend its notice of appeal. Surprisingly, the respondent filed a counter affidavit contesting the application, particularly on the ground that the Lower Court lacks the jurisdiction to entertain the appeal and consequently cannot entertain the application to amend the notice of appeal.

On the 13th January, 2014, the Lower Court ordered that parties should address it on the jurisdiction of the lower Court by each party filing a written address. In compliance with the order of the Lower Court the written addresses were filed by the parties. On the 22nd September, 2014, the application for the amendment of the notice of appeal was moved and argued together with the adoption of the aforementioned written addresses and afterwards, Ruling was reserved by the Lower Court.

The crux on the issue on the jurisdiction of the Lower Court is inter alia whether the Lower Court has not been clothed with the requisite powers under the Constitution of the Federal Republic of Nigeria 1999 (as amended) to hear and determine all appeals emanating from the decisions of the National Industrial Court of Nigeria (trial Court).

Before the Ruling of the Lower Court on this matter of jurisdiction, the appellant on the 24th September, 2014 applied to the Lower Court via its Notice of Motion filed and dated same date for a case to be stated for the decision of this Honourable Court on the constitutional issues and substantial points of law which have arisen before the Lower Court.

On the 11th November, 2014 the Lower Court granted the appellant’s application for a case to be stated for the decision of the Supreme Court as per the questions stated earlier.

On the 3rd April, 2017 date of hearing, learned counsel for the appellant, Dr. Charles D. Mekwunye adopted its brief of argument filed on 11/12/2015 in which were raised three issues for determination which are as follows:

1. Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

2. Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?

3. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?

Appellant also filed a reply brief filed on the 16/12/15.

Learned counsel for the respondents, F. E. Eke, Esq. adopted his brief of argument filed on 14/12/2015 and utilized the three questions raised for this Court by the Court of Appeal.

**ISSUE NO 1**

Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria.

Dr. Mekwunye of counsel for the appellant submitted that the Court of Appeal or Lower Court or Court below was created by Section 237 of the Constitution of Nigeria 1999 (as amended) or CFRN 1999 for short and the Court of Appeal Act, Cap C 36 Laws of the Federation of Nigeria, 2004 to hear and determine appeals from some specified trial Courts which are High Courts of State, Federal High Court, National Industrial Court and High Court of the Federal Capital Territory, Abuja. He cited Sections 239, 240, 241, 242 and 243 CFRN 1999 (as amended). Also the case of: Gafar v. Govt. Kwara State (2007) 4 NWLR (Pt. 1024) 375; Nwaigwe v. Okere (2008) 13 NWLR (Pt. 1105) 445; SPM Ltd v. Adetunji (2009) 13 NWLR (Pt. 1159) 647;  
Moses v. State (2006) 11 NWLR (Pt. 992) 458; Local Government Service Commission, Ekiti State & Anor. v. Mr. M. A. Jegede (2013) LPELR-21131 at page 20.

Mr. Eke, learned counsel for the respondent contended that jurisdiction is so fundamental in adjudication to the extent that it affects the foundation of every cause of action before a Court of law. That a decision by a Court or tribunal without the requisite jurisdiction is a nullity and the principle applies to both trial and appellate Courts. He cited Utih v. Onoyivwe (1991) 1 SC (Pt. 1) 65 at 96-97, Madukolu v Nkemdilim (1962) 2 5C NLR 341.

Learned counsel for the respondent submitted that combined reading of the provisions of the Sections 240, 241(1), 242(1), 243(2), 254C (5), 254C (6) CFRN 1999, shows that the Constitution did not make provisions relating to exercise of right of appeal whether as of right and or/leave. That the appellate jurisdiction of the Court below exercisable over decisions of the National Industrial Court is circumscribed and limited as clearly provided in Section 243(2) - (4) of the CFRN 1999. That no other provision in the Constitution or law that donates appellate jurisdiction to the Court of Appeal over the decision of National Industrial Court. That the right of appeal is granted by statute or Constitution and not by statutory interpretation by the Court and the framers of the Constitution clearly intended to deny the Court of Appeal, the appellate jurisdiction over the decision of the National Industrial Court except with respect to Fundamental Rights as provided in Chapter IV of the Constitution and in civil appeals as provided in Section 254C (6) of the Constitution. That to hold otherwise would amount to doing violence to the clear and unambiguous provisions of the Constitution.

It was stated that the judge's duty is to interpret the law and not make the law. The cases of Babatunde v. Pan Atlantic Shipping Transport Agencies Ltd (2007) 13 NWLR (Pt. 1050) 113 at 149, Dapialong v. Dariye (No. 2) (2007) 8 NWLR (Pt. 1036) 322; Gafar v. Government of Kwara State (2007) 4 NWLR (Pt. 1024) 375 at 1444; A-G, Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1 at 120-121 etc were referred to.

In a nutshell the stance of the appellant is that an appeal is a continuation of the litigation process and the access to Courts is constitutionally guaranteed under Section 36 of the 1999 Constitution of the Federation or CFRN for short and that access does not begin and end with access to the trial Court only. That it continues right through the appeal process and the question of manner of entry into that appeal process is if the appeal is of right or has to be with leave of the Court of Appeal. The appellant posits that because of this fundamental right to access to Courts up to the appeal, the National Industrial Court’s decisions are well within appealable status whether of right or by leave depending on the particular circumstances prevailing such as if on fundamental human rights violation, the appeal would be of right but in other situations the appeal must be by leave of the Court of Appeal.

The respondent taking an opposing stand contends that the right to appeal is circumscribed and limited and cannot go beyond matters pertaining to fundamental human rights violation and in all other circumstances there is no recourse to any other Court as the decision of the National Industrial Court would be final with the finality ascribed to decisions of the Apex Court except by an Act of the National Assembly or a decision on criminal matters.

The situation on ground throws up the matter of jurisdiction of Court and it is trite that jurisdiction is the bedrock of any adjudication to the extent that it affects the very foundation of every cause of action before a Court of law. The reason is simple since without jurisdiction, the decision of a Court or tribunal without the requisite jurisdiction is a nullity, dead on arrival and of no effect whatsoever. The principle applies to Courts whether of trial or appellate. The description is very aptly made in the case of Utih v. Onoyivwe (1991) 1 SC (Pt. 1) 65 at 96-97 per Bello CJN thus:

"...jurisdiction is blood that gives life to the survival of an action in Court of law and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise."

See also the decision of the Supreme Court of Nigeria in the old case of Madukolu v. Nkemdilim (1962) 2 SC NLR 341.

I shall reproduce the relevant sections of the Constitution of the Federal Republic of Nigeria, 1999 as amended to wit:

Sections 240, 241, 243(2) - (4), 254C (6).

S.240 "Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine appeals from the Federal High Court, the National Industrial Court, the High Court of State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a Court Martial or other tribunals as may be prescribed by an Act of the National Assembly."

S.241 (1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

(a) Final decision in any civil or criminal proceedings before the Federal High Court or High Court sitting as first instance;

(b) Where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings;

(c) Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;

(d) Decisions in any civil or criminal proceedings on questions as to whether any of provisions of Chapter IV of the Constitution has been, is being or is likely to be contravened in relation to any person;

(e) Decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death.

(f) Decisions made or given by the Federal High Court or a High Court.

(i) Where the liberty of a person or the custody of an infant is concerned.

(ii) Where an injunction or the appointment of a receiver is granted or refused.

(iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance on otherwise,

(iv) In the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability, and

(v) In such other cases as may be prescribed by any law in force in Nigeria.

2. Nothing in this section shall confer any right of appeal:

(a) From a decision of the Federal High Court or any High Court granting unconditional leave to defend an action;

(b) From an order absolute for the dissolution or nullity of marriage in favour of any party, who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from the decree nisi and

(c) Without the leave of the Federal High Court or a High Court or of the Court of Appeal, from a decision of the Federal High Court or High Court made with the consent of the parties or as to cost only.

S.242 (1) Subject to the provisions of Section 241 of the Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court orthe Court of Appeal.

(2) The Court of Appeal may dispose of any application for leave to appeal from any decision of the Federal High Court or a High Court in respect of any civil or criminal proceedings in which an appeal has been brought to the High Court or a High Court from any other Court after consideration of the record of the proceedings; if the Court of Appeal is of the opinion that the interest of justice do not require an oral hearing of the application.

S.243 (1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be:

(a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any power conferred upon the Attorney-General of the Federation or the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed;

(b) Exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the power, practice and procedure of the Court of Appeal.

S.233 (2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly.

Provided that where an Act or Law prescribed that an appeal shall be from the decision of the National Industrial Court to the Court of Appeal such appeal shall be with the leave of the Court of Appeal.

(4) Without prejudice to the provisions of Section 254C(5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

S.254C (5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal cases and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Industrial Court by this section or any other Act of the National Assembly or by any other law.

S.254C (6) Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in Sub-sections 5 of this Section to the Court of Appeal as of right."

I find it difficult to resist accepting the submission of learned counsel for the appellant on the role or functions of an appellate Court which he stated to be thus:

(a) Determining whether or not there was evidence before the trial Court upon which its decision of facts are based;

(b) Determining whether trial Court wrongly accepted or rejected any evidence tendered at the trial;

(c) Determining whether evidence called by either party to the conflict was put on either side of an imaginary scale and weighed against the other; in other words whether the trial Court correctly approached the assessment of evidence before it;

(d) Determining whether evidence properly admitted was sufficient to support the decision upon the inference drawn therefrom. See Anachune Anyaola & Ors. v. Dr. Felix Adi & Ors. (1986) 3 NWLR (Pt. 31) 731 at 742.

In a more recent case, this Court whilst addressing the role of the Lower Court as an appellate Court stated in Ochiba v. State (2011) LPELR-8245that:

"Now, it is to be reiterated that the role of an Appeal Court is simple. It affirms decisions brought to it on appeal where such decisions are based on sound legal principles which have been exposed by the trial Court and or, the Court from which the appeal emanated. Such are decisions which are arrived at through painstaking steps and careful evaluation of evidence. No elements of miscarriage of justice are traceable to such decisions. By their soundness, such decisions are readily acceptable to any reasonable man who may be present at the Court. The Appeal Court thus has no reason to tamper with them." per Muhammad, JSC at page 28, paragraphs C - F.

Also in A.G. Leventis Nig. Plc v. Akpu (2007) 6 SC. (Pt. 1) 239 this Court held thus: it is also settled that the duty of an appellate Court, is to inquire into ways the trial Court tried and settled the dispute and not to re-open and re-try cases. See the cases of Oroke v. Ede (1964) NNLR 119-120: Ajadi v. Okenihun (1985) 1 NWLR (Pt. 3) 484 at 492 cited and relied on in the respondent's brief. This is why it is also settled that what an appellate Court has to decide is whether the decision of the trial Court was/is right and not the reasons for the decision. Thus, if a judgment of a trial Court is correct, it will not be liable to reversal, merely because it was anchored on a wrong reason."

A reference to Section 240 CFRN 1999 (as amended), which provides:"subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court, National IndustrialCourt, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a Court martial or other tribunals as may be prescribed by an Act of the National Assembly would be helpful."

The bottom line is that Sections 240, 241, 242, 243, 244, 245, and 246 of the CFRN 1999 are to be read together for a better understanding of the intention of the legislature and not one section taken all by itself and given effect to. The decision of the Court of Appeal in the case of Local Government service Commission Ekiti State & Anor. v. Mr. M. A. Jegede (2013) LPELR 21131 is of assistance and I shall quote the dicta therein thus:

"By virtue of Sections 240 and 243 of the 1999 Constitution, the Court of Appeal is well positioned to exercise appellate jurisdiction over decisions of the National Industrial Court and there is no existing constitutional provision which divested the Court of Appeal of its appellate jurisdiction over decisions emanating from the National Industrial Court on any subject matter. Sections 240 of the Constitution of the Federal Republic of Nigeria, 1999 as amended clearly and expressly vested appellate jurisdiction in the Court of Appeal. The jurisdiction so vested is with regard to certain Courts which are specified therein. Thus, the appellate jurisdiction vested in the Court of Appeal is to hear and determine appeals from decisions of subordinate Courts named therein and those that may be prescribed by statute. It is instructive and significant to note that the Courts named therein include the National Industrial Court..."

See Local Government Service Commission Ekiti State & Anor. v. Mr. M. A. Jegede (2013) LPELR 21131 at page 20, paragraph A, where the Lower Court expressed this view when it held thus:

"Right of access to Courts is basic, constitutional and fundamental. An appeal either as of a right or with leave is a review of the trial Court's decision by an appellate Court. I am thus of the firm viewpoint that a dispute between an employer and employee is an ordinary civil proceedings and this qualifies in a similar manner for the same consideration or treatment with regard to the exercise of appellate jurisdiction of the Court of Appeal from decision of subordinate Courts. I am thus of the mindset, that the exercisable jurisdiction of this Court over decisions of the National Industrial Court as conferred and or vested by the Constitution cannot and should not be circumscribed or limited to questions of fundamental rights alone. It is thus clear and without prevarication whatsoever, that Sub-section (4) of Section 243 of the 1999 Constitution as amended, gives the right of appeal to an aggrieved person in any civil matter arising from decisions of the National Industrial Court in the exercise of its civil jurisdiction."

I am satisfied from the foregoing that the issue is resolved in favour of the appellant in that all appeals lie to the Court of Appeal from the National Industrial Court whether the circumstances decree it as of right or by leave of the appellate Court.

ISSUE NO. 2

Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria.

Learned counsel for the appellant submitted that there is no existing constitutional provision which expressly divested the Lower Court of its appellate jurisdiction over decisions emanating from the National Industrial Court on civil matters. That the right of appeal of a litigant to appeal against the decisions of National Industrial Court (NIC) is basic, fundamental and constitutional. He relied on Local Government Service Commission Ekiti State & Anor. v. Mr. M. A. Jegede (2013) LPELR 21131 at 18-19 (CA); Ugwuh v. A-G. East Central State (1975) 6 SC 13: Adigun v. A-G Oyo State (1987) 2 NWLR (Pt. 56) 197: Ajomale v. Yadvat (No. 1) 1991 5 NWLR (Pt. 191) 257; Sections 241, 242(1), 243(1), (2) of the Constitution and the Court of Appeal Act Section 24(1); Order 7 Rules 5 and 10(1) of the Court of Appeal Rules 2011 and S.240 CFRN 1999. That a cursory look at Sections 240 and 243(4) CFRN reveal that the CFRN 1999 has expressly created a general right of appeal against all decisions of the NIC to the Court of Appeal.

