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Navigating Jurisdictional Turbulence on Maritime and Civil Aviation Labour Claims in Nigeria: *Federal High Court* Versus *National Industrial Court* Controversies*

Hon. Justice Oluwakayode Ojo Arowosegbe[±]

Abstract- Controversies have trailed the frontiers of the civil jurisdictions of the *Federal High Court* [*FHC*] and *National Industrial Court* [*NIC*] since the bifurcation of the *FHC's* civil jurisdiction in favour of the *NIC* over labour matters by S. 254C of the *Constitution*, such that, both courts have been asserting rival jurisdictions on the same subject matter, with the consequence that, the purposes of conferring exclusive civil jurisdictions on both – specialization and efficiency – are being thwarted. While some of these controversies have been settled with the acceptance of the appellate decisions on them, the controversies regarding the frontiers of their mutually exclusive civil jurisdictions on admiralty/aviation labour causes have, however, remained intractable. With the recent *Court of Appeal's* decision in *Bains' case* [2021], confirming the *NIC's* exclusive civil jurisdiction on merchant shipping/civil aviation labour matters, it was thought, the contest had been rested, but it has instead, become more ferocious, as legal writers have joined the fray, majority of who vehemently disagreed with the *Court of Appeal's* decision. With these vociferous dissentions, the tone is set for the not-unusual appellate courts' conflicting decisions on such recondite issues as this, soonest: ensuing in grave uncertainty in the law. This portends grave implications for the transnational merchant shipping/ commercial flights and the national economy, considering the centrality of merchant shipping/commercial aviation to commerce and the national economy. There is clearly a disconnect. This article attempts a rigorous interrogation of the problem and, provides a panacea, for greater efficiency. As a doctrinal research, it relies on primary and secondary materials.

Keywords: admiralty/maritime/merchant shipping, civil aviation/commercial aviation, labour/employment disputes, jurisdiction, federal high court, and national industrial court.

I. Introduction

Ever since the bifurcation of the jurisdiction of *Federal High Court* [***FHC***] in 2011[1] in favour of the *National Industrial Court* [***NIC***] in civil causes, conflicting decisions have been rolling out from both courts on maritime labour claims. They have been asserting rival jurisdictions on maritime labour causes. So grave is the recondite nature of the problem that, even the *FHC* has been singing discordant tunes within itself! Some of the *FHC's* cognate decisions are: *Moe & Ors v. MV Phuc Hai Sun*[2] [***Moe's case***], *Assurance Forenningen Skuld (GJENSIDIG) v. MT Clover Pride & Anor*[3] [Skuld's Case] and, *Amarjeet Singh Bains & 6 Ors v. The Vessel MT Sam Purpose & Anor*[4] [***Bains' case***]. In the first [*Moe's case*], the *FHC* assumed exclusive jurisdiction while in the second [*Skuld's case*], the *FHC* contradicted itself, by conceding exclusive jurisdiction to the *NIC*, holding that, the *NIC* had exclusive civil jurisdiction over maritime labour claims. It also voided S. 2(3)(r) of the *Admiralty Jurisdiction Act* [***AJA***], which listed seafarers' wages as part of the admiralty jurisdiction of the *FHC*. It held further that, S. 251(1)(g) of the *Constitution*, which granted the *FHC's* admiralty jurisdiction, was subject to S. 254C-(1)(a)&(k) of the *Constitution*.

Surprisingly, in the third, which is *Bains' case*, the *FHC* made a U-turn from its penultimate decision, holding again that, the *NIC* lacked jurisdiction over maritime labour causes, while it had exclusive jurisdiction. Whereas, in *Stephen v. Seateam Offshore Limited*[5] [***Stephen's case***], the only one that was filed directly in the *NIC*, the *NIC* held that the *FHC* lacked jurisdiction and assumed exclusive jurisdiction for exactly the same reasons the *FHC* divested itself of jurisdiction in favour of the *NIC* in *Skuld's case*. Such is the unintended consequence of the bifurcation of the jurisdiction of the *FHC* in favour of the *NIC* that, it has threatened the very idea of specialisation for greater efficiency that informed the bifurcation. Such is the situation that litigants have been finding it extremely difficult to decide the court to approach for maritime labour disputes. The negative signal to the international merchant shipping community and, the negative consequence on the national economy, are axiomatic.

Good enough, *Bains' case* went on appeal and, the *Court of Appeal*, in its well-considered decision[6],

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[1]* The views expressed are entirely the author's personal views, except otherwise stated.
The Third Alteration Act, 2010.

[2] Unreported Suit No. FHC/L/CS/592/11 [Lagos Division, June 20, 2014].
[3] Unreported Suit No. FHC/L/CS/1807/2017 [Lagos Division, March 28, 2018].
[4] Unreported Suit No. FHC/L/CS/1365/2017 [Lagos Division, May 22, 2020].
[5] NICN/PHC/124/2017 [Port Harcourt Division, Feb. 02, 2020] at https://www.nicnadr.gov.ng/nicnweb/displayr.php?id=4452 [Accessed Feb 7, 2024].
[6] *The Vessel MT Sam Purpose & Anor (Ex MT. Tapti) v. Amarjeet Singh Bains* (2021) LPELR-56460 (CA).

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based on literal interpretation of the regnant constitutional provisions, overruled the *FHC* and held that, the *NIC* is the Court seised of exclusive civil jurisdiction in admiralty labour claims. One would have expected that, this would put paid to the lingering controversies, the *Court of Appeal* being the highest court[7] on labour cases in Nigeria and, considering the erudition of the decision itself. But this was not to be; as immediately thereafter, all hell broke loose, with torrents of severe criticisms[8] trailing the *Court of Appeal's* decision, from both respected academics and elite practising lawyers; with the singular consensus that, the decision was wrong and that, the *NIC* lacked jurisdiction, while the *FHC* had exclusive jurisdiction. They were all of the opinion that, the *Court of Appeal* ought not to have used literal interpretation and that, even at that; it got it wrong. Only one of the countless articles agreed that, the *NIC* has exclusive jurisdiction[9], while another one, which was actually published before the *Court of Appeal's* decision under review, grudgingly conceded the *FHC* and the *NIC* shared concurrent jurisdiction[10]. All, with the lone exception cited, recommended that, the *Court of Appeal's* decision needed to be reconsidered and, that, there was the urgent need for constitutional alteration, to remove the source of the controversies. And surprisingly, the consensus was that, ceding jurisdiction to the *NIC* over maritime civil causes would have severe negative consequences for merchant shipping and the national economy.

With this unremitting opposition, it is evident that, the issue is recondite, particularly so, seeing that, the *FHC* surprisingly could not even agree within itself, by giving self-contradictory decisions on the issue. And the lone supporter of the *NIC's* exclusive jurisdiction in this behalf did not throw new light on the issue. The erudite author only attempted to strengthen the arguments already covered by the *Court of Appeal*. So, the need for shedding an entirely new light on the issue remains poignant, otherwise, the controversy lingers on to the detriment of international commerce on merchant shipping and the national economy. In the second place, it would appear that, the misgivings expressed on the negative consequences of ceding exclusive civil jurisdiction to the *NIC* over maritime labour causes, were ill-conceived thus, demanding thorough examination to situate why, in the modern configuration of labour jurisprudence, it is the *NIC* that actually has exclusive civil jurisdiction.

With the trenchant criticisms from the law elites, it needs no soothsaying that, the last is yet to be heard on the issue, even though, the *Court of Appeal* is the highest Court on labour matters in Nigeria, giving the fact that, it is not unusual for the *Court of Appeal* to give conflicting decisions on complex issues like this[11]. It is evident that, very soon, the *Court of Appeal* would be re-approached on this same issue, in similar cases that are bound to come up soon and, urged to reverse its decision, and this would most probably happen, given the recondite nature of the issue and the fact that, different panels might simultaneously sit on these appeals, coupled with the fact that, these panels are most likely to be manned by justices without expertise in labour law, as the *Constitution* did not recognise the specialised nature of labour law at the *Court of Appeal* level, unlike its special recognition of Customary and Islamic laws, in the appointment of justices to the *Court of Appeal* for which, experts in both fields must be appointed, to partake in panels in the dispensation of justice in the two fields. So, there is no special panel manned by labour law specialist justices for labour cases at the *Court of Appeal*.