For the appellant it was further contended that it is not permissible to construe any provision of the Constitution in a way that would lead the content of another constitutional provision to be distorted or a right given by the Constitution to be denied. The cases of Elehu-Habeeb v. A-G Federation (2012) 40 WRN 1 at 66 - 68, A. G. Federation v. Abubakar (2007) ALL FWLR (Pt. 389) 1264 at 1289-1291; I.N.E.C. v. Musa (2003) 3 NWLR (Pt. 806) 72 were relied upon.

Also canvassed by the appellant is that the NIC is a Court of co-ordinate jurisdiction with the High Court with powers exercisable also by the High Court. It was cited Section 254D of CFRN 1999 (amended) and it was not the intention of the lawmakers to give a right in one section and take it away in another section without an express provision to that effect. See the cases of Senator Dahiru Boko Gassol v. Alhaji Abubakar Umar Tutare & Ors (2013) LPELR-20232, A-G, Federation v. Abubakar (2007) ALL FWLR 1264 at 1300; Ugba v. Suswam (2014) 14 NWLR (Pt. 1427) 264 at 341.

Responding, learned counsel for the respondent contended that the Constitution did not want to vest appellate jurisdiction on the Court below with respect to all decisions of the National Industrial Court in its civil causes and matters. That if it had wanted to do otherwise the Constitution would have said so in no mistaken terms and there would not have been the dichotomy by the creation of Section 243(2) as distinct from Section 241 (a) (f) (i) (v) of the Constitution. That if there is a conflict between Sections 240 as against Section 243 (2) - (4) the later section would prevail. He referred to Abubakar v. Nasamu (No. 2) (2012) 17 NWLR (Pt. 1330) 523 at 587; F.B. Plc v Maiwada (2013) 5 NWLR (Pt. 1348) 444 at 497. That there is no provision in the Constitution which gave a blanket appellate jurisdiction to the Court of Appeal over decisions emanating from the NIC in civil cases and matters and since what is not expressly provided is clearly expressly withheld or curtailed. He cited Dangana v. Usman (2013) 6 NWLR (Pt. 1349) 50 at 79.

The importance of the need for an appeal from a trial Court to an appellate one has been recognized in a plethora of decisions of this Court and recourse to some would clarify the grey areas. In Obikoya v. Wema Bank Limited (1989) 1 SC (Pt. 1) 132 where this Court per Oputa, JSC stated thus:

"A right of appeal is a very important constitutional right and its exercise ought not to unduly fettered."

In Global Excellence Communications Ltd. v. Duke (2007) 16 NWLR (Pt. 1059) 22this Apex Court per Tobi JSC (of Blessed Memory) stated as follows:

"Access to Court is a constitutional right which can only be taken away by a provision in the Constitution. It cannot be taken away by implication or speculation by the Courts."

In recent times my learned brother, Ariwoola, JSC captured the situation aptly in the case of Imegwu v. Okolocha & ors (2013) LPELR-1986 where this Court stated thus:

"There is no doubt, every aggrieved party has constitutional right of appeal to challenge the decision of the Court below in this Court. In other word, right of appeal to this Court is constitutionally guaranteed and cannot be denied or removed by any subsidiary legislation except by the same Constitution. See Section 233 of the 1999 Constitution (as amended)."

A further recasting of Section 243(2) of the F.R.N. 1999 (as amended) would be helpful and thereafter other related provisions.

S.243 (2) "An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an act of the National Assembly. Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.

(4) Without prejudice to the provisions of Section 254(5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final."

The Court of Appeal Act by:

S.24 (1) "Where a person desires to appeal to the Court of Appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within the period prescribed by the provision of Subsection (2) of this section that is applicable to the case.

2. The periods for the giving notice of appeal or notice of application for leave to appeal are –

(a) in an appeal in a civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision;

(b) In an appeal in a criminal cause or matter, ninety days from the date of the decision appealed against.

3. Where an application for leave to appeal is made in the first instance to the Court below, a person making such application shall, in addition to the period prescribed by Subsection (2) of this section, be allowed a further period of fifteen days, from the date of the determination of the application by the Court below, to make another application to the Court of Appeal.

4. The Court of Appeal may extend the periods prescribed in Subsections (2) and (3) of this section." Court of Appeal Rules by Order 7 Rules:

5. "if leave to appeal is granted by the Court or by the Court below, the appellant shall file a notice of appeal within the time prescribed by Section 24 of the Court of Appeal Act, 2004.

10. (1) The Court may enlarge the time provided by these Rules for the doing of anything to which these Rules apply except the filing of notice of intention not to contest an application under Rule 8 above."

It is clear that a community reading of Sections 240, 241, 242, 243, 245, 246 and then the necessary Act of the National Assembly being the Court of Appeal Act of 2004 Section 24 and Order 7 Rules 5 and 10 (1) of the Court of Appeal Rules 2011, would show clearly what is on ground. In this regard I shall cite in aid the case of Elelu-Habeeb v. A-G, Federation (2012) 40 WRN 1 at 66-68. Also the Court of Appeal in the case of: Elelu-Habeeb v. A-G Federation (2012) 40 WRN 1 at 66-68; A-G of Federation v. Abubakar (2007) ALL FWLR (Pt. 389) 1264 at 1289-1291, where it was held thus:

"A Constitution is an instrument of government under which laws are made and is not a mere Act or Law, and the construction which the Court will give to a constitutional provision must be such that will serve the interest of the constitutional (sic) provision and best carry out its object and purposes and give effect to the intention of the framers.... The duty of the Court when interpreting a provision of the Constitution is to read and construe together all the provisions of the Constitution, unless there is a very clear reason that some particular provisions of the Constitution should not be read together."

Indeed provisions in a Constitution are of equal strength and constitutionality. No provision is inferior to the other and a fortiori no provision is superior to the other. See I.N.E.C. v. Musa (2003) 3 NWLR (Pt. 806) 72 at 102 per Tobi, JSC

The situation as I am inclined to go along with is well set out in a similar presentation in the case ofLocal Government Service Commission Ekiti State & Anor. v. Mr. M. K. Bamisaye (2013) LPER-20407 per Onyemenam, JCA at pages 17-19, paragraphs B-B stated thus:

"There is nothing both in the Act or Constitution that provides that the National Industrial Court shall be a final Court in respect of any matter before it. While the law provides that appeal on questions of fundamental right shall lie as of right to the Court of Appeal. No provision forecloses a right of appeal with leave on other decisions of the National Industrial Court. Since there is no express provision both in the Constitution and the Act, that the National Industrial Court shall be a final Court in any matter before it, it follows that under no circumstance shall the National Industrial Court exercise the act of finality in a matter before it. A Court of law can only be expressly made a final Court by the statute that created it or by any other law where necessary. No Court can be a final Court by mere implication. The above reasoning is supported by the intent of the law makers as to where the final decision in civil matters coming before the National Industrial Court lies. The intent of the law makers is found Section 243 (4) of the Constitution. Standing the risk of repetition, I shall restate the provisions of the section. Section 243(4) provides:

"Without prejudice to the provisions of Section 254(5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final."

The section unequivocally made the Court of Appeal the final Court in respect of any civil appeal from the decision of the National Industrial Court. In the spirit of this section, it is my opinion that in consonance with the provision of Section 243 (3); the law, by Section 240 of the Constitution has prescribed that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal. So while there is Act of the National Assembly which has so prescribed, the law has prescribed that appeal in civil matters other than as of right on questions of fundamental rights shall lie to the Court of Appeal."

In line with the mindset in interpretations above expoused, it is to be said that in interpreting the provisions of Section 243(2) and (3) of the CFRN 1999 (as amended) that the intention of the lawmakers when amending the Constitution was not to divest the Court of Appeal of its appellate jurisdiction over decisions involving civil matters from the National Industrial Court. That is to say in another way that the legislature could not have intended to give the right of appeal in one section and make an about turn to take the right away in another section of the same Constitution without making an express provision for such with its attendant serious implication. In the case of: A-G Federation v. Abubakar (2007) ALL FWLR 1264 at 1300, paras A-B where the Court stated thus:

"One of the basic principles of interpretation of all Constitutions and statutes is that the lawmaker will not be presumed to have given a right in one section and taken it in another. In the instant case, it will not be presumed that the makers of the 1999 Constitution intended the immunity provided to certain categories of public officers in Section 308 of the Constitution during the tenure of their office, to be taken away by the Code of Conduct Bureau created under Section 153 of the Constitution."

See also F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361; Senator Dahiru Bako Gossol v. Alhaji Abubakar Umar Tutare & Ors (2013) LPELR-20232.

Indeed, this Court as a Court of last resort would not hesitate in its function to do justice between parties by settling their dispute shy away from pronouncing upon a new head of remedy suitable to meet an exigent situation will be dictated by the particular facts and circumstances as the present case. This is based on the principle that we operate in a new and advancing world not static and so positioned in the protection of the rights of the individual or persons and so the categories of remedies may never be closed. Therefore the law is adopted to meet the needs of society and not to foreclose the legitimate yearning demands of the rights of the citizenry as anything short of this defeats the spirit of law and Constitution. See Ugba v. Suswam (2014) 14 NWLR (Pt. 1427) 264 at 341; Engineering Enterprises v. A.G. Kaduna State (1987) 2 NWLR (Pt. 57) 381 or 400 per Aniagolu, JSC.

It is in the light of the foregoing that I see no hesitation in resolving this issue in favour of the appellant as I am satisfied that an appeal lies in all circumstances from the National Industrial Court to the Court of Appeal whether in matter of fundamental rights as of right and in other circumstances by leave of the Court of Appeal.

**ISSUE NO 3**

Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights.

Learned counsel for the appellant referred to the fundamental rights as enshrined under Chapter IV of the CFRN 1999 (as amended) and that the NIC breached appellant's right to fair hearing when it failed to consider all the issues submitted to it for determination. He cited Opuiyo v. Omoniwari (2007) ALL FWLR (Pt. 328) 1093 at 110; Irole v. Uka (2002) 14 NWLR (Pt. 786) 195 at 225; That the NIC in the determination of the civil rights and obligations of a party before it has no power to depart from the rules of the Evidence Act, 2011 as the N.I.C. has ceased to be an inferior Court. Therefore that S. 12 (b) of the National Industrial Court Act, 2006 being inconsistent with S. 6(5) (cc) and S. 254(a) and (C) of the CFRN is null and void to the extent of that it permits the N.I.C. to depart from the provisions of the Evidence Act, 2011.

Learned counsel went on to contend that it amounts to a breach of fair hearing to a party when the N.I.C. goes ahead to hear a matter it does not have jurisdiction to determine such as issues relating to appointment, removal or change of directors and their terminal benefits - treating directors as employees as this leads the N.I.C. to determine matters on the interpretation and operations of Companies and Allied Matters Act, Cap C20, LFN 2004 (CAMA 2004) which is exclusively within the jurisdiction of the Federal High Court. He relied on Yalaju-Amoye v. A.R.E.C. Ltd (1990) NWLR (Pt. 145) 422; Fagbola & Anor. v. Kogi Chambers of Commerce Industry, Mines and Agriculture & Anor (2006) LPELR-5292 (CA).

Also a breach of the fair hearing right of the appellant, learned counsel stated is the N.I.C. raising an issue suo motu and deciding on it without calling on the parties to address the Court on it. He cited Sodipo v. Lemminkainen Oy (1985) NWLR (Pt. 8) 54. Stirling Civil Eng. (Nig.) Ltd. v. Yahaya (2005) LPELR-3118 or (2005) 11 NWLR (Pt. 935) 181.

That where in the aforementioned instances occur in a proceeding before the N.I.C. and an appellant's right to appeal is foreclosed a greater miscarriage of justice will be done to the appellant who would have lost the opportunity of having such errors corrected on appeal if the decisions of N.I.C. are final. He cited Abubakar & Ors. v Nasamu (2011) LPELR-1831; Pam v. Mohammed (2008) LPELR-2895 also in (2008) 16 NWLR (Pt. 1112) 1.

Learned counsel for the respondent submitted that Section 240 of CFRN 1999 which granted general appellate powers and jurisdiction to the Court of Appeal is certainly subject to the restricted and specific and special provision of Section 243(2) - (a) of the same Constitution. That no matter how charitable the Court of Appeal may appear, it cannot assume jurisdiction in the interest of justice when it is clear from the words of the Constitution it does not have the jurisdiction. He relied on Dangana v. Usman (supra) at 79; African Newspapers of Nigeria v. Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137.

The issue is this third question has been answered in the two earlier issues and there is no point repeating a consideration of the same arguments.

In conclusion the issues all resolved in favour of the appellant, it is to be said in line with the lead judgment which effectively and soundly tackled the questions that arose that the appellate jurisdiction of the Court of Appeal is not foreclosed within matters only related to fundamental rights, rather, the appeals from the National Industrial Court all can go on appeal to the Court of Appeal whether as of right in the case of fundamental rights but by leave of the appellate Court when the matter is in relation to other circumstances. The appeal is allowed as I abide by the consequential orders made.

**MUSA DATTIJO MUHAMMAD, J.S.C.:**

Having read before now the lead judgment of my learned brother CHIMA CENTUS NWEZE, JSC just delivered and being in agreement with his lordship's answers to the questions stated to this Court by the Lower Court in the matter, I adopt same as my opinion and order that same be transmitted to the Court of Appeal, Lagos Division, as guidance to its determination of the appeal to which the Court's enquiries to this Court relate.

**CLARA BATA OGUNBIYI, J.S.C.:**

The three constitutional issues/questions posed before this Court for determination are:-

a) Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the Decisions of the National Industrial Court of Nigeria?

b) Whether there exists any Constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?

c) Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of Fundamental Rights?

The questions relate to the appellate jurisdiction of the Court of Appeal to hear and determine appeals emanating from the decisions of the National Industrial Court (N.I.C.) bearing in mind especially the conflicting interpretation of Sections 240 and 243(1-4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as given by the Lower Court in the various cases decided before it.