It might happen too that, lawyers on the opposing sides and judges at the trial level and justices at the *Court of Appeal* might not even be aware of this *Court of Appeal's* precedent when adjudicating similar issues in the near future, and consequently unwittingly bypass *stare decisis* by giving contrary decisions at both levels, considering the common occurrence of such, even at the *Supreme Court*[12] level, on recondite issues.

[7] *Skye Bank Plc v. Iwu* [2017] LPELR-42595 (SC) 39-42, F-A.

[8] Unini Chioma, "*Unpaid Wages Of Crew Members: Case Review Of The Vessel Mt Sam Purpose (Ex Mt. Tapti) & Anor V. Amarjeet Singh Bains & 6 Ors*" [Apr 8, 2021] at www.thenigerialawyer.com [accessed Oct 01, 2022]. FAMSVILLE Solicitors, "*Jurisdiction of the National Industrial Court in maritime labour claims: A Review of the court of appeal decision in MT SAM PURPOSE V AMARJEET SINGH BAINS*" at www.famsvillelaw.com [accessed Oct 01, 2022]. Temple Damiari, "*Unpaid Wages of Crew Members: A Review of Mt Sam Purpose (Ex Mt. Tapti) v Amarjeet Singh Bains*", *Gravitas Review of Business Law*, Vol. 12, No. 2 (June 2021) at www.gravitasreview.com.ng [accessed Oct 01, 2022]. E.I. Richard, "*The Jurisdictional Dispute Over Seafarers Wages: Revising The Decision Of The Court Of Appeal In The Vessel Sam Purpose (Ex Mt. Tapti) & Anor V. Amarjeet Singh Bains & Ors"* [Posted May 4, 2021] at www.papers.ssrn.com [accessed Oct 01, 2022]. Dayo Adu *et al*, "*Nigeria: Jurisdiction Of The National Industrial Court In Maritime Labour Claims: A Review Of The Court Of Appeal Decision In Mt Sam purpose V Amarjeet Singh Bains*" [June 11, 2021] at www.mondaq.com [[accessed Oct 01, 2022]. These are just representative examples of the galore articles.

[9] ADVOCAAT Law Practice, "*Who has jurisdiction over Maritime Labour Claims: FHC or NIC?*" [Oct 7, 2021] at www.legal.businessday.ng [accessed 01/10/2022].

[10] A.A. Olawoyin, "*Enforcement of Maritime Claims: The Unintended Consequences of Constitutional Change on Admiralty Jurisdiction in Nigeria*", (2021) Vol. 12, No. 1, (March 2021), *The Gravitas Review of Business & Property Law*, p. 10 at https://www.gravitasreview.com.ng [accessed Oct 26, 23]. It is also in *ResearchGate* [April 2021] at https://www.researchgate.net [accessed Oct 26, 23].

[11] *Skye Bank* v. Iwu op. cit. It is a good example of a case detailing the conflicting decisions of the *Court of Appeal* on the issue of right of appeal against the decisions of the *NIC*.

[12] *Onuaguluchi v. Institute of Management and Technology & Ors* at https://www.nicnadr.gov.ng/nicnweb/displayr.php?=7362 [Accessed Feb 6, 2024]. This case gave a good account of the recurrent conflicting decisions of both the *Court of Appeal* and the *Supreme Court* on the applicability of the *Public Officers (Protection) Act* to contracts for about six decades unremitted till now!

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And giving conflicting decisions would definitely be to the detriment of merchant shipping, with ultimate negative effects on the national economy, if the potential legal imbroglios were not quickly nipped in the bud, by proactive enlightenment that clears the fogs. It is therefore expedient for all to see clearly that; truly it is the *NIC* that has exclusive civil jurisdiction on maritime labour claims and the positive implications for labour relations and the national economy. In a nutshell, apart from situating, by purposeful interpretation, the *NIC's* exclusive civil jurisdiction on the subject matter in view, it is also necessary to disabuse the stakeholders' minds of the misgivings expressed on the grant of exclusive civil jurisdiction to the *NIC* on this issue, by showing the ironic nature of these misgivings. These are the purposes of this article. These are particularly pertinent because, jurisdictional rigmaroles are the major cause of unreasonable tardiness in adjudications in Nigeria[13]. And with the virulence of the galore articles against the *Court of Appeal's* decision on point, the issue naturally demands a very comprehensive and rigorous treatment; otherwise, the controversy might linger for long.

The precursor of this more comprehensive research was originally posted on the *All NICN Judges*, the WhatsApp page of the *NIC's* judges, June 2, 2020, as a critical review of *Bains' case*, which was posted on the same WhatsApp page the previous day. And that was shortly after it was delivered May 22, 2020. The *Court of Appeal's* decision on it was delivered March 5, 2021, about nine months later. This initial write up for the in-house consumption of the *NIC's* judges, canvassed essentially the same points that are now reviewed and improved in this article, as the reasons why the *NIC* has exclusive civil jurisdiction over maritime/aviation labour claims. It generated a lively discussion amongst the *NIC's* judges, and I had thought, I would firm it up for publication in a learned journal. However, before that could be done, the *Court of Appeal* delivered its landmark decision, affirming the conclusion reached in the domestic write up.

I thought that was the end but, following the unexpected trenchant and unremitting criticisms that were railed against the *Court of Appeal's* decision, and reading the *Court of Appeal's* erudite decision, the research found that, the *Court of Appeal* was unfortunately, oblivious of all the specialised points, some impinging constitutional and statutory provisions canvassed in the domestic write up, as the reasons why the *NIC* has exclusive civil jurisdiction over maritime/aviation labour causes, as it only dealt with a literal construction of some of the directly cognate provisions of the immediate pertinent statutes and the *Constitution*, while unwittingly leaving out some vital relevant statutory provisions thus, the unremitting criticisms. And incidentally, these special/technical points and the coordinate constitutional and statutory provisions, which the *Court of Appeal* and all the writers on the issue are oblivious of, are the very points that can convincingly remove all shades of uncertainties on the fact that, it is the *NIC* that truly has exclusive civil jurisdiction over all maritime/civil aviation labour claims and, irreproachably settle the matter. They are the eye-opener and the key to unlocking the enigma of the science of tracing the frontiers of the jurisdictions of the *FHC* and the *NIC*. This is because, labour law is a highly specialised and complex subject and, incidentally, the *Court of Appeal*, is a general jurisdiction court. And here we are, faced with the trenchant and unceasing criticisms of the *Court of Appeal's* decision on the issue, which criticisms also did not consider these highly technical points, raising the spectres of future departure from the extant *Court of Appeal's* correct decision and inimical conflicting decisions therefrom, thus, accentuating the dire need for the publication of this research.

The research also found that, all the critical reviews consulted on the *Court of Appeal's* decision in issue, equally did not address these highly technical points and the impinging constitutional and statutory provisions unearthed by this research. And this too, is largely because the writers, academic and practitioners, were not labour law experts, as the practice of law in Nigeria is, by law, non-specialised general practice and generally practised as such. It therefore becomes apparent that the issue of which court has exclusive civil jurisdiction over maritime/aviation labour disputes, has not been rested by this laudable but yet vilified *Court of Appeal's* decision and that, for it to be resolved beyond resuscitation, these highly technical points and the cognate constitutional and statutory provisions, which have not been addressed, must be brought to the fore of the discussions on the issue, to rest them once and for all. Thus, the need to publish this research for the consumption of the stakeholders has never been more germane than now, at the very crossroads of the landmark *Court of Appeal's* decision.

From the controversies trailing the frontiers of the exclusive civil jurisdictions of the *FHC* and the *NIC*, it would appear that, the philosophy of efficient, fair and speedy dispensation of justice that informed the creation of courts with exclusive jurisdiction in Nigeria is being thwarted and, paradoxically producing the exact opposite of the noble intendments. This article interrogates the missing links and, provides the connecting rods, so that, both the *FHC* and the *NIC* together with the stakeholders, could easily appreciate the exact frontiers of their jurisdictions for greater efficiency and speedy dispensation of justice in their distinct areas of jurisdictions. The article finds that, the trenchant and unrelenting criticisms of the *Court of Appeal's* decision proceeded on wrong footings and, in

[13] *Obiwuebi v. CBN* (2011) LPELR-2185 (SC), which took 23 years to settle issue of jurisdiction alone.