The reproduction of the Sections state as follows:-

*"240. Appellate jurisdiction Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction, to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court, the National Industrial Court, and the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a Court-martial or other tribunals as* *may be prescribed by an Act of the National Assembly.*

*243. Exercise of Right of Appeal from the Federal High Court, National Industrial Court or a High Court in Civil and Criminal matters*

*(1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be: -*

*(a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed.*

*(b) exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.*

*2. An appeal shall lie* *from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.*

*(3) An appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly. Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of appeal, such appeal shall be with the leave of the Court of Appeal.*

*4. Without prejudice to the provisions of Section 254C (5) of this Act the decision of the Court of appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final."*

It is submitted by the learned counsel for the appellant that No provision forecloses a right of appeal with leave on other decisions of the National Industrial Court. Counsel submits also that in the absence of any express provision both in the Constitution and the Act, that the NIC. shall be a final Court in any matter before it, it follows therefore that under no circumstance should the said Court exercise the act of finality in a matter before it.

While interpreting the provisions of Section 243 (2) - (4) of the Constitution, the respondent's counsel submits in effect that the appellate jurisdiction of the Court of Appeal exercisable over decisions of the NIC is clearly circumscribed and limited. The counsel submits the absence of any other provision in the Constitution or law that donates appellate jurisdiction to the Court of Appeal over the decisions of NIC; that the spirit of Section 243 (2) - (4) of the Constitution was couched clearly to show that the legislature intended to limit and circumscribe the exercise of appellate jurisdiction by the Court of Appeal over the decision of National Industrial Court (NIC).

The learned counsel in seeking to restate the correct position of the law re-iterated that the Court below can only exercise appellate jurisdiction over the decisions of NIC on questions of Fundamental Rights as contained in Chapter IV of the 1999 Constitution (as amended) and with respect to appeals from the criminal jurisdiction of the NIC; that unless and until the National Assembly makes Law or Act donating further appellate jurisdictions to the Court of Appeal over decisions of the NIC, the Lower Court has no jurisdiction to inquire into the decisions of NIC except as already provided in the Constitution.

With the numerous decisions of the Lower Court which are conflicting as regards the appellate jurisdiction of the Lower Court over decisions of NIC, the necessity for the interpretation of Sections 240 and 243(1-4) of the Constitution cannot be better than now. The conflict posed is that, while some of the cases decided the right of appeal from decisions of the NIC to the Lower Court is not limited to appeals on fundamental right issues, others tow a different trend and contend that the right of appeal from decisions of NIC to the Lower Court is limited to fundamental right issues.

Section 243(4) of the Constitution has been reproduced supra, and it unequivocally made the Court of Appeal the final Court in respect of any civil appeal from the decision of the National Industrial Court.

On a careful perusal of Sections 240 and 243 of the 1999 Constitution, it is expressly stated that the Court of Appeal can exercise appellate jurisdiction over the decisions of the NIC. However, reading through the entire Constitution, there is no contrary provision precluding the Court of Appeal from exercising appellate jurisdiction over the decisions of the NIC on any other matter.

The determining point in this issue is the appellate jurisdiction of the Lower Court over decisions of NIC on civil matters.

The Lower Court as a creation of statutes exercises an appellate jurisdiction to the exclusion of other Courts over "High Courts", which are Federal High Court, National Industrial Court, High Court of the Federal Capital Territory, Abuja and the High Court of a State. See Sections 240, 241, 242 and 243 of the Constitution 1999 (as amended). See also the judicial authorities in the cases of Gafar v. Government of State (2007) 4 NWLR (Pt. 1024) 375: Nwaigwe v. Okere (2008) 13 NWLR (Pt. 1105) 445 SC and SPM Ltd v. Adetunji (2009) 13 NWLR (Pt. 1159) 647 SC.

For purpose of presenting the significance of hierarchical order of Courts, this Court has made it clear by its endorsement in the case of Moses v. State (2006) LPELR-1915 (DC)also reported in (2006) 11 NWLR (Pt. 992) 458 and said:-

*"It is to be emphasized that the appeal jurisdiction of the Court of Appeal is to hear and determine appeals from the High Courts. If a finding or decision of a trial Court, whether on an issue of fact or law is not challenged in an appeal to the Court of Appeal, such finding or decision, rightly or wrongly must not be disturbed for the purposes of the appeal question." Per Onnoghen, JSC (as he then was) at page 38 of the LPELR-1915 (SC) report.*

As rightly submitted by the learned counsel for the appellant, the appellate process is a very significant tool in maintaining institutional sanity, guiding Lower Court judges and building consensus on the way the system should work. Appellate Courts are watch dogs and serve as tools for keeping checks on subordinate Courts. Any system which is allowed to operate without check will soon be out of control and act like wild sheep without any shepherd.

Significantly therefore, the role of an appeal Court is to affirm or otherwise disrupt decisions brought to it on appeal for purpose of ensuring that such decisions are based on sound legal principles and that no elements of miscarriage of justice are traceable to such decisions.

Put differently, the duty of on appellate Court is to review the record of proceedings by the trial Court and not to re-open and re-try cases. See Oroke v. Ede (1964) NNLR 119-120 and Ajadi v. Okenihun (1985) 1 NWLR (Pt. 3) 484 at 492.

Section 240 of the CFRN 1999 reproduced earlier in the course of this judgment relates to the exclusive appellate jurisdiction of the Court of Appeal. The jurisdiction includes appeals from the National Industrial Court expressly.  
I seek to add at this juncture also that when regard is had to Section 240 of the Constitution, all the various Courts mentioned therein have been given further expatiation in Sections 241, 242, 243, 244, 245 and 246 as they were in the same order of enlistment in Section 240 of the CFRN 1999.

Again and as rightly argued by the learned counsel for the appellant, the community interpretation of the foregoing constitutional provisions will leave no one in doubt that, with the inclusion of the National Industrial Court (NIC) as one of the Courts from which the Lower Court can hear appeals, in respect of their decisions, the Lower Court has been clothed by implication with the requisite jurisdiction to hear and determine appeals arising from the decisions of the NIC.

In other words and as rightly said earlier, all decisions of the NIC are subjects to the review of the Lower Court.

The two divergent views submitted to this Court and needing resolution are where the first four cases were decided by the Court of Appeal that the right of appeal from the decision of the NIC to the Court of Appeal is not limited to appeals on fundamental right issues; to the contrary however and in respect of the last two cases, the same Court held a contrary view that the right of appeal form decisions of NIC to the Court of Appeal is limited to fundamental right issues.

The six cases in controversy are:-

1) Local Government Service Commission, Ekiti State & Anor v. Mr. M. A. Jegede (2013) LPELR-21131.

2) Local Government Service Commission, Ekiti State & Anor v. Mr. M. K. Bamisaye (2013) LPELR-20407 decided on the 15th February, 2013.

3) Local Government Service Commission, Ekiti State & Anor v. Francis Oluyemi Olamiju (2013) LPELR-20409 decided on the 15th February, 2013.

4) Local Government Service Commission, Ekiti State & Anor v. Mr. G. O. Asubiojo (2013) LPELR-20403 decided on the 15th February, 2013.

5) Coca-Cola (Nig.) Ltd. v. Akinsanya (2013) 18 NWLR (Pt. 1386) 225 decided on the 4th July, 2013.

6) Lagos Sheraton Hotel & Towers v. H.P.S.S.S.A. (2014) 14 NWLR (Pt. 1426) 45 decided on the 15th July, 2014.

In the circumstance and following from the foregoing therefore, the position of the law and the interpretation thereof could not have been better stated as it was done by the Lower Court in the case of Local Government Service Commission, Ekiti State and Anor v. Mr. M. A. Jegede (2013) LPELR-21131 at 18-19 wherein the Lower Court stated the correct position of the law per Oredola, JCA as thus:-

"By virtue of Sections 240 and 243 of the 1999 Constitution, the Court of Appeal is well positioned to exercise appellate Jurisdiction over decisions of the National Industrial Court and there is no existing Constitutional provision which divested the *Court of Appeal of its appellate jurisdiction over decisions emanating from the National Industrial Court on any subject matter. Section 240 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) clearly and expressly vested appellate jurisdiction in the Court of Appeal. The jurisdiction so vested is with regard to certain Courts which are specified therein. Thus, the appellate jurisdiction vested in the Court of Appeal is to hear and determine appeals from decisions of subordinate Courts named therein and those that may be prescribed by statute. It is instructive and significant to note that the Courts named therein include the National Industrial Court..."*

Suffice it to say also that an appeal is a continuation of its litigation process. It is akin to the right of access to Court which is constitutionally guaranteed under Section 36 of the Constitution. In other words, the right of access to Court does not end with access to the trial Court only. The right so guaranteed is substantive and continues right through to the appeal process. The right is not dependent on whether the appeal is of right or with leave. See also the case of Local Government Service Commission, Ekiti State & Anor v. Mr. M. A. Jegede (2013) LPELR-21131 at 20wherein the Lower Court expressed the following view and said:-

"*Right of access to Courts is basic constitutional and fundamental. An appeal either as of right or with leave is a review of the trial Court's decision by an appellate Court. I am thus of the firm view point that a dispute between an employer and employee is an ordinary civil proceeding and this qualifies in a similar manner for the same consideration or treatment with regard to the exercise of appellate jurisdiction of the Court of Appeal from decisions of subordinate Courts. I am thus of the mindset, that the exercisable jurisdiction of this Court over decisions of the National Industrial Court as conferred and or vested by the Constitution cannot and should not be circumscribed or limited to questions of fundamental rights alone. It is thus clear and without prevarication whatsoever, that Subsection (4) of Section 243 of the 1999 Constitution as amended, gives the right of appeal to an aggrieved person in any civil matter arising from decisions of the National Industrial Court* *in the exercise of its civil jurisdiction."*

I seek to impress further that Section 240 of the Constitution is clear. Hence no contrary interpretation can be introduced to circumvent its true intention no matter the explanation or ingenuity. To succeed in doing will require an express statutory provision and such legislation does not seem to be in place currently.

The law is also well established that interpretation of statutes should always be given its ordinary meaning. Where however it is clear, unambiguous and to the point, any addition or subtraction will be sequel to introducing an illegal back door amendment.

The National Industrial Court is a subordinate Court to the Court of Appeal. In seeking to accord it a status over and above the other Courts of co-ordinate jurisdiction listed in Section 240 of the Constitution is in my view without basis and any backing.

The National Industrial Court was established vide Section 254A of the Constitution (Third Alteration Act), 2010 when it was elevated to a status of superior Court of record and thus elevating its status to the level of the Courts which are existing already as provided under Section 240 of the Constitution. It will be against logical reasoning therefore that a child, who is the last in the family, should seek to take over birthright of those who are elders and without any reason and explanation so expressly stated. The Biblical situation of Esau and Jacob, where the younger took over the birthright of the older is well explained and with reason. It was not borne out of imagination or from nowhere.

The Supreme Court is the Highest Court in the land, while all other Courts are subordinate to it. The Constitution cannot be interpreted to create by implication (NIC) as another Supreme Court in certain areas.

The law is firmly established that if any Court and moreso an appellate Court is to be divested of its conferred jurisdiction, it is done expressly and not impliedly. A Court of law can be clothed with power of finality only by express provision to that effect and not by implication. The substantive power vested in the Count of Appeal to hear and determine appeals, either as of right or with leave, from decisions of subordinate Courts, cannot be caged, confined, curbed or curtailed. Courts must be wary not to foreclose the right of access to Court. See Section 36 of the Constitution. No Court can therefore be a final Court by mere implication. In support of this is the provision of Section 243(4) of the Constitution which unequivocally and expressly made the Court of Appeal the final Court in respect of any civil appeal from the decision of the NIC. In the absence of express provision of an Act from the National Assembly, appeal in civil matters other than as of right on questions of fundamental right shall be to the Court of Appeal.

In a more recent case, this Court whilst addressing the role of the Lower Court as an appellate Court stated in Ochiba v. State (2011) LPELR-8245 thus:-

*"Now, it is to be reiterated that the role of an appeal Court is simple. It affirms decisions brought to it on appeal where such decisions are based on sound legal principles which have been exposed by the trial Court and or, the Court from which the appeal emanated. Such are decisions which are arrived at through painstaking steps and careful evaluation of evidence. No elements of miscarriage of justice are traceable to such decisions. By their soundness,* *such decisions are readily acceptable to any reasonable man who may be present at the Court. The Appeal Court, thus, has no reason to tamper with them." Per Muhammad, JSC at page 28.*

The NIC is a Court of co-ordinate jurisdiction with the High Courts and has been created to exercise powers exercisable also by the High Courts. See Section 254D of CFRN 1999 which provides thus:-

*"For the purposes of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.*" (Emphasis is provided).

It follows from the foregoing provision therefore, that the NIC is an equivalent of a High Court and with its inclusion, under Section 240 of the Constitution as one of the Courts from which the Lower Court can hear appeals, in respect of their decisions thereof, all decisions of the NIC are subject to the review of the Lower Court.

Constitutional right of an appeal (whether as of right or with leave) of a litigant cannot be curtailed or circumscribed except by an express provision in the Constitution. There should therefore be no reason to encourage the removal of such right as it will signal a dangerous trend.

Further still and in interpreting Section 243(2) and (3) of the Constitution, it could not have been the intention of the lawmakers to divest the Lower Court of its appellate jurisdiction over decisions emanating from the NIC civil matters. It will not be reasonable also that the lawmaker should intend giving a right in one Section of the Constitution and only to take away the same right in another Section without any express provision to that effect.

Where the Constitution is silent or there is no express provision on the procedure of appeal either as of right or with leave, recourse can be had to the Rules of Court or the statute creating that Court, (herein which is the Court of Appeal, Act 2004 or the Court of Appeal Rules, 2011).

I seek to state briefly further that the Court of Appeal Act, 2004 is an already existing Act of the National Assembly with provisions for leave to appeal before the Lower Court. See Section 24(1) of the Court of Appeal Act 2004 which is a subsidiary legislation enacted pursuant to the Constitution of the Federal Republic of Nigeria. It is trite, elementary and settled law also that a subsidiary legislation has the force of law.