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ignorance of the goldmines in the salient provisions of the *Third Alteration Act*, other salient constitutional and statutory provisions, and the collateral *ILO* instruments and other international labour law instruments that combined to give the *NIC* exclusive civil jurisdiction over maritime/civil aviation labour claims. The dire need for this article becomes ever more poignant because of the negative economic implications of unwittingly ceding civil jurisdiction to the *FHC* in maritime/civil aviation labour claims. The research being doctrinal; relies on both primary and secondary materials. The primary sources are: the cognate conflicting decisions of the two courts, the recent *Court of Appeal's* decision in *Bains' case* being primus, the *Constitution*, the *Labour Act* [*LA*], the *National Industrial Court Act* [*NICA*], the *Civil Aviation Act* [*CAA*], the *Merchant Shipping Act* [*MSA*] and, the *Admiralty Jurisdiction Act* [*AJA*]. The secondary sources are: local and foreign cognate decisions, journal articles, *ILO* instruments and other international labour instruments.

It however needs be observed at the outset that, in all the articles read, none touched on the issue of civil aviation labour claims, which was part of the decision that went on appeal, though in *obita*. All were fixated on the contests for labour admiralty jurisdiction between the *FHC* and the *NIC*. Thus, the scope of this research covers both maritime and civil aviation labour claims, in order to clarify the existing controversies on maritime labour claims and, to nip in the bud, likely future controversies on aviation labour claims too. It needs be noted at this juncture that, this treatise uses the words: "admiralty", "maritime" and "merchant shipping" interchangeably. In like manner, the words "worker" and "employee" are used interchangeably and also, the phrases "civil aviation" "commercial aviation" and "commercial flights" too. The article moves to the real business. The paper is structured into bold-type capitalised headings for the major divisions and, bold title-case in alphabetical order, for the subheadings.

II. Critical Analysis of the Conflicting Positions

a) *Excerpts From the Trial and Appellate Decisions on Bains' Case*

Logically, *Bains' case*, the only decision in this area of the law that went on appeal and in which the *Court of Appeal* overturned the *FHC*, and which ignited the present controversies, must be the focal point of this discourse. The brief facts of the case were that: the plaintiff at the *FHC*, and respondent at the *Court of Appeal*, sought several reliefs bordering on wages and sundry costs. He was a seafarer. He accompanied his writ with ex-parte application to arrest the ship in rem, as pre-judgment lien and, it was granted. The defendant, now appellant, later filed objection that, the *FHC* lacked jurisdiction over the case while the *NIC* had exclusive jurisdiction, by virtue of S. 254C-(1)(a)&(k) of the *Constitution*. In finding that the *NIC* lacked jurisdiction, His Lordship, Faji J. of the *FHC* held at page 18 that:

> "The Constitution must be construed as a whole. Section 254C(1)(b) having incorporated the Labour Act, that Act must be read along with the Constitution in construing it. The Labour Act has defined the extent of the jurisdiction of the Court over workers by excluding crewmen i.e. those under the Merchant Shipping Act and workers in the aviation industry.
> …Counsel's reference to Maritime Convention Act and section 66 of the Merchant Shipping Act is thus not entirely off-point.
> The subject matter of this claim is thus clearly outside the jurisdiction of the National Industrial Court. I am therefore unable to follow the decision of Idris J. (as he then was) in the CLOVER PRIDE's case.
> I therefore hold that this suit is properly situate in the Federal High Court."

Note that *Clover Pride's case* in the quotation is the same as *Skuld's case* [supra]. The above is the kernel of the reasoning by which the *FHC* dismissed the objection and assumed exclusive jurisdiction. Being dissatisfied with the decision, the defendant/appellant appealed. In overturning the *FHC's* decision, the *Court of Appeal* reasoned:

> "Therefore, the interpretation to be given to the above provision of the constitution is literal approach, as the draftsman did not mince words. Section 254C-(1) of the Constitution is clear and unambiguous. It is the intention of the draftsman to confer jurisdiction on the National Industrial Court, to the exclusion of all other courts with jurisdiction pursuant to Sections 251, 257 and 272 over the subject matter of the items listed thereunder…Simply put that when the word 'notwithstanding' is used in a clause of any statute, it is to be construed as a term of exclusion…
> There is no doubt that a confusion arises as to jurisdiction because Section 1 of the Admiralty Jurisdiction Act states that the admiralty jurisdiction of the Federal High Court includes jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of the Act…
> Section 254C-(1)(a) and (k) of the 1999 Constitution (as amended) gave the National Industrial Court exclusive jurisdiction over employee wages and other labour related matters. It is also clear from the said provisions that an action founded on claims for unpaid wages falls outside the Federal High Court's jurisdictional competence…
> Section 2(3)(r) of the Admiralty Jurisdiction Act…which differed from Section 254C-(1) of the Constitution, which conferred the same jurisdiction on the National Industrial Court is void to the extent of its inconsistency. Even though Section 251 of the Constitution provides for the admiralty jurisdiction of the Federal High Court, the express use of the word 'notwithstanding' in Section 254(C) clearly made the said Section 251 subject to the latter.[14]"

[14] *The Vessel MT Sam Purpose & Anor (Ex MT. Tapti) v. Amarjeet Singh Bains* op. cit., 21-30, C-D. That is, the appeal on *Bains' case*.

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The above is the crux of the reasoning by which the *Court of Appeal* overruled the *FHC* and held that, the *NIC* is the Court with exclusive civil jurisdiction over maritime/civil aviation labour claims. The reasoning is evidently lucid enough and irreproachable in law. Surprisingly, torrential criticisms immediately followed this clearly faultless decision and have remained unremitting. In criticizing the *Court of Appeal's* decision in *Bains' case* as quoted above, the erudite legal writers[15], cutting across the shades of academic and practitioners, gave reasons, which were not dissimilar to the reasons offered by the *FHC* to assume jurisdiction and, which were all dismissed in the appeal. They only tried to strengthen them. In all the numerous articles read, the arguments were virtually the same and, they cited virtually the same legal principles, statutory provisions and similar authorities. One could safely take the article of Unini Chioma[16], as the amalgam of the essential arguments contained in all the others, being very elaborate and, touching on virtually all the statutes mentioned in the others and, above all, containing virtually the same arguments, but with more elaborations. The only slightly differing article is that of erudite Olawoyin [supra], which only differed in that, it was of the opinion that, both the *FHC* and the *NIC* shared concurrent jurisdictions on disputes on seafarers' wages, and for that reason, has some peculiar arguments, which shall be specifically attended to. Other than this, one can summarise their composite arguments as follows:

1. SS. 251(1)(g) and 254C-(1)(b) of the *Constitution* construed with S. 91(1)(f) of the *Labour Act* [***LA***] excludes the *NIC* from admiralty jurisdiction of which maritime labour disputes are part; 2. Both SS. 251(1)(g) and 254C-(1)(a)&(k) of the *Constitution* are couched in affirmative exclusivity and, have equal forces, so, S. 254C-(1)(a)&(k) of the *Constitution* cannot take away the admiralty jurisdiction of the *FHC*; 3. S. 254C-(1) of the *Constitution* did not mention admiralty, crew wages and seamen, so, did not affect the admiralty jurisdiction of the *FHC*; 4. The *FHC*, like the *NIC*, equally has jurisdiction to apply international maritime conventions by virtue of the *AJA*&*MSA*; 5. Seafarers' best way of securing the reliefs in admiralty claims, is by instituting actions in rem to arrest the ships as pre-judgment liens, which is part of admiralty jurisdiction exclusively granted to the *FHC*; 6. The action in rem takes the ship as the employer, as distinct from the actual human/corporate employer, so, the *NIC* would not be able to order arrest of ships, since it lacks admiralty jurisdiction; 7. Since the *NIC* would not be able to grant admiralty order to arrest ships, the seafarers would be disadvantaged by being limited only to actions in *personam* thus, defeating the most potent pre-judgment way of securing the reliefs claimed, which would in turn negatively afflict merchant shipping in Nigeria and the national economy; 8. The *NIC Rules* have no provisions for admiralty practice and procedure; 9. The *LA*, *AJA*, *MSA*, *CAA* and the *Federal High Court Act* [***FHCA***] became part of the *Constitution* by incorporation, and so, S. 2(3)(r) of the *AJA* must be construed as part of S. 251(1)(g) of the *Constitution*, to deny *NIC* jurisdiction; and 10. The *Court of Appeal* ought not to have applied the literal rule of interpretation.