The right of appeal of a party and the powers of the Lower Court to grant leave to appeal where necessary should also be protected in the interest of justice rather than impeded, curtailed on discouraged. As rightly submitted on behalf of the appellant, the Court must not hesitate to act in keeping with the accepted principles of *Ubi jus Ubi remedium.*

Courts are established to do justice between the parties that come before them. The Lower Court sitting as an appellate Court should be allowed to exercise its full powers as donated by the Constitution and statute which created it.

Following from the above, I hold the view that with the inclusion of the National Industrial Court (NIC) in Section 240 of the CFRN 1999 (as amended) as one of the Courts from which the Lower Court can hear appeals, in respect of their decisions, it is conclusive that the Lower Court has been clothed with the requisite jurisdiction to hear and determine appeals arising from the decisions of the NIC.

In other words I hold the firm view that all decisions of the NIC are subject to the review of the Lower Court.

On this note I hold the view that all the three questions posed as case stated to this Court are interwoven and closely related. Suffice it to say also that the last two are embedded in the first which determination has disposed of the entire appeal.

In summary and with the few words of mine and relying particularly on the comprehensive reasoning and conclusion arrived at in the lead judgment of my learned brother, Nweze, JSC, I also resolve all the three question posed to this Court for determination in favour of the appellant.

In the result, I hereby adopt as mine the answers as given to the questions posed to this Court in terms of the lead judgment and which same are hereby transmitted also to the Court of Appeal, Lagos Division.

**KUMAI BAYANG AKA'AHS, J.S.C.:**

The respondent, a former staff of Afribank Nigeria Plc was dismissed from his employment on 6 July, 2011 for gross misconduct. On February, 2012 he instituted an action in the National Industrial Court, Lagos in Suit No. NICN/LA/21/2012 against Mainstreet Bank Limited, the successor-in-title of Afribank Plc and claimed the following reliefs in paragraph 39 of the Statement of Facts:-

*(a) A declaration that the summary dismissal of the claimant's employment with the defendant's predecessor-in-title was wrongful, unwarranted and amounted to a nullity.*

*(b) A declaration that the defendant's predecessor-in-title was in violent breach of the claimant's right to fair hearing in the circumstance of this case.*

*(c) An order of this Honourable Court commanding the defendant as the successor-in-title of Afribank Nigeria Plc to pay the claimant the sum of N8,073,377.73 as speciol damages as follows:-*

*(i) Unpaid salaries due to the claimant from the defendant for the months of May, 2010 to July 2011 at the rate of N380,733.00 per month (15 months) N5,701,955.00*

*(ii) 13th month salary for December, 2010.=N44,596.56*

*(iii) Pension contribution unremitted at the rate of N42,419.77 per month (for 15 months).=N636,287.55*

*(iv) National Housing Fund (NHFUND No. 101026308) contributed by the claimant at the rate of N36,749.97 per month for 46 months =N1,690,498.82  
Sub* total (special damages)N8,073,377.73

(d) An order of this Honourable Court commanding the defendant to pay to the claimant the sum of N10m (Ten million naira) as general damages.

Total Damages -N18,073,377.73

(e) Interest on the judgment sum at the rate of 30% per annual with effect from the date of judgment until the entire judgment sum is fully and finally liquidated.

(f) Cost of this action.

The complaint was accompanied by the Statement of Facts, name of witness, witness statement on oath and documents to be relied on at the trial.

In reaction the defendant filed a memorandum of conditional appearance and its statement of Defence, list of witnesses, witnesses statements on oath and list of documents. Thereafter the defendant filed Notice of Preliminary objection on the grounds that:-

(a) The suit was improperly constituted for lack of proper party;

(b) The remedy and/or action sought by the Claimant/Respondent under relief c (ii) and (iv) as contained in the complaint and the averments in paragraphs 36,37,38 and 39(c)(iii)and (iv) in the Claimants/Respondent's Statement of Facts before the Honourable Court were incompetent and liable to be struck out as the causes and matters therein can only be entertained under the criminal jurisdiction of the Court and at the instance of the Attorney-General of the Federation of Nigeria.

(c) No cause of action disclosed against the Defendant/Appellant.

In the ruling delivered on 5 November, 2012 Obaseki-Osaghae J held, overruling the objection, that the Court is not deprived of jurisdiction to hear and determine the matter. Before reaching that conclusion, the learned trial Judge said:-

*"Section 254C (1)(a) and (k) of the 1999 Constitution as amended has conferred this Court with exclusive jurisdiction to entertain matters related to or connected with dispute arising from payment of pensions among others. Section 254C (5) has also conferred this Court with powers to hear and determine criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on it. The claimant is suing for non remittance of his pension contribution and National Housing Fund contributions. The Claimant has by this complaint activated the civil jurisdiction of the Court regarding the alleged non* remittance of his pension and Housing Fund contributions by the defendant. He has not activated the criminal jurisdiction of the court. It is after this court has made a finding that the defendant did not remit the claimant's contributions that its criminal jurisdiction is activated in the form of prosecution of the defendant".

Aggrieved by this ruling the defendant appealed to the Court of Appeal, Lagos, on 19 November, 2012. It was in an attempt to amend the Notice of Appeal which was stoutly opposed by the Claimant/Respondent that the appellant filed a motion requesting the Court of Appeal, Lagos to refer some questions of law to the Supreme Court on the following Constitutional questions:-

(i) Whether the Court of Appeal as an appellate court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?

(ii) Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all *decisions in civil matters emanating from the National Industrial Court of Nigeria?*

*(iii) Whether the Court of Appeal's jurisdiction to hear civil appeals from the National Industrial Court of Nigeria is limited to only questions of fundamental human rights?*

The application to amend the Notice of Appeal was granted and the appellant filed the amended Notice of Appeal on 25/3/2013 while the request made under Section 295(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) for reference to be made to the Supreme Court for the determination of the constitutional questions was also granted by the Court of Appeal, Lagos on 11 November, 2014. Section 295(3) of the Constitution provides:-

*"295 (3) Where any question as to the interpretation or application of this Constitution arises in any proceedings in the Court of Appeal and the Court is of the opinion that the question involves a substantial question of law, the Court may, and shall if any party to the proceeding so requests, refer the question to the Supreme Court which shall give its decision upon the question and give such directions to the Court of Appeal as it deems* *appropriate".*

The reference became necessary because of the conflicting interpretation of Sections 240 and 243(1)-(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which relates to the appellate jurisdiction of the Court of Appeal to hear and determine appeals emanating from the decisions of the National Industrial Court. Four cases decided on 15th February, 2013 namely:-

Local Government Service Commission, Ekiti & Anor v. Mr. M. A. Jegede (2013) LPER-21131 which was followed in Local Government Service Commission Ekiti State & Anor v. M. K. Bamisaye (2013) LPELR-20407. Local Government Service Commission Ekiti State & Anor v. Francis Oluyemi Olamiyu (2013) LPELR-20409 and Local Government Service Commission Ekiti State & Anor v. Mr. G. O. Asubiojo (2013) LPELR-20403 decided that the right of appeal from a decision of the Court of Appeal is not limited to appeals on fundamental rights issues while the decision in Lagos Sheraton Hotel & Towers v. H.P.S.S.S.A (2014) 14 NWLR (Pt. 1426) decided on 15 July, 2014 which followed Coca-Cola (Nig.) Ltd v. Akinsanya (2013) 18 NWLR (Pt. 1386) 225 decided on 4th July 2013 held that the right of appeal from decisions of the National Industrial Court to the Court of Appeal is limited to fundamental rights issues.

In the Local Government Service Commission, Ekiti Statecases; the Court of Appeal sitting in the Ado Ekiti Division held per Onyemenam, JCA:-

*"... there is nothing both in the Act or Constitution that provides that the National Industrial Court shall be a final Court in respect of any matter before it. While the law provides the appeal on questions of fundamental right shall lie as of right to the Court of Appeal, no provision forecloses a right of appeal with leave on other decisions of the National Industrial Court. Since there is no express provision both in the Constitution and the Act, that the National Industrial Court shall be a final Court in any matter before it, it follows that under no circumstances shall the National Industrial Court exercise the act of finality in a matter before it. A Court of law can only be expressly made a final Court by the statute that created it or by any other law where necessary. No Court can be a final Court by mere implication."*

Following this stand, Bada JCA in Local Government Service Commission Ekiti State & Anor v. Francis Oluyemi Olamiju (2013) LPELR 20409 at pages 12-14 stated that:-

*"The Court of Appeal by virtue of Section 240 and 243 of the 1999 Constitution is in a position to exercise appellate jurisdiction over the decision of the National Industrial Court and there is no provision in any provision of the said Constitution which divested the Court of Appeal of appellate jurisdiction over the decisions of the National Industrial Court on any matter. A careful examination of the Sections of the Constitution set out earlier in this ruling would reveal that the Court of Appeal has power to entertain appeals as of right from the National Industrial Court on questions of fundamental human rights. However, that does not presuppose that the Court of Appeal can only exercise appellate jurisdiction on question of fundamental human rights........"*

But in Coca-Cola (Nig.) Ltd v. Akinsanya (2013) 18 NWLR (Pt. 1385) 225. Loluko-Sodipe, JCA held at pages 326-327 thus:-

*"... by virtue of the provisions of the Constitution, herein before referred to, the Lower Court is the only* *superior Court of record created by the Constitution that can entertain civil and criminal jurisdictions and whose decisions in respect of its civil jurisdiction are appealable to the Court of Appeal on ground of violation of fundamental rights provisions of Chapter IV of the Constitution only".*

In his contribution in support of the interpretation given by Loluko-Sodipe, JCA regarding Section 243, Saulawa JCA stated at pages 375-377 thus:

*"As the position stands now, there is no enactment of the National Assembly conferring a right of appeal from any decision of the National Industrial Court outside fundamental rights relating to matters within its civil jurisdiction to the Court of Appeal ..."*

The divergence of opinions in the interpretation of Sections 240 and 243 of the Constitution in relation to the jurisdiction of the National Industrial Court donated by Sections 254C and 254D of the Constitution created the uncertainty. If the latter decisions in Coca-Cola (Nig.) Ltd v. Akinsanya (supra) and Lagos Sheraton and Towers v. H.P.S.S.S.A.(supra) had sought to distinguish the decisions of the Local Government Service Commission, Ekiti State cases which were delivered five months earlier, there would have been no uncertainty in the law. But because of the confusion created by the Lower Court in giving two divergent decisions, it became imperative for this Court to step in to clarify the position of the law.

In his brief of argument, Dr. Mekwunye, learned counsel for the appellant, referred to Sections 237, 239, 240, 241, 242 and 243 of the Constitution of the Federal Republic of Nigeria and Court of Appeal Act Cap. C36 Laws of the Federation of Nigeria, 2004 and submitted that the Lower Court was created as an appellant Court to specifically entertain appeals to the exclusion of other Courts from the High Courts which include the Federal High Court; National Industrial Court; High Court of the Federal Capital Territory, Abuja; High Court of a State; Sharia Court of Appeal of the Federal Capital Territory and States; Customary Court of Appeal Federal Capital Territory and States and decisions of a Court Martial or other tribunals as prescribed by an Act of the National Assembly and referred to the following cases:

Gafar v. Government, Kwara State (2007) 4 NWLR (Pt. 1024) 373; Nwaigwe v. Okere (2008) 13 NWLR (Pt. 1105) 445; SPM Ltd v. Adetunji (2009) 13 NWLR (Pt. 1159) 647. He argued that the appellate process is a very significant tool in maintaining institutional sanity, guiding Lower Court Judges and building consensus on the way the system should work. Therefore trial Judges on their part, as a result of the appellate process and conscious of the fact that their decisions may very well become the subject matter of an appeal to the Court of Appeal and Supreme Court give painstaking attention to the enunciation of legal principles to avoid the embarrassment that comes with having their decisions reversed completely for being wrong statements of the law. He enumerated the functions of the Lower Court to include amongst others:-

*(a) determining whether or not there was evidence before the trial Court upon which its decision was based;*

*(b) determining whether the trial Court accepted or rejected any evidence tendered at the trial;*

*(c) determining whether evidence called by either party to the conflict was put on either side of an imaginary scale and weighed against the other; in other words whether the trial Court* *correctly approached the assessment of the evidence before it;*

*(d) determining whether evidence properly admitted was sufficient to support the decision upon the inference drawn therefore. He submitted that in view of Section 240 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which empowers the Court of Appeal to hear appeals from all Superior Courts of Record in Nigeria, it is beyond the realm of any ambiguity that by Sections 240, 241, 242, 243, 244, 245 and 246 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) taken together, appeals are to lie from only the decisions of those Courts mentioned in Section 240 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) to the Lower Court and flowing from this, the inclusion of the National Industrial Court (NIC) as one of the Courts from which the Lower Court can hear appeals, in respect of their decisions, the Lower Court has been clothed with the requisite jurisdiction to hear and determine appeals arising from the decisions of the National Industrial Court which means all decisions of the Notional Industrial Court are subject to the* *review of the Lower Court.*

In answering question 2 learned counsel for the appellant submitted that there is no existing constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over decisions emanating from the National Industrial Court on civil matters and that the right of appeal of a litigant to appeal against the decisions of National Industrial Court is a basic fundamental and constitutional right which cannot be curtailed or limited except as provided in the Constitution. He cited the following cases in support:-

Ugwuh v. Attorney-General of East Central State (1975) 6 SC 13; Adigun v. Attorney-General Oyo State (1987) 2 NWLR (Pt. 56) 197; Ajomale v. Yaduat (No.1) (1991) 5 NWLR (Pt. 191) 257.