The above digests constitute the kernels of the arguments against the *Court of Appeal's* decision in *Bains' case* under consideration. The validity of these arguments is to be critically examined now. Constitutional questions, being the *fons et origo* of the validity or otherwise of all the arguments, shall be examined first. But before then, it needs be stated, as a general preface to the interpretation of amendments to existing statutes or brand new statutes, which is the major work in this research that, the words of a new statute or amending statute are construed without reference at all, to the old amended statute or the previous position of the law before the brand new statute and, given their natural meanings and effects[17]. This is to disabuse the minds of the courts from prejudice ingrained by the previous statutes or positions of law. It is therefore wrong to construe a new or amending statute in the shadows of the old amended statute or the common law or previous case law by trying to compare the two. The paper proceeds on the foregoing platform to the real business.

b) Proper Construction of SS. 251(1)(g) & 254C-(1)(a)-(b)&(k) of the Constitution with SS. 91(1)(f) of the LA and 2(3)(r) of the AJA

The basic premise is that, with the clear antagonistic exclusivity of the civil jurisdictions of both the *FHC* and the *NIC*, there is no way both courts can share concurrent jurisdictions on any civil cause. So, with the utmost respect, it is wrong to posit that, the *FHC* and the *NIC* share concurrent jurisdiction on any civil cause, as opined by erudite Olawoyin. Wherever *NIC* has civil jurisdiction, the *FHC* Court must lack civil jurisdiction, since both have mutually exclusive civil jurisdictions. If it is recollected that the *FHC* used to exercise exclusive civil jurisdiction over all labour/ employment matters involving the *FGN* and its agencies and that; this jurisdiction has been excised from it in favour of the *NIC* by S. 254C-(1)&(2) of the *Constitution*, it will be clear that the *Third Alteration Act* actually sets out to completely usurp all things labour/employment howsoever styled from the *FHC* completely. Therefrom, it will be difficult to fathom how it could be logically argued that this intendment to excise completely the

[15] Unini Chioma and 4 other different writers listed in Note 8 op cit.
[16] Ibid.
[17] *Sahara Energy Resources Limited v. Oyebola* (2020) LPELR-51806 (CA) 43-56, B.

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FHC's labour/employment jurisdiction, does not extend to maritime or merchant shipping labour/employment causes.

The foregoing is what the *Supreme Court* had in mind when it said the *Third Alteration Act* recognised the *NIC* as a specialised court and gave it exclusive jurisdiction over all labour and employment matters[18]. And the basic rule of interpretation is the literal rule[19], which the *Court of Appeal* correctly applied in the interpretation of the cognate provisions in issue. All other rules of interpretation are resorted to, only where there is ambiguity or absurdity. Giving a composite construction to the whole of the provisions of the *Constitution* but with particular reference to SS. 251(1)(g) and 254C-(1)(a)-(b)&(k), one cannot escape the conclusion that, the *Constitution* clearly demonstrated the grant of exclusive civil jurisdiction to the *NIC* in all labour/employment matters and matters incidental, howsoever called or styled. This conclusion is inescapable, apart from the introduction of S. 254C-(1) with the subjugating word or non-obstante clause "notwithstanding", which the *Court of Appeal* discussed with approval in *Bains' case*; the language of S. 254C-(1)(a) cures any iota of doubt, by further saying any issue:

> "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*…"

The words "any" and "including" employed therein; are words of inexhaustive expansion and, incorporation of all *ejusdem generic*[20] items. They reinforced the earlier use of the subjugating word "notwithstanding" at the beginning of S. 254C-(1) of the *Constitution* and, go further to show that, all civil labour claims arising from any type of workplace, involving any type of worker or any type of labour, howsoever called or styled, is vested in the *NIC* exclusively. The introductory phraseology of S. 254C-(1) removed any form of doubt on the exclusivity of the civil jurisdiction of the *NIC* over any and, all types of labour claims, including wages when, it clearly says that, the civil jurisdiction of the *NIC* shall be exercised "to the exclusion of any other court…" S. 254C-(1)(a) is the nucleus of the subject matter jurisdictional scope of the *NIC* in civil causes. All other subsequent provisions of S. 254C-(1)-(2) of the *Constitution* are mere elaborations of this self-sufficient nucleus. The other items are inserted to obviate this type of controversy. Without the further elaboration, the *NIC* would still have had exclusive civil jurisdiction on all types of labour and employment matters with the self-sufficient provisions of S. 254C-(1)(a) alone. That must be borne in mind in discussing the latitude of the civil jurisdiction of the *NIC*, which the pro-*FHC* writers did not pay attention to. The arguments have been vociferously made that, S. 254C-(1)(b) of the *Constitution*, as kick-started by His Lordship Faji J. in *Bains' case*, which lists out some labour related statutes, ousts the civil jurisdiction of the *NIC* on admiralty/civil aviation labour claims. These arguments are, with profound respect, misconceived.

First, the law is that, nothing, which ordinarily is an incident of the jurisdiction of a superior court, should be whimsically yanked off, unless there is clear yanking-off of such in the statute granting the jurisdiction[21]. S. 254C-(1)(b) of the *Constitution* lists out some statutes, which it says, the *NIC* has exclusive civil jurisdiction to apply. Like hinted earlier, without the provisions of S. 254C-(1)(b) of the *Constitution*, with the exclusive civil jurisdiction of the *NIC* under S. 254C-(1)(a), over all categories of labour relations, workers and workplaces, the *NIC* undoubtedly would still have retained the exclusive civil jurisdiction to apply any labour statutes because, the principal work of a court is to interpret and apply relevant statutes to the proved facts of intra-jurisdictional cases, without any further assurance[22]. S. 254C-(1)(b) is therefore; an explanatory surplusage to S. 254C-(1)(a) of the *Constitution*, meant to avoid controversy of this nature, as to the width of the *NIC's* jurisdiction, and ironically, it is being used as the anchor of the present controversies!

In the second place, a close study of the provisions of S. 254C-(1)(b) shows that, the interpretation attached to it by the erudite authors and, the *FHC* in the *Bains' case*, is with humility, not correct. The internal aid testimony favours the opposite view championed by this research, as evidenced in the phrase "or *any other* Act or Law relating to labour, employment, industrial relations, workplace…" in the self-same S. 254C-(1)(b), which the erudite dissenting authors unwittingly glossed over, the simple meaning of which is, the *NIC* has all-encompassing jurisdiction to interpret and apply any other labour statute, outside the listed ones. It means the list is not exhaustive. Erudite Olowoyin got this right in his equally erudite article supra. It is by this rule that, the *NIC* applies the cognate provisions of the *Armed Forces Act* [***AFA***] relating to the employment of military officers including naval, air-force and army, even though, not directly listed in S. 251C-(1)(b) of the *Constitution*. There is no denying the fact that, SS. 1(1)(b)-(c) & 2(3)(c)-(d)&(r) of the *AJA* contained provisions relating to employment rights of maritime/aviation workers. It does not matter that these employment relationships are onboard ships and aircrafts. It is in exactly the same manner by which the

[18] *Skye Bank v. Iwu* op. cit at 146, C.
[19] Ibid, 118, B-C.
[20] *Oyeniran & Ors v. Egbetola & Anor* (1997) LPELR-2876 (SC) 19-20, F-A.
[21] *Anakwenze v. Aneke & Ors* (1985) LPELR-481 (SC) 15, A-C.
[22] *APC v. INEC & Ors* (2014) LPELR-24036 (SC) 65, E.

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NIC applies the cognate provisions of the *AFA* that, it has the exclusive civil jurisdiction also, to apply the cognate provisions of the *AJA* and *MSA* in relations to merchant shipping/civil aviation labour claims.