On the third question posed, learned counsel for the appellant enumerated the fundamental rights enshrined under Chapter IV of the Constitution which includes the right to fair hearing contained in Section 36 and submitted that if the right of appeal from the decision of National Industrial Court is limited to fundamental rights only, there could be likelihood of violation of the constitutional right of fair hearing of an appellant which will run contrary to the spirit of the Constitution and the intention of the law makers in many respects such as failure to consider all issues submitted to it for adjudication, the arbitrary admission or rejection of evidence contrary to the provisions of the Evidence Act, the National Industrial Court acting ultra vires its jurisdiction, pronouncing on issues *suo motu.* He therefore submitted that the fair hearing principle entrenched in the Constitution is so fundamental in our judicial process of the administration of justice that a breach of it like jurisdiction will vitiate or nullify the whole proceedings no matter how well conducted. He argued that since there exists no constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria and since the Court of Appeal's jurisdiction to hear appeals from the decision of the National Industrial Court is not limited to only questions of fundamental human rights, he urged this Court to declare as follow:-

*(a) That a party can appeal as of right* *to the Lower Court on matters of fundamental human right from the decisions of the National Industrial Court in civil matters.*

*(b) That parties have the constitutional right of appeal on all other civil decisions of the National Industrial Court to the Lower Court but with leave of the Lower Court.*

*(c) That when a ground of appeal over the decisions of the National Industrial Court on civil matters is on jurisdiction of National Industrial Court, the appellants have a right of appeal as of right.*

*(d) That in the determination of civil rights and duties of parties before the National Industrial Court, the National Industrial Court is bound by the Evidence Act, 2011 and has no discretion to depart from it and that admission or exclusion of evidence contrary to the provisions of the Evidence Act under S. 12(2)(b) of the National Industrial Court Act, 2006 will amount to a breach of the fair hearing right of the parties;*

*(e) That S. 12(2)(b) of National Industrial Act 2006 being inconsistent with S. 6(5)(cc) and S. 254(A) and (C) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is void and should be declared a* *nullity;*

*(f) That where the ground of appeal over the decisions of the National Industrial Court on civil matters is that the National Industrial Court did not consider all the issues put before it by the parties, that appeal is of right to the Lower Court given that the failure of a trial Court to consider all issues put before it by the parties amounts to a breach of the fair hearing right of parties.*

Mr. Eke, learned counsel for the respondent submitted that in order to deal with the first question raised in this proceeding, reference must be made to Sections 240, 241, 242, 243(2)-(4); 254C(5) and (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and argued that a combined reading of the foregoing provisions shows that the amended Constitution did not make provisions relating to exercise of right of appeal whether as of right and/or leave and the appellate jurisdiction of the Court of Appeal exercisable over decision of the National Industrial Court is circumscribed and limited to Section 243(2)-(4) of the Constitution. He argued that the right of appeal is granted by statute or the Constitution and not by statutory interpretation by the Court. He maintained that the framers of the Constitution clearly intended to deny the Court of Appeal appellate jurisdiction over the decisions of the National Industrial Court except with respect to Fundamental Rights as provided in Chapter IV of the Constitution an in criminal appeals as provided in Section 254C (6) of the Constitution. Although the proviso to Section 243(3) allows for an appeal with leave of the Court of Appeal over decisions of the National Industrial Court, the National Assembly is yet to make any law donating appellate jurisdiction to the Court of Appeal. The law as it stands today is that the decisions of the National Industrial Court in civil matters are more or less final except those decisions that touch the provision of Chapter IV of the Constitution or where the National Industrial Court exercised its criminal jurisdiction in a matter before it. He submitted by placing reliance on Babatunde v. Pan Atlantic Shipping Transport Agencies Ltd (2007) 13 NWLR (Pt. 1050) 113that the Judge’s duty is to interpret and not to make the law and in the interpretation process, and Judge should be liberal and give the natural meaning of the statute where the words are clear and unambiguous. He went further to submit that where the words of the statute are clear, they should be given their simple, grammatical and ordinary meaning rather than look further because that is what *prima facie* gives them their most reliable meaning and that the decision in the Local Government Service Commission, Ekiti State v. Francis Oluyemi Olamiju (2013) LPELR-20409 cannot be the correct position of the law as such interpretation will do violence to the express provision of the Constitution. He advocated that the correct legal position is the one contained in the decision of Coca-Cola Nigeria Ltd. v. Akinsanya supra.

On question number 2 he said that it is only the Constitution or the Act that sets up a Court that can curtail its jurisdiction. He argued that if the Constitution had wanted to vest appellate jurisdiction on the Court of Appeal with respect to all the decisions of the National Industrial Court in its civil causes and matters the Constitution would have said so in no mistaken terms and there would be no dichotomy between Section 243(2)-(4) and Section 241(1)(a)-(f)(i)-(iv) of the Constitution.

In answer to question three learned counsel for the respondent advanced the same arguments he made on questions 1 and 2.

In considering the questions posed for the consideration and direction of this Court it is necessary to take a cursory look at the development of the National Industrial Court. It was established by the Trade Disputes Decree No. 7 of 1976 which is CAP 432 of the Laws of the Federation of Nigeria, 1990.

The Act provides in Sections 19, 20 and 21 the establishment, jurisdiction and power of appeal of the Court.

The sections state:-

*"19(1) There shall be a National Industrial Court for Nigeria (in this part of this Act referred to as "the Court") which shall have such jurisdiction and powers as are conferred on it by this or any other Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.*

*(2) The members of the Court shall be –*

*(a) the President and*

*(b) four other members (in this Act referred to as "ordinary member" of the Court) all of whom shall be persons of good standing being, to the knowledge* *of the Minister, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have a competent knowledge of economics, industry or trade.*

*20(1) The Court shall, to the exclusion of any other Court, have jurisdiction –*

*(a) to make awards for the purpose of settling trade dispute and*

*(b) to determine questions as to the interpretation of*

*(i) any collective agreement,*

*(ii) any award made by arbitration tribunal or by the Court under Part 1 of this Act,*

*(iii) the terms of settlement of any trade dispute as recorded in any memorandum under Section 7 of this Act*

*(2) The Court shall determine any trade dispute referred to it not later than thirty working days from the day it begins to consider such trade dispute.*

*(3) No appeal shall lie to any other body or person from any determination of the Court.*

*(4) Nothing in Subsection (1) or (2) of this Section shall prejudice any jurisdiction of the Supreme Court of Nigeria under Section 259 or 213(2)(c) of the Constitution of the Federal Republic of Nigeria or any jurisdiction of a High Court under Section 242 of that* *Constitution.*

*21. An Appeal shall lie from the decision of the Industrial Arbitration Panel to the Court as of right, in matter of disputes conferred upon it by Section 20 of this Act."*

Section 20(1) and (2) of the Trade Disputes Act has crystallized into Section 254C (1), (2), (3) and (4) of the 1999 Constitution (as amended).

It was when the 1979 Constitution was promulgated and superior Courts of record were specifically listed leaving out the National Industrial Court of Nigeria that problems started. It became doubtful whether the National Industrial Court of Nigeria was a Court of superior record under that Constitution. This dilemma was resolved in 1992 with the promulgation of Decree 47 which made Decrees superior to the Constitution. However with the coming into effect of the 1999 Constitution the dilemma as to the status of the National Industrial Court of Nigeria once more came to the fore. The National Assembly attempted to resolve the problems faced by the National Industrial Court of Nigeria when it passed the National Industrial Court Act 2006 and raised it to a superior Court of record with exclusive jurisdiction over issues relating to labour, trade unions and industrial relations and matters incidental thereto. But in that case of N.U.E.E v. BPE (2010) 7 NWLR (Pt. 1194) 538 this Court held that the National Industrial Court of Nigeria was not one of the superior Courts of record listed in Section 6 of the Constitution and that it was inferior to the High Courts and consequently the exclusive jurisdiction given to it was unconstitutional. It was following on this decision that the Constitution was amended by the Third Alteration to the 1999 Constitution which recognized the Court as a specialized Court and provided in Section 254C the exclusive jurisdiction of the Court over all labour and employment issues.

Specialized Courts of limited and exclusive jurisdiction are seen as fulfilling a growing need for expertise in increasingly complex areas of law. The resolution of labour and employment disputes is guided by informality, simplicity, flexibility and speed. Specialized business Courts will no doubt play an important role in the economic development of the country.

It is from these perspectives that Sections 240, 241, 242, 243, 254C(1) and 254D(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) should be interpreted. The Sections provide as follows:-

*"240. Subject to the provisions of this Constitution, the Court of Appeal have jurisdiction to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court, National Industrial Court, the High of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a Court martial or other tribunal as may be prescribed by an Act of the National Assembly.*

*241- (1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases –*

*(a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;*

*(b) where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings;*

*(c) decisions in any civil or criminal proceedings on questions as to the* *interpretation or application of this Constitution;*

*(d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person;*

*(e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;*

*(f) decisions made or given by the Federal high Court or a High Court –*

*(i) where the liberty of a person or the custody of an infant is concerned,*

*(ii) where on injunction or the appointment of a receiver is granted or refused.*

*(iii) in the case of a decision determining the case of a creditor or the liability of a contributory of other officer under any enactment relating to companies in respect of misfeasance or otherwise,*

*(iv) in the case of a decree nisi in a matrimonial cause or a decisions in an Admiralty action determining liability, and*

*(v) in such other cases as may be prescribed by an Act of the National Assembly.*

*(2) Nothing in this Section shall confer any right of appeal*

*(a) from a decision of the FederalHigh Court or any High Court granting unconditional leave to defend an action;*

*(b) from an order absolute, for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded had not had appealed from that decree nisi; and*

*(c) without the leave of the Federal High Court or a High Court or of the Court of Appeal from a decision of the Federal High Court or High Court made with the consent of the parties or as to costs only.*

*242-(1) Subject to the provisions of Section 241 of this Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or that High Court or the Court of Appeal.*

*(2) The Court of Appeal may dispose of any application for leave to appeal from any decision of the Federal High Court or a High Court in respect of any civil or criminal proceedings in which an appeal has been brought to the Federal High or a High Court from any other Court after consideration of the record of the proceedings, if the Court of Appeal is of opinion that the* *interests of justice do not require an oral hearing of the application.*

*243-(1) Any right of appeal to the Court of Appeal from the decisions of Federal High Court or a High Court conferred by this Constitution shall be –*

*(a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this Constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings at the instance of such other authorities or person as may be prescribed; and*

*(b) exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.*

*(2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental* *rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.*

*(3) An appeal shall only lie from the decisions of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly;*

*Provided that where an Act or law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.*

*(4) Without prejudice to the provisions of Section 254C (5) of this Constitution, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.*

*254C-(1) 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, welfare of labour, employee, worker and matters incidental thereto or connected therewith;*

*(b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations workplace or any other enactment replacing the Acts or Laws;*

*(c) relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in further of a strike, lock-out or any industrial action and matters connected therewith or related thereto;*

*(d) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;*

*(e) relation to or connected with any dispute arising* *from national minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;*

*(f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial matters;*

*(g) relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;*

*(h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*

*(i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;*

*(j) relating to the determination of any question as to the interpretation and application of any –*

*(i) collective agreement;*

*(ii) award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;*

*(iii) award or judgment of the Court;*

*(iv) term of settlement of any trade dispute;*

*(v) trade union dispute or employment dispute as may be recorded in a memorandum of settlement;*

*(vi) trade union constitution, the constitution of an association of employers or any association* *relating to employment, labour, industrial relations or work place;*

*(vii) dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any port thereof;*

*(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pension, 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;*

*(l) relating to –*

*(i) appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;*

*(ii) appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and*

*(iii) such other jurisdiction, civil or criminal and whether to the exclusion of any other Court or not, as may be conferred upon it by an Act of the National Assembly;*

*(m) relating to or connected with the registration of collective agreements.*

*254D-(1) For* *the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.*

*(2) Notwithstanding Subsection (1) of this Section, the National Assembly may by law, make provisions conferring upon the National Industrial Court powers additional to those conferred by this Section as may appear necessary or desirable for enabling the Court to be more effective in exercising its jurisdiction".*

In answer to the questions posed on the case stated, Section 240 read along with Section 243(2) and (5) of the Constitution, appeals lie as of right from decisions of the National Industrial Court exercising criminal jurisdiction and on questions of fundamental rights as contained in Chapter IV of the Constitution as it relates to matters upon which the National Industrial Court has jurisdiction. The bone of contention lies in the interpretation of Section 243(3). Because of the wide jurisdiction granted to the Court in Section 254C(1) of the Constitution an appeal which is not related to the criminal jurisdiction of the Court or does not concern questions of fundamental rights must be by leave where the decision of the Court of Appeal will be final.

I am of the firm view that decisions of the National Industrial Court in relation to matters spelt out in Section 254C (2), (3) and (4) of the Constitution should be final since it is a specialized Court and is meant to cater for special interests and foster economic development.

In conclusion I answer the questions formulated by the Court of Appeal in the following manner:-

*1. The Court of Appeal has jurisdiction to the exclusion of any other Court in Nigeria to hear appeals from the decisions of the National Industrial Court where such decisions touch on questions of fundamental rights enshrined in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

*2. The Court of Appeal is divested of its appellate jurisdiction in the decisions of the National Industrial Court in respect of Section 254C (2)(3) and (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

*3. The Court of Appeal has jurisdiction to hear appeals from the decisions of the National* *Industrial Court in respect of other matters apart from questions of fundamental rights but the exercise of such jurisdiction must be with leave of the Court of appeal.*

**KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, J.S.C.:**

My learned brother, CHIMA CENTUS NWEZE, JSC has obliged me with a draft of the judgment just delivered. The reasoning and conclusions therein on the questions raised in the case stated for the decision of this Court are in accord with mine.

The facts that gave rise to this case stated have been amply summarized in the lead judgment. I adopt the summary in making my comments in support of the lead judgment.

The questions framed by the Court below for the decision of this Court are as follows:

*1. Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999, (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria.*

*2. Whether there exists any constitutional provision which expressly* *divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?*

*3. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?*

It is pertinent to observe at the outset that the questions in this case stated have arisen as a result of conflicting decisions of the Court of Appeal on the jurisdiction of that Court to hear and determine appeals arising from decisions of the National Industrial Court (NIC) on any matters other than questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 as amended (hereinafter referred to as the 1999 Constitution). To put it another way - whether the right of appeal from decisions of the National Industrial Court to the Court of Appeal is limited to questions of fundamental rights alone.