Apropos of which, it is erroneous to argue that, because, S. 91(1)(f) of the *LA* excludes seafarers and civil aviation workers in its definition of ***worker*** that, it inferentially excludes them from the confines of the exclusive civil jurisdiction of the *NIC*. What the exclusion in the *LA* means, is that, other relevant statutes, like those of the *AJA*, *MSA* and *CAA* are the applicable statutes, in line with the mandate of the *NIC* under S. 254C-(1)(b) of the *Constitution* to apply "*…any other Act or Law…"* other than those therein specifically listed, once they relate to labour/employment/industrial relations/workplace. Therefore, it is the *NIC* that now has the exclusive civil jurisdiction to apply the relevant labour-related provisions of the *AJA*[23], *MSA*[24] and *CAA*[25] to the categories of workers therein named. The *Court of Appeal* was therefore irrefutably correct in its conclusion that, S. 91(1)(f) of the *LA*, or rather, the whole of the *LA*, was inapplicable to seafarers and civil aviation workers, but was, with respect, not correct that, S. 254C-(1)(b) was also irrelevant. It is relevant because, it directly gives the *NIC* the civil jurisdiction to apply any other cognate statutes than those directly listed therein, which makes the cognate provisions of the *MSA*, *AJA* and *CAA* *intra-vires* the exclusive civil jurisdiction of the *NIC*. Though, like the research observed earlier, the position would have remained the same without S. 254C-(1)(b) because, it is a court's duty to apply laws [statutory or common law or case law] to the proved and relevant evidence before it without promptings. It is therefore paradoxical that, S. 254C-(1)(b), meant to avoid ambiguity, is being cited, as not only birthing ambiguity but, as actually removing the exclusive civil jurisdiction that S. 254C-(1)(a) expressly granted the *NIC*!

It needs be pointed out too, that, S. 91 of the *LA*, not only excludes seafarers and civil aviation workers in its definition of ***worker***[26], but also excludes military officers, administrative and technical officers in the public service, in fact, all senior civil and public servants[27]. The *LA* is actually meant to cater for low cadre workers like artisans, manual labourers, agriculture hands, and menial workers. The vast majority of the other workers are left for other statutes and, the *NIC* still continues to exercise exclusive civil jurisdiction over them and the cognate statutes regulating their employments. The *NIC* would not have continued to have jurisdiction over these other classes of workers, excluded in the definition of ***worker*** in the *LA*, were the posture being touted by the pro-*FHC* jurists, correct. Were it that, the *AJA, MSA* and *CAA* did not provide for these other categories of workers, they would still have come under the exclusive civil banner of the *NIC*, by virtue of S. 254C-(1)(a) and, would have been covered under the common law, if no other statute provided for them. It means their mere exclusion by S. 91(1)(f) of the *LA* did not take them out of the exclusive civil jurisdiction of the *NIC* but only outside the application of the *LA*.

Unini Chioma has argued that, because, SS. 251(1)(g) and 254C-(1)(a)&(k) of the *Constitution* are both couched in affirmative but mutually exclusive languages, in intendment, S. 251(1)(g) of the *Constitution* that grants the *FHC* admiralty jurisdiction to the exclusion of all other courts, cannot therefore be subjugated by S. 254C-(1)(a)&(k). Apart from the earlier answer that, S. 254C-(1) of the *Constitution* is surfeited with non-obstante words depicting absolute exclusivity of the civil jurisdiction of the *NIC*, the erudite author failed to pay heed to some salient rules of construction, otherwise, he would not have fallen into the error. S. 254C-(1) of the *Constitution*, in conferring exclusive civil jurisdiction on the *NIC*, started, by first listing out the jurisdictional sections of all the superior courts of first instance in Nigeria – SS. 251, 257 & 272 – and clearly and specifically subjugated them to the exclusive civil jurisdiction of the *NIC*. That is indubitable. The same thing is not applicable to S. 251 of the *Constitution*, which grants the *FHC* exclusive civil jurisdiction against all the superior courts of first instance, existing at the time it was inserted into the *Constitution* and, the *NIC* was not in existence then. S. 251 obviously did not list out S. 254C, which grants *NIC* exclusive civil jurisdiction, as one of the jurisdictional provisions of the *Constitution* it subjugated. The *exclusio unius rule*[28] applies and shows that, S. 251 of the *Constitution* is not meant to operate concurrently with S. 254C, which is couched with non-obstante clauses and is also, latter.

With utmost respect, it would therefore be preposterous to argue that, S. 251(1)(g), which grants exclusive civil admiralty jurisdiction to the *FHC*, would continue to grapple jurisdiction with S.254C-(1)(a)&(k), latter provisions of the *Constitution*, introduced by the *Third Alteration Act*, which directly subjugated the jurisdiction of the *FHC* to that of the *NIC* on all civil labour claims. S. 251(1)(g) of the *Constitution* could not have and, did not anticipate S. 254C-(1)(a)&(k) of the *Constitution* and, could therefore, not have the effect that would subjugate the provisions of S. 254C-(1), which are later and latter and, actually directly and

[23] S. 2(3)(r) of the *AJA* relates to maritime labour claims and SS. 1(1)(a), (c)-(d), (g) and 4(5)(3) of the *AJA* relate to civil aviation labour claims.

[24] See generally Part IX-XI, which runs from S.91-208 of the *MSA*, which are comprehensive provisions on employment, safety measures, conditions of service and discipline of workers, onboard merchant ships.

[25] S. 67 of the *CAA* relates to prohibition of industrial actions and designation of essential services of workers in the civil aviation industry.

[26] S. 91(1) (f) of the *LA* at "worker".

[27] S. 91(1)(b) of the *LA* at "worker".

[28] *Jegede & Anor v. INEC & Ors* (2021) LPELR-55481 (SC) 74, A-E.

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clearly subjugated S. 251(1)(g) in very clear words, except the proponents of this idea are arguing that, S. 254C-(1) of the *Constitution* did not actually effect any amendment on S. 251, which it specifically named and directly subjugated. The basic rule of priority of two affirmative but contrary provisions of the same statute is that, the latter provision supersedes[29]. This is even more so, where the latter provision expressly amends the prior. There is no doubt that the *Third Alteration Act*, which introduced S. 254C-(1)(a)&(k) of the *Constitution* amended the pertinent provisions of the *Constitution*. Therefore, from whatever angle one looks at it, the provisions of S. 254C-(1)(a)&(k) of the *Constitution* supersede those of S. 251(1)(g) of the *Constitution*, since both cannot enjoy exclusive and opposite accommodations on the issue of admiralty/civil aviation labour claims.

It is in this respect that, the further argument that, the *AJA*, *MSA*, *CAA* and the *FHCA* are part of the *Constitution* by incorporation, and so, S. 1, 2(1)&(3)(r) of the *AJA* must be construed as part of the *Constitution*, to deny the *NIC* civil jurisdiction on maritime labour claims, cannot be right, apart from the plenary of constitutional supremacy enjoined by SS. 1(1)&(3) and 315(3) of the *Constitution* that, ordinary statutes cannot rival the constitutional provisions of S. 254C-(1)(a)&(k), more so that, these ordinary statutes are not even part of or entrenched into the *Constitution*. The *Supreme Court* has repeatedly held that, the *Land Use Act* [***LUA***], directly named and entrenched in the *Constitution*[30], with iron-cast protection against invalidation and, with the same procedure, as is wont for constitutional amendment under S. 9(2) of the *Constitution*, in case of conflict with the other provisions of the *Constitution*, is not part of the *Constitution*, and struck down[31] some of its obnoxious provisions that were in conflict with the *Constitution*.