In four appeals, namely:

*- Local Government Service Commission, Ekiti State & Anor. v. Jegede (2013) LPELR-21131.*

*- Local Government Service* *Commission, Ekiti State & Anor. v. Bamisaye (2013) LPELR-20407.*

*- Local Government Service Commission, Ekiti State & Anor. v. Olamiju (2013) LPELR- 20409.*

*- Local Government Service Commission, Ekiti State & Anor. v. Asubiojo (2013) LPELR-20403,*

all decided on 15th February 2013, the Lower Court held that in the absence of any provision in the 1999 Constitution or the National Industrial Court Act, 2006 conferring the status of a final court on the N.I.C, and upon a combined reading of Sections 240, 243(1) - (a) and Section 254C (5) of the Constitution, all decisions of the NIC are appealable to the Court of Appeal - in all civil matters, as of right on questions of fundamental rights and with leave in respect of other matters. The Court held in the various judgments that there is no provision in the Constitution that expressly deprives the Court of Appeal of jurisdiction to entertain appeals from the NIC.

On the other hand, in the following appeals:

*- Coca-Cola Nig. Ltd. v. Akinsanya (2013) 18 NWLR (Pt. 1386) 255 decided on 4th July 2014 and*

*- Lagos Sheraton Hotel & Towers V. H.P.S.S.S.A. (2014) 14 NWLR (Pt.* 1426) decided on 15th July 2014, the Court of Appeal held that the NIC is the only superior Court of record created by the Constitution whose decisions are only appealable where questions of fundamental rights are involved (see Coca-cola Ltd. v. Akinsanya supra). The Court also held in Lagos Sheraton Hotel & Towers v. H.P.S.S.S.A. (supra) that until the National Assembly enacts a law under the proviso to Section 242(3) of the Constitution, the appellate jurisdiction of the lower Court remains Limited to matters of fundamental rights.

From the above scenario, it is abundantly clear that there are very divergent views on the interpretation of the relevant Sections of the 1999 Constitution as regards the appellate jurisdiction of the Court of Appeal in respect of decisions of the NIC, hence the statement of a case to this Court in accordance with the provisions of Order 5 Rule 1 of the Supreme Court Rules. I shall consider all three questions together.

In the interpretation of constitutional provisions, the Court must bear certain principles in mind, as stated in Agbaje v. Fashola (2008) ALL FWLR (Pt. 443) 1302 @ 1337 B-C. They are as follows:

(a) a liberal approach to the interpretation of the Constitution or statute should be adopted;

(b) the Court must employ care and take the circumstances of the people into consideration;

(c) the historical facts, which are necessary for comprehension of the subject matter may be called in aid; and

(d) the mischief which the legislation was made to deter is arrested.

The following authorities were cited: Rabiu v. Kano State (1980) 8-11 SC 130; Uwaifo v. A.G. Bendel State (1982) 4 NWLR 1; Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 1 SCNLR 296; A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041) 1 @ 80-81.

It was held by this Court in Obi v. I.N.E.C. (2007) 11 NWLR (Pt. 1046) 560 @ 664 B-D that it is an accepted principle of the interpretation of the Constitution (or indeed any statute) that the provisions should be taken as a whole, It was further held that it cannot be presumed that any clause in the Constitution is intended to be without effect.

His Lordship, Nweze, JSC in **Saraki v. F.R.N. (2016) 3 NWLR (Pt.1500) 531 @ 631-632** reiterated the aforementioned principles and held thus:

*"Above* *all, the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus where alternative constructions are equally open, it is the construction that is consistent with the smooth working of the system, which the Constitution read as a whole has set out to regulate is to be preferred. Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 239. The principle that underlies this construction technique is that the Legislature would legislate only for the purpose of bringing about an effective result*

*This approach is consistent with the "living tree" doctrine of constitutional interpretation enunciated in Edward v. Canada (1932) AC 124 which postulates that the Constitution "must be capable of growth to meet the future"*.

The general rule of interpretation of constitutional provisions is that where the words used are clear and unambiguous, they must be given a literal interpretation i.e. they must be given their ordinary and grammatical meaning. See: Egbe v. Alhaji & Ors. (1990) 1 NWLR (Pt. 128) 546; Adewumi v. A.G. Ekiti State & Ors. (2002) SCNJ 27 @ 50; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Obi v. I.N.E.C. (supra).

However, where the provisions are not clear, are ambiguous or have become controversial, in order to arrive at a reasonable construction, the Court is entitled to consider other provisions of the statute, how the law stood when the statute was passed, what the mischief was for which the old law did not provide and the remedy which the new law has provided to cure that mischief. This is known as the mischief rule. See: Ugwu v. Ararume (2007) 12 NWLR (PT. 1048) 365; Wilson v. A.G. Bendel State (1985) 1 NWLR (Pt. 4) 572; Global Excellence Communications Ltd. v. Duke (2007) 16 NWLR (PT. 1059) 22 @ 47-48 H-C; Agbaje v. Fashola (supra) @ 1338 C-E; A.G. Lagos State v. A.G. Federation (2003) 12 NWLR (Pt. 833) 1.

The effect of the various authorities referred to is that it is the duty of the Court to ascertain the intention of the legislature and to give effect to it.

Before applying the principles enunciated above to the case stated before us, it is also pertinent to state that Courts are creatures of statute and their jurisdiction is prescribed and circumscribed by the statute or Constitution that created them.

See:Obiuweubi v. C.B.N. (2011) 7 NWLR (Pt.1247) 465; Onuorah v. K.R.P.C. (2005) 6 NWLR (Pt. 921) 393. Section 237 of the 1999 Constitution, as amended, provides for the establishment of the Court of Appeal.

Section 240 of the 1999 Constitution provides for the appellate jurisdiction of the Court. It provides thus:

*S.240 "Subject to the Provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine appeals from the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a Court Martial or other tribunals as may be prescribed by an Act of the National Assembly."*

Other provisions of the Constitution relevant to this discourse are: Sections 241(1), 242(1) & (2), 243(1)(a) & (b), Sections 243(2), (3) & (4), Section 254C (5) and 254(6). Their provisions are set out below for ease of reference.

*S.241 (1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:*

*a) final decision of any civil or criminal proceedings before the Federal High Court or a High Court sitting as First instance;*

*b) where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings;*

*c) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution;*

*d) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter IV of the Constitution has been, is being or its likely to be contravened in relation to any person;*

*e) decisions in any criminal proceedings in which the Federal High Court or a High Court has imposed a sentence of death;*

*f) decisions made or given by the Federal High Court or a High Court*

*(i) where the liberty of a person or the custody of an infant is concerned,*

*(ii) where an injunction or the appointment of a receiver is granted or* *refused;*

*(iii) in the case of a decision determining the case of a creditor or the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise;*

*(iv) in the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability and*

*(v) in such other cases as may be prescribed by any law in force in Nigeria.*

*2. Nothing in this Section shall confer any right of appeal:*

*a) from a decision of the Federal High Court or any High Court granting unconditional leave to defend an action;*

*b) from an order absolute for the dissolution or nullity of marriage in favour of any party, who, having had time and opportunity to appeal from the decree nisi on which the order was founded; has not appealed from the decree nisi and*

*c) without the leave of the Federal High Court or a High Court or of the Court of Appeal, from a decision of the Federal High Court or High Court made with the consent of the parties or as to cost only.*

*S.242 (1) Subject to the provision of Section 241 of the Constitution an appeal shall lie from decisions of the* *Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or the Court of Appeal.*

*(2) The Court of Appeal may dispose of any application for leave to appeal from any decision of the Federal High Court or a High Court in respect of any civil or criminal proceedings in which an appeal has been brought to the Federal High Court or a High Court from any other Court after consideration of the record of the proceedings; if the Court of Appeal is of the opinion that the interests of justice do not require an oral hearing of the application.*

*S.243 (1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be:*

*a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter, and in the case of criminal proceedings at the instance of an accused person or subject to the provisions of this Constitution and any power conferred upon the Attorney-General of* *the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as may be prescribed;*

*b) exercised in accordance with any Act of the National Assembly and rules of Court for the time being in force regulating the power, practice and procedure of the Court of Appeal.*

*(2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.*

*(3) An appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly, provided that where an Act or Law prescribes that an appeal shall lie from the decision of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.*

*(4) Without prejudice to the provisions of Section 254C(5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from* *any civil jurisdiction of the National Industrial Court shall be final.*

*S.254(C) (5) "The National Industrial Court shall have and exercise jurisdiction and powers in criminal cases and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this Section or any other Act of the National Assembly or by any other law.*

*6. Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in Sub-Section 5 of this Section to the Court of Appeal as of right"*

The inclusion of the NIC as one of the Courts from which appeals may lie to the Court of Appeal was as a result of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act No.3 of 2010 which by Section 245A provided for the establishment of the National Industrial Court. Section 6(3) of the Constitution provides that the Courts listed in Sub-section 5(a) –

(i) shall be the only superior Courts of records in Nigeria and that save as otherwise prescribed by the National Assembly or by the House of Assembly of a State, each Court shall have all the power of a superior Court of record, The NIC is listed in Sub-paragraph (5)(cc) immediately after the Federal High Court (sub-paragraph(c)) and just before the High Court of the Federal Capital Territory, Abuja. By Section 240 of the Constitution appeals shall lie to the Court of Appeal from all the Courts listed in Section 6(5)(c) - (i).

By the Third Alteration to the Constitution, the NIC was therefore elevated from an inferior Court to a superior Court of record. Section 254D (1) of the Constitution provides that for the purpose of exercising the jurisdiction conferred on it by the Constitution, the NIC shall have all the powers of a High Court. By this provision, it is clear that the NIC is of coordinate jurisdiction with a High Court of a State or the High Court of the FCT.

Section 240 of the Constitution confers exclusive jurisdiction on the Court of Appeal to hear and determine appeals from all the Courts stated therein and from decisions of a Court martial or other tribunals as may be prescribed by an Act of the National Assembly. Thus the Section creates a right of appeal which enures to anyone dissatisfied with the decision of any of the Courts mentioned therein. The question is whether this right of appeal is fettered in any way by the provisions of the Constitution?

It is argued on behalf of the appellant that since the NIC is one of the Courts mentioned in Section 240, it follows that all decisions of the NIC are subject to review by the Lower Court. Reliance was placed on the Local Government Service Commission cases, particularly Local Government Service Commission, Ekiti State v. Jegede (supra) @ 18-19 C-A. It is also contended that an appeal is a continuation of the litigation process and the right of access to Courts is a constitutional right guaranteed under the 1999 Constitution. That the right of access to Courts continues through the appeal process. Learned counsel further submits that whether an appeal is as of right or with leave is a procedural issue which stipulates the manner in which the right of appeal may be exercised. See:Local Government Service Commission, Ekiti State v. Jegede (supra) @ 20 A per Oredola, JCA.

It is contended on behalf of the respondent on the other hand that upon a combined reading of Section 241(1) (a) - (f) (i)-(v) and 2(a)-(c); 242(1) & 243(1) of the Constitution, it is clear that the provisions as to the exercise of a right of appeal whether as of right or with leave as they relate to the Federal High Court or High Court of a State are not made applicable to decisions of the NIC. Learned counsel is of the view that the appellate jurisdiction of the Court of Appeal over decisions of the NIC is circumscribed and limited as provided in Section 243(2)-(4) of the Constitution. He argued that the framing of Section 243(2)-(4) shows the intention of the Legislature to limit and circumscribe the exercise of appellate jurisdiction by the Court of Appeal over the decisions of the NIC. He argued that the right of appeal is granted by statute or by the Constitution and cannot be conferred by statutory interpretation by the Court. He referred to: Inigbedes v. Balogun Nig. Ltd. v. Uchey (1973) 1 ALL NLR 233; Nemgia Ltd. v. Uchey (1973) 4 SC 1. He is of the view that the framers of the Constitution intended to deny the Court of Appeal appellate jurisdiction over the decisions of the NIC except with respect to fundamental rights as provided in Chapter IV of the Constitution and in criminal appeals as provided in Section 254C(6) thereof.

I think it is fair to say, without equivocation that Section 240 of the Constitution confers a right of appeal on any citizen of this country who may be dissatisfied with a decision of any of the Courts mentioned therein, which includes the NIC. It is a right constitutionally guaranteed which must not be unduly fettered. See: Obikoya v. Wema Bank Ltd. (1989) 1 SCNJ 127; Anachebe v. Ijeoma (2014) LPELR - 23181 (SC); Imegwu v. Okolocha (2013) LPELR-1986 (SC).

The Constitution which gave the right of appeal also makes provisions for its exercise. The right of appeal may be exercised as of right or with leave. Section 241(1) (a)-(f) provides for appeals as of right from the Federal High Court and State High Courts while Sections 241(2) & 242(1) provide for appeals with leave from those Courts. Section 243(1) provides how persons aggrieved by decisions of the mentioned Courts may exercise their right of appeal depending on whether they were parties to the action or interested persons. While it is trite that the marginal note to a Section does not form part of the enactment, it is helpful in determining its purpose or the mischief it is aimed at. See: Idehen v. Idehen (1991) 6 NWLR (pt.198) 382; O.S.I.E.C. v. A.C. (2010) 12 SC (Pt. IV) 108. The marginal note to Section 243(1) clearly states that the Section deals with the *"exercise of right of appeal from the Federal High Court, National Industrial Court or a High Court in civil and criminal matters."*

Similarly, Section 243(2), (3) & (4) of the Constitution introduced by Section 5 of the Third Alteration Act, deals specifically with the manner in which the right of appeal from decisions of the NIC may be exercised, Sub-section (2) is clear - that an appeal on questions of fundamental rights as contained in Chapter IV of the Constitution, as it relates to matters upon which the NIC has jurisdiction, is of right.

Sub section (3) provides:

*"243(3). An appeal shall only lie from the decisions of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly;*

*Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be* *with the leave of the Court of Appeal."*

The bone of contention is whether by these provisions any appeal on a matter outside a question of fundamental rights is foreclosed. In other words, whether any decision of the NIC in respect of any matter other than fundamental rights is final. This is where the principles and canons of interpretation earlier referred to become applicable. In order to decide the issue, the Court must consider the provisions of the Constitution holistically and not in isolation. Where there are two possible meanings, as argued by learned counsel for the appellant, the Court must adopt the meaning that is more reasonable and which would avoid absurdity. It should give a wide and liberal interpretation that would best give effect to the intention of the lawmaker, unless there is express provision to the contrary. See: Awolowo v. Shagari (1979) 6-9 SC 37; A.G. Lagos State v. A.G. Federation (supra) @ 117-118 H-B; Aqua v. Ondo State Sports Council (1985) 4 NWLR (Pt. 91) 622; Ugwu v. Ararume (2007) 12 NWLR (Pt. 1048) 365.

In Nokes v. Doncaster Amalgamated Colleries Ltd. (1940) AC 1014 @ 1022 the Court held:

*"... if* *the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result."*

See also: A.D.H. Ltd. v. Amalgamated Trustees Ltd. (2007) ALL FWLR (Pt. 392) 1781 @ 1824-1825 G-A.

Thus, in the circumstances of this case, the adoption of the mischief rule would best enable the Court to resolve the issue. The mischief sought to be addressed by the Third Alteration Act was the exclusivity of the jurisdiction of the NIC, and its status as a superior Court of record.

I agree with my learned brother, Nweze, JSC that having been granted the status of a superior Court of record and having regard to the hierarchy of Courts as it exists in our constitutional arrangement, the National Industrial Court must fall in line with other Courts of coordinate jurisdiction. There is nothing in Sections 240, 241 or 242 of the Constitution that suggests that decisions of any of the Courts referred to in Section 240 shall be final. Section 240 has clearly given a right of appeal from decisions of all the Courts subordinate to the Court of Appeal and this includes the NIC. If that right is to be curtailed in any way the Constitution must expressly say so. I have observed earlier that Section 243 of the Constitution deals, not with the right of appeal already granted in Section 240, but with the manner in which the right is to be exercised. The Court of Appeal Act, which is an Act of the National Assembly, also makes provisions for the manner in which the right of appeal to the Court of Appeal may be exercised by stipulating prescribed periods for its exercise. See Section 24(2), (3) & (4) of the Court of Appeal Act, 2004 and the Court of Appeal Rules, 2011.

It would be absurd in my view to interpret Section 243(3) of the Constitution as restricting the right of appeal from decisions of the NIC to questions of fundamental rights alone. To construe the provision to mean that the decisions of the Court in any other civil proceeding are unappealable would place the Court at par with the Supreme Court, which is the only Court in the land whose decisions cannot be appealed against, irrespective of subject matter (Section 235 of the Constitution). That cannot be the intention of the Legislature. By Section 240 of the Constitution, it is clearly the intention to the framers that decisions of Courts subordinate to the Court of Appeal shall be subject to scrutiny and review. An appeal is a continuation of the litigation process which does not terminate at the trial stage. Furthermore, the Legislature could not have intended to give a right of appeal in one Section of the Constitution and take it away in another Section without an express provision to that effect. I am further fortified in this view by the provision of Section 243(4) which provides:

*"243(4). Without prejudice to the provisions of Section 254C(5) of this Constitution, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final."*

The use of the word "any" in the above provision is a clear indication that appeals from the decisions of the NIC are not limited to questions of fundamental rights alone. I am also of the view that the proviso to Section 243(3) also points to the intention of the Legislature that appeals other than those on questions of fundamental rights shall be with leave. I agree with my learned brother, Nweze, JSC that upon a holistic interpretation of Sections 240 & 243(1) & (4) of the 1999 Constitution, as amended, all decisions of the NIC are appealable to the Court of Appeal: as of right in criminal matters (Section 254C (5) & (6) and fundamental rights cases) and with leave of the Lower Court in all other civil matters where the NIC has exercised its jurisdiction.

In the final analysis, I answer the questions raised in the case stated as follows:

1. Whether the Court of Appeal as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National Industrial Court of Nigeria?   
*- Answered in the affirmative.*

2. Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?   
*- Answered in the negative.*

3. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?   
*- Answered in the negative.*

The answers are to be transmitted to the Court of Appeal, Lagos Division for its guidance in the determination of the appeal before it.

**EJEMBI EKO, J.S.C.:**

My Lords, I am in agreement with the opinion expressed in this matter by my learned brother, CHIMA CENTUS NWEZE, JSC. Find below my further comment and opinion on three questions referred to us on this case stated.

On 24th September, 2014, the Mainstream Bank Ltd, described as the successor-in-title of AfriBank Nigeria plc, vide its motion filed the same day requested the Court of Appeal (hereinafter called "the Lower Court") to refer some questions of law upon case stated to this Court. The Lower Court on 11th November, 2014 acceded to the request, which was not opposed by the counsel to the respondent herein who was also the respondent at the Lower Court. Three questions were raised by the Lower Court to this Court for determination on the case stated, pursuant to Section 295 of the 1999 Constitution, as amended.

Three issues for the determination by this Court are as follows:-

"a. Whether the Court of Appeal, as an appellate Court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals arising from the decisions of the National industrial Court of Nigeria?

b. Whether there exists any Constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on Civil Matters emanating from the National Industrial Court of Nigeria?

c. Whether the Court of Appeal's jurisdiction to hear civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?"

Briefly the history of this case is thus: The Respondent was formerly a staff of AfriBank Nigeria Plc. The employment was determined, upon his dismissal, on 6th July 2011 for gross misconduct. He claimed that AfriBank, his employer, owed him arrears of his salaries and allowances for the period April 2010 and July, 2011, and other benefits including contributory pension funds and contributions under the National Housing Fund Contributions Scheme.

In the meantime, AfriBank Nigeria Plc had gone under into distress. The Mainstream Bank Ltd had taken over the interest of AfriBank, and had become the successor-in-title to some rights and obligations of AfriBank Nigeria Plc. On this basis the Respondent approached the National Industrial Court and commenced an action to compel Mainstream Bank Ltd, as the successor-in-title of AfriBank Nigeria Plc, to pay over to him all the debts owed to him by AfriBank Nigeria Plc. These are contract of employment related debts.

Upon service on the Mainstream Bank Ltd as the defendant in the suit, it raised a preliminary objection to the competence of the suit against it for being improperly constituted. The National Industrial Court overruled the objection. In its ruling, the National Industrial Court, *suo motu* discountenanced the further affidavit of the Mainstream Bank (hereinafter called the "Applicant").

Dissatisfied, the Applicant filed its notice of appeal to the Court of Appeal. The Notice of appeal was filed on 19th November, 2012. On 23rd March, 2013 the Applicant filed a motion seeking leave to amend the notice of appeal. The application was fiercely opposed by the Respondent on the ground that the Court of Appeal lacked jurisdiction to entertain the appeal, in the first place, and consequently the application to amend the allegedly incompetent notice of appeal.

On 13th January, 2014, the Court of Appeal ordered the parties, through their respective counsel, to file written addresses, and address it on the issue of jurisdiction. On 22nd September, 2014, the Court of Appeal, reconvened, took arguments on the preliminary objection and reserved ruling on it. On 24th September, 2014, two days thereafter, while the reserved ruling was yet to be delivered, the Applicant applied to the Court of Appeal, upon a motion on notice, requesting reference to the Supreme Court for a case to be stated on same constitutional and or substantial points of law that had arisen at the Court of Appeal. On the 11th November, 2014 the Court of Appeal acceded to this request for case stated, and raised the three issues, aforementioned, for the determination by this Court.  
  
On 8th December, 2015, this Court, after granting an order substituting Skye Bank Plc for Mainstream Bank Ltd as the Applicant, *suo motu* raised the question whether this Court has jurisdiction to entertain the three issues posed for the determination by this Court upon the case stated by the Court of Appeal. The three questions, it should be noted, are not issues for determination arising from any appeal or grounds of appeal from the Court of Appeal to this Court. The reference to this Court, upon case stated by the Court of Appeal, is pursuant to the special interpretational jurisdiction vested in this Court by Section 295 (3) of the Constitution which provides:-

295. (3) Where any question as to the interpretation or application of this Constitution arises in any proceedings in the Court of Appeal and the Court is of the opinion that the question involves a substantial question of law, the Court may, and shall if any party to the proceedings so requests, refer question to the Supreme Court which shall give its decision upon the question and give such directions to the Court of Appeal as it deems appropriate.

The situation in this case is not akin to that in ABUBAKAR v. A-G FEDERATION (2007) 6 NWLR (pt. 1031) 626 where the matter referred to the Court of Appeal on a case stated by the High Court was relayed or re-transmitted to the Supreme Court verbatim by the Court of Appeal for determination. Thus a situation was foisted on the Supreme Court, by design, to answer directly questions on the issues for determination raised by the High Court to the Court of Appeal. In addressing the situation this Court stated:-

"The question now is - can the Court of Appeal validly transfer the matter or suit properly instituted before it to this Court for hearing or determination? The answer is clearly in the negative. All the (3) questions cannot be said to have arisen from the proceedings. The questions are the very subject matter of the suit. The questions should therefore not be answered by this Court. See for example GAMIOBA v. ESEZI II (1961) ALL NLR 584; (1961) 2 SCNLR 237; BAMAIYI v. A-G FEDERATION (2000) 6 NWLR (Pt. 661) 421; IJEGWU v. FEDERAL REPUBLIC OF NIGERIA (2001) 13 NWLR (Pt. 729) 103**.** For the Constitutional question to "arise in the course of proceedings", it must not have formed part of the question for determination in the original suit as in this case. It must have arisen "ex tempore" or "ex impriviso". (See BAMAIYI V. A-G FEDERATION (supra). Section 295 (3) of the Constitution does not confer upon the Court of Appeal power to transfer a cause to the Supreme Court for hearing or determination".

The point is well taken. Section 295 (3) of the Constitution does not vest or confer on the Court of Appeal excuse or *alibi* to abdicate its adjudicatory role to Supreme Court nor does it make the Court of Appeal a conveyor belt between the High Court, or any Court of co-ordinate jurisdiction with the High Court, and the Supreme Court.

In the instant case, the questions referred to this Court for determination are not the same questions submitted to the Court of Appeal. The substantiality of the questions posed to this Court for determination, historically, lies in the fact that the Court of Appeal had, previous to the instant suit, rendered two inconsistent views, each powerful in its own right. For instance, in LGSC, EKITI STATE v. BAMISAYE (2019) LPELR 20401 (CA) the Court of Appeal, per Onyemenam, JCA, had held that no provisions of the Constitution forecloses a right of appeal with leave on decisions of the National Industrial Court other than decisions on any question of fundamental right in Chapter IV of the Constitution. The learned jurist went on-

"There is no express provision of the Constitution or any Act to the effect that National Industrial Court decisions are final, except if the decisions affect fundamental rights. A Court of law can only expressly be made a final Court by the statute that created it or by another statute, where necessary. No Court can be a final Court by mere implication."

In FEDERAL MINISTRY OF HEALTH v. THE TRADE UNION MEMBERS OF THE JOINT HEALTH SECTORS UNIONS AND ORS (2014) LPELR - 2354 (CA), Tur, JCA, agreeing with the views of ONYEMENAM JCA in LGSC, EKITI STATE VS. BAMISAYE (supra), stated that where a question of the fundamental rights of a party arises in any proceedings before the National Industrial Court, in such a circumstance -

"An appeal shall lie from the National Industrial Court as of right to the Court of Appeal. But in all other situations or circumstances the aggrieved party has to obtain leave to appeal to the Court of Appeal.... Indeed, that was the situation in the case of COCA-COLA NIG. LTD v. AKINSANYA (supra) heavily relied upon by the learned counsel for the respondent. Section 243 (3) of the Constitution - 1999 Act No. 3 of 2010 is not intended to preclude a party aggrieved by the decision of the National Industrial Court from applying for leave to appeal to the Court of Appeal."

The contrary view by the Court of Appeal on whether a party aggrieved by the decision of the National industrial Court has any right of appeal under Section 243 of the 1999 Constitution is as expressed in the LAGOS SHERATON HOTEL & TOWERS v. H.P.S.S.A. (2014) 14 NWLR (Pt. 1426) 45. In that case the full panel of the Court of Appeal held that unless and until the National Assembly had enacted a law or Act donating further appellate jurisdiction to the Court of Appeal over decisions of the National Industrial Court, the Court of Appeal has no jurisdiction to inquire into the decisions of the National Industrial Court, except as already provided in the Constitution. The Court of Appeal in LASISI LAWAL v. OBAFEMI AWOLOWO UNIVERSITY, ILE-IFE (2016) LPELR - 40290 (CA) followed the earlier decision of its full Court in LAGOS SHERATON HOTEL & TOWERS v. HPSSA (supra), Owoade, JCA, in the LASISI LAWAL case (supra) had endorsed the view expressed in the LAGOS SHERATON HOTEL & TOWERS v. HPSSA (supra) thus as –

"There is no such Act of the National Assembly and until there is an enactment to that effect or a subsequent amendment of Section 243 of the Constitution, the National Industrial Court remains the final and ultimate Court in all causes or matters upon which it has jurisdiction except in decisions relating to questions of fundamental rights connected with Chapter IV of the Constitution or in Criminal cases."

I had earlier stated herein that the questions or issues before the Court of Appeal from the National Industrial Court and the three questions submitted by the Court of Appeal to this Court for determination are not the same. I had also earlier reproduced the three questions formulated to this Court by the Court of Appeal for determination.

The five issues submitted to the Court of Appeal for the determination of the applicant’s appeal at the Court of Appeal are as follows:-

"1. Whether the Lower Court was right to have discountenanced the appellant’s further affidavit of 1st August, 2012 in support of its preliminary objection of 10th July, 2012 on the ground that Order 11 Rules 1(3), (4) & (5) of the National Industrial Court Rules 2007 (as amended) has no provision for further affidavit which amounts to a denial of the appellant’s Constitutional right to fair hearing? (Distilled from Ground 3.1)

II. Whether the Lower Court's refusal AND failure to consider the issue and/or argument canvassed by the appellant's counsel in his reply on points of law of 1st of August, 2012 on the ground that the appellant did not assume and/or acquire all the assets and liabilities of AfriBank Nigeria PLC did not amount to a denial of the appellant’s constitutional right to fair hearing? (Distilled from Ground 3.2)

III. Whether the Lower Court was right to have relied on the appellant’s statement of defence to determine the issue of jurisdiction? (Distilled from ground 3.3)

IV. Whether the Lower Court was right to have assumed jurisdiction over the parties in the matter? (Distilled from Ground 3.4)

V. Whether the Lower Court was right to have refused to strike out the respondent’s claim on unremitted pension and National Housing Fund contributions for being incompetent which amounts to the breach of the appellants constitutional right to be heard only by a competent Court in the determination of its civil rights and duties? (Distilled from Ground 3.5)"

I have, my Lords, demonstrated that the Court of Appeal in referring the three questions of law to this Court for determination upon case stated is not doing so in abdication of its primary role or function. Clearly, the situation here is distinguishable from what obtained in ABUBAKAR v. A - G. FEDERATION (supra).