In like manner, the amorphous provision of S. 251 to the effect that, the *National Assembly* [***NASS***] could grant the *FHC* additional jurisdiction cannot save the provisions of the *AJA* that conflict with the *Constitution*. Thus, the phrase "in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly" is simply less incorporative of any Act of the *NASS* than the *LUA* and makes such Act, an ordinary Act, like any other Act of the *NASS*. 'Jurisdiction' was employed in that context loosely for 'power', which has a subtle distinction from jurisdiction[32]. Only additional powers, distinct from jurisdiction, could therefore be granted the *FHC* by an ordinary Act of the *NASS*, which the *AJA* is, as any attempt to grant it additional jurisdiction would infringe on the jurisdiction of another superior court of first instance, as there is currently no subject that is not covered by the jurisdiction of one of the superior courts of first instance. This much is gathered from the decision of *Supreme Court* in *NUEE & Anor v. BPE*[33] that, an ordinary Act of the *NASS* cannot curtail the jurisdiction of the *SHC*.

If the *Supreme Court* could nullify some provisions of the *LUA*, directly entrenched into the *Constitution* and heavily fortified against invalidation, it is clear therefore that, the provisions of the *AJA*, *MSA*, *CAA* and the *FHCA*, which are ordinary statutes and therefore directly liable to S. 315(1)&(3) of the *Constitution*, are fully liable to the invalidating powers of the superior Courts pursuant to SS. 1(1)&(3) and 315(3) of the *Constitution*. The doctrine of incorporation of other statutes by reference would appear not to be applicable to the *Constitution*, going by the decisions of the *Supreme Court* cited, which invalidated some provisions of the extraordinary *LUA* and held that, they were not part of the *Constitution* in spite of the fact that, the *Constitution* specifically saved the *LUA* and fortified it against invalidation. In any case, the *Constitution* did not specifically incorporate the *AJA*, *MSA*, *CAA* & *FHCA* beyond S. 315(1)&(3) of the *Constitution* and, they cannot self-incorporate themselves into the *Constitution*. The tail does not lead the head. It is an anathema. They therefore enjoy exactly the same plenitude as any ordinary Act of the *NASS*. Hence, SS. 1 and 2(1)&(3)(r) of the *AJA*, remained invalidated, to the extent which they conflicted with S. 254C-(1)(a)&(k) of the *Constitution*, as has been discussed earlier.

It needs be noted too, that, the argument that, following the *NIC's* decision in *Stephen's case*, would produce the absurd result that, there would be no limit to the maritime labour jurisdiction of the *NIC*; is with respect, misconceived. S. 254C-(1)(a)-(b)&(k) of the *Constitution* actually sets out to achieve the objective of making the jurisdiction of *NIC* over maritime labour claims, all encompassing on everything labour. There is nothing esoteric or absurd in that. His lordship Idris J. of the *FHC* [as he then was] therefore got it very right when he held in *Skuld's case* supra that, the *NIC* has exclusive civil jurisdiction in all labour matters, inclusive of admiralty labour causes. That is the tenor. *NIC* is a single-subject court of exclusive but general and unlimited civil jurisdiction over all types of labour/

[29] *Jombo United Company Ltd v. Leadway Assurance Company Ltd* (2016) LPELR-40831 (SC) 18, A-B.
[30] S. 315(5)(d).
[31] *Adisa v. Oyinwola & Ors* (2000) LPELR-186 (SC) 102, C-F. See also *The Controller General of Prisons & Ors v. Elema & Anor* (2021) LPELR-56219 (SC) 25-27, C-B, where S. 47(2) of the *LUA* was voided.
[32] *Adigun & Ors v. AG Oyo State & Ors* (1987) LPELR-40648 (SC) 66-67, A-68; also *Ajomale v. Yaduat & Anor* (1991) LPELR-305 (SC) 8-9, E-D.
[33] (2010) LPELR-SC.62/2004, 38-39, B-F; also (2010) 7 NWLR (Pt. 1194) 538 S.C.

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employment claims. A dispassionate reading of the whole of S. 254C-(1)-(4) of the *Constitution* cannot escape this conclusion. Therefore, you cannot attach any appellation to any civil labour claim to divest *NIC* of the civil jurisdiction clearly and exclusively granted it by the *Constitution*. It therefore logically comes to be that, once it is mentioned that, there is conflict or ambiguity or borderline situation between the provisions of SS. 251(1)(g) and 254C-(1)(a)&(k) of the *Constitution*, it is an implicit admission that, S. 251(1)(g) must give way because, that is the intendment of the amendment wrought by the *Third Alteration Act*. Both cannot enjoy contradictory validations. That this is so; is beyond arguments. It is however another thing: whether there is actually any absurdity arising from the subjugation of S. 251(1)(g) by S. 254C-(1)(a)-(b)&(k) of the *Constitution*, but that, there's subjugation, is indubitable. Let's now examine the issue of the alleged absurdity.

c) *Hints of Absurdity and The Question of Lack of Power of Pre-Judgment In-Rem Arrest of Ships*

Arguments have been proffered too, that, the decision of the *Court of Appeal* ceding exclusive civil jurisdiction to the *NIC* on seafarers' wage claims would produce the absurd result of making seafarers lose the opportunity of instituting actions in rem to arrest ships because, the *NIC* has no admiralty jurisdiction and, could therefore, not make the admiralty order of in-rem pre-judgment arrest of ships. This is an extension of the arguments on the plenary of S. 251(1)(g) of the *Constitution* and S. 2(3)(r) of the *AJA*, which the proponents had argued, ousted the jurisdiction of the *NIC* on admiralty labour claims; apropos of which, they concluded, the only actions, which seafarers could now institute, in the *NIC*, is action *in personam* against the real employers, who might be at large thus, defeating the main anchor of admiralty adjudication and throwing into disarray merchant shipping and the national economy. First, the earlier clarifications have shown, with all respect, this position to be untenable. Having found earlier that, S. 254C-(1)(a)&(k) supersedes S. 251(1)(g) of the *Constitution*, it becomes self-evident that, this new strand of the same argument is, with respect, specious and cannot be the cause of any absurdity, whatsoever.

Admiralty jurisdiction is not synonymous with the *FHC*. *FHC* used to be *Federal Revenue Court* [***FRC***] without admiralty jurisdiction before its transmutation to *FHC* with admiralty jurisdiction. Before then, it did not have admiralty jurisdiction, which was left for the *State High Court* [***SHC***]. Several provisions of the *AJA* actually concede this point[34]. In the same way that the admiralty aspect of the jurisdiction of *SHC* was cut off in favour of the *FHC*, in exactly the same way, admiralty civil labour claims have been constitutionally cut off in favour of the *NIC* and with this, follows all the powers exercisable hitherto by the *FHC* on adjudication of its hitherto admiralty labour jurisdiction. That this view is correct is exemplified in *Savannah Bank Limited v. Pan Atlantic Shipping & Transport Agencies & Anor*[35] wherein, the *Supreme Court*, by virtue of S. 236 of the *1979 Constitution*, which conferred unlimited jurisdiction on the *SHC*, held in 1987, before the promulgation of the *AJA* in 1991 that, both the *SHC* and the *FHC* had concurrent jurisdiction on admiralty causes. Once a court has jurisdiction it has the powers to grant appropriate orders coterminous with its jurisdiction. The important thing is to be certain that; maritime labour claims had actually been so cut off from the *FHC*. There ought not and cannot be any argument, where it is clear, that was the constitutional intendment. And it is very clear in the instant case that, the *Constitution* intended and actually cut off maritime labour claims from the *FHC* in favour of the *NIC*: so be it.

Nigeria is not the only country where admiralty jurisdiction is bifurcated. In Britain, admiralty jurisdiction is not confined in one court. The *Employment Tribunal*[36] has jurisdiction over maritime labour claims involving foreigners. Though, it is conceded that, arrest of ships is exclusively ceded to admiralty court, which itself is part of the *High Court* in Britain but, the fact remains that, maritime labour claims are also heard and determined in the *Employment Tribunals*[37], an inferior court. If the *Constitution* gives the *NIC* part of the admiralty jurisdiction of the *FHC*, by excising maritime labour claims from the *FHC*, it goes without saying that, the powers of the *NIC* to make its new jurisdiction efficacious automatically follow the jurisdiction. That is the intendment of SS. 6(3), (6)(a) & 287 of the *Constitution*. A superior court never has jurisdiction without the powers to lubricate it, which is why the *Supreme Court* said in *Bola & Anor v. Latunde & Anor*[38] that: "Every Court has inherent jurisdiction to ensure that its order carries into effect the decision at which it arrived[39]" This power is innate in all the superior courts of record: it cannot be taken away by any statute: it is a second nature to the superior courts[40]. That is why S. 6(3) of the *Constitution* clearly provides that, all the superior courts listed in S. 6(5)(a)-(i), of which *NIC* is one, by virtue of S. 6(5)(cc): "each court shall have all

[34] SS. 1(b)-(c), 18(1)(a) & 19 of the *AJA*.