The next question is: Whether the question of law submitted to this Court by the Court of appeal arose *ex tempore* or *ex imprivis*o at the Court of Appeal and whether they raise substantial points of law? The question arose in the course of the proceedings in the preliminary objection raising the same issues on which the Court of Appeal had in its previous decisions rendered two contradictory opinions. And I ask: Do the three questions raise substantial points of law to warrant our answering them? My answer is in affirmative.

A substantial question of law, from the dicta of this Court in several decisions, is one on which arguments in favour of more than one interpretation might reasonably be adduced and which must be decided in the cause or matter, and not one which may prove unnecessary to decide. Thirdly, the parties in the cause, if it is a civil case, are not mere busy bodies. The plaintiff in the case must have locus standi. See AFRICAN NEWPAPER v. F.R.N (1985) 1 SC 127; (1985) NWLR (PT. 6) 137; GAMIOBA & ORS v. ESEZI II, THE ONODJE OF OKPE & ORS (1961) ALL NLR 584 AT 588; BARRS & ORS v. BETHEL & ORS (1981) 3 WLR 874. Karibi-Whyte, JSC in BAMAIYI v. A-G, FEDERATION (2001) 7 SC (Pt. II) 62; (2001) 12 NWLR (Pt. 727) 468was emphatic that a question of law is substantial if it admits of arguments in favour of more than one reasonable interpretation.

The three questions referred to this Court for determination are, as earlier pointed out, already vexed issues at the Court of Appeal, and two contradictory views have already been expressed by the Law Lords at the Court of Appeal. They are, in my firm view, substantial points of law; and I shall proceed to answer them. They are centred on or spin round Sections 240 and 243 (2) & (3) of the 1999 Constitution, as amended. The provisions are herein below reproduced.

"240 Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court of Law in Nigeria, to hear and determine appeals from the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja. Sharia Court of Appeal of a State, Customary Court of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a Court Martial or other Tribunals as may be prescribed by an Act of the National Assembly.

243 (2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An appeal shall only lie from the decision of the National industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly.  
Provided that where an Act or law prescribes that on appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.

I now come to the issues formulated for the determination in the case stated.

On the import or purpose of Section 240 of the Constitution, as amended, both Dr. Mekwunye for the Applicant and Mr. Eke for the Respondent do not to seem dispute the fact that the National Industrial Court is one of the Courts specifically mentioned in Section 240 that appeals from their decisions lie to the Court of Appeal. As rightly submitted by Mr. Eke, on authority of NEMGIA LTD v. UCHEY (1973) 4 SC 1 and INIGBEDEB v. BALOGUN (1973) ALL NLR 233, the right of appeal is granted or vested only by the Constitution or Statute, and not by mere statutory interpretation by the Courts.

Without much ado, it is indubitable that Section 240 of the Constitution expressly vests jurisdiction in the Court to entertain appeals from the National Industrial Court. It states clearly and without any ambiguity that "subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other Court in Nigeria, to hear and determine appeals from - the National Industrial Court -". A substantive right of appeal to the Court of Appeal has, therefore been created in favour of those persons who may be aggrieved with the decisions of the National Industrial Court.

The words "subject to" which are the prefix to the provisions of Section 240 of the Constitution are words of subordination. They subordinate the provisions of Section 240 to the other provisions of the Constitution on the right of appeal. See NDIC v. OKEM ENT. LTD (2004) 18 NSCQR 42; (2004) 10 NWLR (pt. 880) 107; OKE v. OKE (1974) 1 ALL NLR (Pt. 1) 443 at 450. That makes Section 36 (2) (b) in Chapter IV of the Constitution very relevant and material as it abhors any enactment that contains "provisions making the determination of the administering authority final and conclusive". The Constitution does not favour the first instance decision of any judicial body final and conclusive. The right to appeal against the decision of a first instance Court or tribunal is a basic Constitutional right. An appeal is a resort to a superior Court to review the decision of an inferior Court and find out whether on the facts placed before it, and applying the relevant and applicable law the inferior Court came to a right or wrong decision. See A-G, OYO STATE AND ANOR v. FAIRLAKES HOTEL LTD (1988) 5 NWLR (pt.92) 1 AT 56; AMADI v. NWOSU (1992) 5 NWLR (Pt. 241) 273; PONNAMMA v. ARUMAGUN (1905) A. C. 390.

The dispute or controversy seems not to be about the substantive jurisdiction and or right of appeal created and vested by Section 240 of the Constitution, as amended. Rather, it is about how the right of appeal created by Section 240 of the Constitution shall be exercised. There is a distinction between the procedural law prescribing the steps for having a right or duty judicially enforced, and the law that defines the specific rights or duties themselves. My Lord, Ogunbiyi, JCA (as he then was) sitting on the same Panel with C.C. Nweze, JCA (as he then was) and Onyemenam, JCA, made this point, relying on Black's Law Dictionary 8th ed. in **DAME PAULINE TALLEN & ANOR v. DAVID JONAH JANG & ORS. (2011) LPELR-9761 (CA)**. While the right in law is a correlative to duty; the procedure of having the right judicially enforced is another thing. The two are completely two different things.

Section 240 of the Constitution, as amended, unequivocally vests appellate jurisdiction on the Court of Appeal to review and revise the decisions of the National Industrial Court. Appellate Jurisdiction, according to Black's Law Dictionary 9th ed., means the power of the Court to review and revise the decisions of the Lower Court. Coterminous with this appellate jurisdiction of the Court of Appeal "to hear and determine appeals from the National Industrial Court" is the right of a party aggrieved by or from the decision of the National Industrial Court to approach the Court of Appeal to have his grievance heard and determined by the Court of appeal. In reaching or coming to this conclusion I bear in mind that the State Social Order, as declared by Section 17(2)(e) of the same Constitution includes "easy accessibility" to the Courts of law for ventilation of grievances, which in this case has been guaranteed by Section 240 of the Constitution.

I do not think that Mr. Eze is right in his submission that unless and until the National Assembly makes Law or Act donating further appellate jurisdictions to the Court of Appeal over decisions of the National Industrial Court, the Court of Appeal has no jurisdiction to inquire into the decisions of the National Industrial Court except as already provided in the Constitution". I underlined the phrases "further appellate jurisdictions to the Court of Appeal" and "except as already provided in the Constitution" to demonstrate the fallacy of the argument and the difficulty the learned counsel is having to break out of the circus show. I dare say that the "further jurisdiction" refers to the appellate jurisdiction already vested in the Court of Appeal to hear and determine appeals from the decisions of the National Industrial Court, which jurisdiction has already thereby been "provided in the Constitution".

The right of appeal and the procedure of exercising the right of appeal in order to gain access to the appellate Court are both statutory. The fair hearing guarantee under Section 36 of the Constitution is one of such procedures for achieving the right of appeal.

Subsections (2) & (3) of Section 243 of the Constitution, as amended, clumsy and inelegant as they are in draftsmanship, seem to prescribe the procedure of exercising the right of appeal or the accessing the appellate jurisdiction of the Court of Appeal over decisions of the National Industrial Court. Section 243 (2) merely prescribes the procedure for exercising the right of appeal to the Court of Appeal from the decision of the National Industrial Court "on questions of fundamental rights as contained in Chapter IV of "the Constitution. The appeal shall be as of right in that case or circumstance.

Subsection (3) of 243 of the Constitution is where the problem of interpretation has arisen at the Court of Appeal. Without going in full to discuss various canons of interpretation, I think there are useful guides to be found in some decided cases by Nigerian Courts on which I can find solution to the problems of inelegant drafting of Section 243 (3) of the Constitution.

The side notes to Section 243 of the Constitution state: "Exercise of right of appeal from the Federal, National industrial Court or a High Court in Civil or Criminal matters". From the side notes, Section 243 is not intended to create a right of appeal. Rather it is about how the right of appeal is to be exercised

InIDEHEN v. IDEHEN (1991) 7 SCNJ 196; (1991) 6 NWLR (pt.198) 382, Karibi-Whyte, JSC says that although the marginal note in a Section is not part of the provisions of the Section, it is helpful, even if occasionally misleading, to construction as a sign post to what the Section sets out to provide. The Court of Appeal in F.R.N. v. IBORI & ORS. (2014) LPELR- 23214 (CA) per Saulawa, JCA, relying on some English decisions, has stated that although marginal or explanatory notes are generally not considered as aids to interpretation of statutes, it is nonetheless permissible for the Court to find the general purpose and the mischief at which the provision of the statute is aimed with the explanatory or marginal notes in mind. See also UWAIFO v. A-G. BENDEL STATE(1982) NSCC 221 at 242. The consensus stance of this Court seems to be that a marginal note to Section of a statute is a good guide to knowing the intention of the law makers, the purpose of the Section and the mischief the provisions are aimed at. See for instance OSUN STATE INDEPENDENT ELECTORAL COMMISSION v. ACTION CONGRESS & ORS. (2010) 19 NWLR 273; (2010) LPELR - 2818 SC, where Coomassie, JSC, used the explanatory and marginal notes to hold that the procedure for an election includes the timing and notice to be given for the conduct of the election.

While Subsection (2) of Section 243 specifically provides that an appeal from the National Industrial Court lies as of right to the Court of Appeal on questions of fundamental rights; Subsection (3) thereof read together with the proviso only create a situation where the appeal to the Court of Appeal is not as of right but with leave of the Court of Appeal. Subsection (3) to Section 243 does not abrogate the appellate jurisdiction of the Court of Appeal to hear and determine appeals from the decision of the National Industrial Court. It will be incongruous to construe Subsection (3) to mean that unless and until an Act of the National Assembly is enacted to vest in the Court of Appeal jurisdiction to hear and determine appeals from the National Industrial Court on issues or matters other than fundamental rights question the Court of Appeal cannot exercise the jurisdiction vested on it by Section 240 of the Constitution to hear and determine appeals from the National Industrial Court. I think it is reasonable to construe Subsection (3) of Section 243 to mean additional jurisdiction and the procedure for the exercise of the right of appeal already donated by Section 240.

I cannot envisage a situation where the National Assembly, pursuant to Section 243 (3) of the Constitution, would enact an Act depriving the Court of Appeal appellate jurisdiction to hear and determine appeals from the National Industrial Court unless such appeal is only on questions of fundamental rights. Such an Act would be in conflict with Section 240 and therefore void to the extent of its inconsistency in view of Section 1 of the Constitution. Such absurdity is not intended by the Constitution.

Pursuant to Section 243 (3) the National Assembly can only enact, as it did (for appeals from the High Court) under Section 24 of the Court of Appeal Act, 2004, the procedure for exercising the right of appeal from the decision of the National Industrial Court to the Court of Appeal. The Proviso to Subsection (3) of Section 243 makes it clear the National Assembly can only prescribe that an appeal to the Court of Appeal from the decision of the National Industrial Court "shall be with leave of the Court of Appeal". That clearly brings out the intention of the framers of the Constitution that civil appeals from the National Industrial Court on any matter other than fundamental rights questions "shall be with leave of the Court of Appeal". Section 243(3) of the Constitution cannot be construed to mean that a litigant aggrieved by the decision of the National Industrial Court has no right of appeal to the Court of Appeal unless and until the National Assembly enacts a Law or an Act vesting that right.

Reading Sections 240 and 243(2) of the Constitution together means that a party aggrieved by the decision of the National Industrial Court on any question of fundamental right can appeal as of right to the Court of Appeal. And reading Sections 240 and 243(3) of the Constitution together would mean that the right of appeal is not as of right, but upon leave of the Court of Appeal. When the provisions of Section 240, 243(3) 36(1) & (2) (b) and 17 (2)(e) of the Constitution are read together I cannot fathom the construction being suggested that unless and until the National Assembly enacts a Law or Act vesting a right of appeal, a litigant aggrieved by the decision of the National industrial Court has no right of appeal to the Court of Appeal except on only question of fundamental rights.

Section 36(2)(b) of the Constitution would make it unconstitutional if any Act of the National Assembly makes the decision of the National Industrial Court, as a Court of first instance, final and conclusive, except only on any question of fundamental rights under Chapter iv of the Constitution. Any provision of a statute that makes "the determination of the administering authority final and conclusive" violates Section 36(2)(b) of the Constitution. See BOARD OF EDUCATION v. RICE (1911) AC 179 (HL) at page 182; LOCAL GOVT. BOARD v. ARLIDGE (1915) AC 120 (HL) 132; HART v. MILITARY GOVERNOR RIVERS STATE & Ors (1976) 11 SC (Reprint) 109 SC, I do not think the Constitution intends that the first instance decision of the National Industrial Court shall be final and conclusive. The promulgation of Section 240 of the Constitution makes the point more poignant, particularly when it is read together with Section 36(2)(b) of the same Constitution.

My firm view on Sections 240; 243(2) & (3) and 36(2) (b) of the Constitution is that –

(i) From the decision of the National Industrial Court there is a right of appeal to the Court of Appeal;

(ii) Appeal is of right to the Court of Appeal from any decision of the National Industrial Court on any question of fundamental right under Chapter iv of the Constitution;

(iii) Appeal, is not as of right, but upon leave of the Court of Appeal, from any decision of the National Industrial Court other than an appeal on any fundamental rights question.

My Lords, my answers to the three questions referred to this Court upon case stated by the Court of Appeal are that on –

"a. Whether the Court of Appeal, or an appellate Court created by the Constitution of the Federal Republic of Nigeria, as amended, has the jurisdiction to the exclusion of any other Court of law in Nigeria to hear and determine all appeals from the decisions of the National Courts of Nigeria?  
My answer is YES or in affirmative

b. Whether there exists any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the National Industrial Court of Nigeria?  
My answer is NO, or there is NONE.

c. Whether the Court of Appeal's jurisdiction to hear and determine civil appeals from the decision of the National Industrial Court of Nigeria is limited to only questions of fundamental rights?

My answer is NO, or there is NONE.

Having answered all the three questions referred to this Court upon a case stated by the Court of Appeal, it is hereby ordered that the questions and answers thereto be forthwith returned to the Court of Appeal.