[35] (1987) 1 NWLR (Pt. 49) 212.

[36] Courts and Tribunals Judiciary, "*How are Tribunal decisions challenged*" [Copyright Judiciary 2022] at www.judiciary.uk [accessed Sept. 30, 2022]. Case No. 2400214/2017 – delivered by the *Employment Tribunals*, *London Central*, 25 October 2017 at https://assets.publishing.service.gov.uk [accessed Nov 03, 2020].

[37] Case No. 2400214/2017 – delivered by the *Employment Tribunals*, *London Central*, 25 October 2017, op. cit.

[38] (1963) LPELR-15478 (SC).

[39] Ibid, p. 6, A-B.

[40] *Umaru & Anor v. Aliyu & Ors* (2011) LPELR-9354 (SC) 5, A-E and, *Covalent Oil & Gas Services Ltd & Anor v. Ecobank Nigeria Plc & Anor* (2021) LPELR-53391 (CA) 20-21, E-A.

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the powers of a superior court of record." It must be noted that, there is a distinction between S. 6(3) and 6(6)(a) of the *Constitution*.

While S. 6(3) relates to the statutory powers of superior courts, S. 6(6)(a) relates to their inherent powers, which are entirely common law. Definitely, SS. 6(3) and 6(6)(a) could not both be speaking about the same thing, as legislatures do not use words in vain[41]. Since S. 6(6)(a) talks specifically about inherent powers, and since there are only two types of powers that courts exercise, S. 6(3) must be talking about statutory powers. The implication is that, each of the superior courts can enjoy any statutory power irrespective of whether it was specifically conferred on it, once it has jurisdiction. This means powers [inherent or statutory] automatically follow superior courts' jurisdiction. This must be so because; superior courts are not granted jurisdiction to exercise powers or to make orders, but jurisdiction over subject matters, geographical areas and persons. It is after assumption of jurisdiction that they exercise powers. S. 287 of the *Constitution* implies this, which is why it binds all authorities, courts and persons to spontaneously enforce superior courts' decisions without further assurance of having the power to make any order to effectuate the decisions. This signifies that, once there is jurisdiction, power to make any particular order to effectuate the jurisdiction, automatically follows.

Thus, once a superior court has jurisdiction, it can make any imaginable and realistic order, once necessary, to lubricate its jurisdiction; which means, its jurisdiction would substitute the court in any statute conferring power, even if not so named in the statute. It means all statutory powers are concurrent to all superior courts alike irrespective of the courts actually named in the statutes conferring the powers. Inherent powers, as the name implies, are inherent in the superior courts and, kick off once they assume jurisdictions. They are those powers the common law courts used to exercise to lubricate their jurisdictions, inherited by the superior courts in Nigeria, by virtue of S. 6(6)(a) of the *Constitution*. An essential part of inherent powers is that, a superior court has inherent power to make its decisions fructify[42]. This is what S. 287 of the *Constitution* recognises by mandating all authorities and persons to be under obligations to enforce superior courts' decisions in Nigeria. Superior courts therefore have the inherent powers to make order of injunctions to arrest ships and detain same as pre-judgment liens for actions being prosecuted and, all authorities are bound to obey such orders, made by the *NIC*, being a superior court, without further assurance. To this extent, the posture that the *NIC* cannot make in-rem pre-judgment admiralty order to arrest ships as liens for an action has no legal firmament to stand.

The admiralty powers of in-rem arrest of ships though, not entirely of common law origins, having been originally borrowed from Roman civil law, has chequered history and, intermingled with common law[43] and thereby formed part of the common law[44] Nigeria inherited from Britain, together with the cognate *Statutes of General Applications*[45] [***SOGA***]. It is therefore part of the common law or equitable powers of the superior courts in Nigeria, which all the superior courts, of which *NIC* is one, can exercise. In any case, the power of in-rem arrest of ships is a variant of *Mareva Injunction*, which substituted action in *personam* with action in rem against the ship. The *English High Court* created *Mareva Injunction* in 1975 pursuant to its powers under the *Supreme Court of Judicature (Consolidation) Act, 1925*[46] to grant mandamus and injunction. The *NIC* is equally empowered under the *NICA* – SS. 13-19 – as a Court of equity, to grant any type of injunction or any type of interim order or mandamus or any order at all and whatsoever, whether interim or not, on such terms as it deems fit. These powers cover the grant of *Mareva Injunction* and in-rem pre-judgment arrest of ships without further assurance. Even without the *AJA*, the original superior court of first instance in Nigeria – the *High Court [**HC**]* – ordinarily had the common law powers of pre-judgment in-rem arrest of ships and the powers of in-rem arrests conferred by the relevant *SOGA*[47]. The *AJA* impliedly noted this fact[48]. This is in

[41] *Ojibara & Ors v. The Governor of Kwara State & Anor* (2004) LPELR-13002 (CA) 62, D-E.

[42] *Bola & Anor v. Latunde & Anor* op. cit. and, *Ugba & anor v. Suswan & Ors* (2014) LPELR-22882 (SC) 109, A-C.

[43] Omar Mohammed Fraj, "*The Arrest of Ships: Comprehensive View on the English Law* (Master Thesis, Faculty of Law, Lund University, Spring 2012) at www.lup.lub.lu.se [accessed Sep 27, 2022].

[44] Courts and Tribunals Judiciary, "*History of the Admiralty Court*" (Copyright Judiciary 2022) at www.judiciary.uk [accessed Oct 8, 2022]. *Ontario Oil and Gas Nigeria Ltd v. FRN* (2015) LPELR-24651 (CA) 30-31, B-D and *TSK Nigeria Ltd v. Otochem Nigeria Ltd* (2018) LPELR-44294 (SC) 27-30, A-C.

[45] *The Admiralty Court Act* 1840 and 1861.

[46] AAAChambers, "*Mareva Injunction: An Appraisal of Its Meaning, Origins and Application in Nigeria*" [posted June 28, 2019] at www.aaachambers.com [accessed Jan 04, 2023]. See also M.S. A. Alenaze, "*The Mareva Injunction As A Means of Affording Protection To The Interests Of Creditors*" at https://www.maal.journals.ekb.eg [accessed Jan 01, 2023].

[47] *Admiralty Jurisdiction Act*, 1847; the Colonial Ordinance, 1890; *the Court of Admiralty Act 1890; the Nigerian Protectorate* and *Admiralty Jurisdiction Order*; the *Admiralty Jurisdiction Act 1962*; and A.K. Mgbolu, et al, "*Courts Jurisdiction to Hear and Entertain Admiralty Matters in Nigeria*", *Law and Social justice Review (LASJURE) 2 (3) 2021*, at https://www.nigeianjournasonline.com [accessed Jan 07, 2023].

[48] SS. 1(b)&(c); 18(1)(a) and 19 of the *AJA*. S. 1(b)-(c) recognised that other courts had admiralty jurisdiction before the *AJA*. S. 18(1)(a) makes limitation laws in effect before the *AJA* for maritime claims, which would have been brought before another court, still applicable. This other court is the *HC*, which used to exercise common law powers. S. 19 excised from the *HC* the right to exercise its admiralty powers.

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tune with the equitable doctrine of *ubi jus ibi remedium*[49].

There is also the power of injunction inherent in superior courts, which is available to use in the attachment of properties [ships inclusive] to prevent: dissipation of potentially liable assets or the escape of the defendants from a municipal jurisdiction[50], to secure the means of paying damages in lawsuits, which could satisfy the purposes of admiralty in in-rem pre-judgment arrest of ships. But, the arguments have been made that, such attachment still falls short of admiralty in-rem arrest of ships because, it is only available in actions in *personam* and, contingent on proof of ownership whereas, proof of ownership is not germane in in-rem arrest of ships. First, it is not entirely true, as has been shown above that, the power of in-rem arrests of ships was entirely statutory. Its origin was *Common Law*. Nonetheless, while it is correct that, the arrest of ships is the fulcrum of admiralty actions in rem, which attachment cannot satisfy, it is not correct that, proof of ownership of ships is not necessary in admiralty arrest in rem. Ownership is merely presumed because of the ship's locus as the place of work of the seafarers and, proof of total lack of nexus is germane to vacation of the order[51].

Nevertheless, the singularity is that, attachment is the fulcrum of actions in personam, which obviously negates seafarers' right of actions in rem thus, the allure of in-rem arrest of ships. The problem in Nigeria is that, it seems, the common law powers of in-rem arrest of ships have been entirely supplanted by statute, since the enactment of the *AJA*. That appears to be the tenor of SS. 1, 18(1)(a) & 19 of the *AJA*. This superficially suggests the conclusion that, the *NIC* lacks statutory powers of in-rem arrests of ships and, can only rely on common law powers of mandatory injunction, which might be devoid of the advantages of the subtleties introduced in the *AJA*, if we discount the *NIC's* powers under SS. 13-19 of the *NICA* to grant any type of reliefs – interim or perpetual – once justified by the facts of the case in-vires and, the *NIC's* powers, as a superior court, to utilise both inherent and statutory powers pursuant to S. 6(3) & 6(6)(a) of the *Constitution*. Unfortunately, the *Court of Appeal* did not address this seeming grave issue in its *locus classicus* of *Bains' case* thus, creating a great vacuum, which the pro-*FHC* writers have capitalised on, as one of the pillars of their attacks on the decision. Maybe the *Court of Appeal* assumed that, it was self-evident that, a court that has jurisdiction has the necessary powers to effectuate it, as explained earlier on. Be that as it may, let us now examine, if, discounting the foregoing arguments, the *NIC* actually lacks statutory powers of in-rem pre-judgment arrest of ships, conferred on the *FHC* by the *AJA*.

The pro-*FHC* writers erroneously claimed that, seafarers would lose the right of in-rem arrest of ships, should exclusive civil jurisdiction be ceded to the *NIC* because, the *NIC* lacked admiralty jurisdiction and therefore, power to make admiralty order of in-rem arrest of ships. Is this really so? For a combination of further reasons, apart from the ones earlier given, the answer is no. We have fully examined the common law aspect but not fully, the statutory law aspect. Let us now examine the other aspect of the statutory law angle, which we have only previously half examined. First, it must be taken as settled that, the *NIC* has jurisdiction over maritime/civil aviation labour claims and, if this is termed, admiralty jurisdiction, so be it. Jurisdiction is statutory irrespective of the appellations attached to it by writers. S. 254C-(1)(a)&(k) of the *Constitution* gives *NIC* exclusive civil jurisdiction over all types of labour claims and the consequential wages/salaries without exception and, admiralty labour claims form part of labour claims. It follows that; the *NIC* automatically has part of the admiralty jurisdiction hitherto held by the *FHC*, just as it has jurisdiction over military labour claims hitherto exercised by the same *FHC*. S. 54(2)(a)&(b) of the *NICA*, construed with S. 254D of the *Constitution*, also cures the alleged lack of statutory power in the *NIC* to make cognate admiralty orders of in-rem arrest of ships, assuming the previous arguments in this research did not suffice. This, the pro-*FHC* erudite writers failed to cognisance.

S. 254D of the *Constitution* gives the *NIC* the plenitude of all the powers of a *HC*, of which the *FHC* is one thus, implying that, the *NIC* can lawfully exercise all the powers conferred on the *FHC* by the *AJA* without any further assurance thus, filling the seeming void. S. 54(2)(a)&(b) of the *NICA* also further fills the seeming statutory void, by providing that, wherever the provisions of any statute refers to the *FHC*, *FCTHC* and *HC*, in so far the reference is in respect of jurisdiction, powers, practice and procedure: such provisions must be read to include the grant of such powers to the *NIC*, for the purposes of fulfilling its jurisdiction, as originally granted by the *NICA*, but now by the *Constitution*. In this wise, S. 54(2)(a)&(b) of the *NICA* also takes care of erudite Olawoyin's [supra] opinion that the *NIC* lacked the power to enforce arbitral awards in labour matters due to its non-inclusion[52] in the *Arbitration and Conciliation Act* [*ACA*] as one of the courts that can enforce arbitral awards. The *NIC* would simply be read into any section of the *ACA* conferring jurisdiction on other courts than *NIC*. The purport of S. 54(2)(a)&(b) of the *NICA* is similar to S. 6(3) of the *Constitution* espoused earlier, but in a more direct form that obviates any argument. The

[49] *Amaechi v. INEC & Ors* [2008] LPELR-446 (SC) 96-97, B-A; 189, F.
[50] Lewis Moore & Tony Swinnerton, "*Ship arrest in England & Wales*" in *Ship Arrest Practice* [Third Ed.] at www.shiparrest.com [accessed Oct 8, 2022].
[51] Ibid.
[52] S. 57(1) of the *Arbitration and Conciliation Act*.

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combined effect of SS. 6(3), 6(6)(a), 254D, 315(1) & 287(3) of the *Constitution* along with SS. 13-19 & 54(2)(a)&(b) of the *NICA* shows that, the *NIC* has access to all necessary powers, as the *FHC*, to make any necessary order in furtherance of its maritime labour jurisdiction, while Order 1, Rule 9(1) of the *National Industrial Court of Nigeria* [*Civil Procedure*] *Rules, 2017* [***NIC Rules***], which gives the *NIC* the liberty to borrow from any court's rules, in case of vacuum in its rules, seals off the argument of inhibition on *NIC* to exercise its exclusive civil maritime labour jurisdiction simply because, its extant rules have no cognate provisions on admiralty. The *NIC* can borrow a leaf from the cognate *FHC Rules* or from any relevant rules of court or even invent rules to meet any exigencies for which no rules are provided by virtue of its inherent powers and Order 1, Rule 9(1) of the *NIC Rules*.

This power granted the *NIC* by S. 54(2)(a)&(b) of the *NICA* only deferred to the *Constitution*, which now grants the *NIC* exclusive civil jurisdiction over all labour claims thus, making it appositely applicable. Incidentally, the *Court of Appeal* has affirmed the efficacy of S. 54(2)(a)&(b) of the *NICA* in *CBN v. Eze & Ors*[53]. S. 254D-(1) of the *Constitution* says, the *NIC* shall have all the powers of a *HC* for the purposes of effectively exercising its jurisdiction, while S. 254D-(2) of the *Constitution* says, additional powers than already conferred by the *Constitution*, may be conferred by the *NASS* on the *NIC*, for the purposes of better exercising its jurisdiction. Thus, when S. 254D-(1)&(2) of the *Constitution* is construed along with S. 315(1) of the *Constitution*, which saves the provisions of SS. 13-19 & 54(2)(a)&(b) of the *NICA,* and both are read in conjunction with SS. 1, 5(3)(c)&(6) and S. 7 of the *AJA* and 66 of the *MSA*, both of which now impliedly grant to the *NIC*, the additional statutory powers of pre-judgment in-rem arrest of ships, as liens and, the power to sell same, in order to make efficacious its jurisdiction on maritime labour claims, all doubts, arising from the misconceived absurdity, are completely removed on the exclusivity of the *NIC's* civil jurisdiction on all maritime labour causes. S. 287(3) of the *Constitution*, which burdens all persons, lower courts and authorities to enforce *NIC's* decisions, further complements this. By virtue of S. 287(3), once the *NIC's* decision is within jurisdiction, the issue of not being conferred with certain power by a statute becomes otiose and subsumed by S. 1(1)&(3) of the *Constitution* and, the doctrine of covering the field, which SS. 1(1)&(3), 6(3), (6)(a) and 287(3) signify. Such statute denying *NIC* powers in that regard would be void to the extent of its inconsistency with the overriding constitutional provisions cited above[54].

In effect, by the combined effects of SS. 254D-(1) of the *Constitution*, SS. 1, 5(3)(c)&(6) and 7 of the *AJA* and, S. 66 of the *MSA*, the *NIC* has all the powers [common law and statutory] conferred on the *HCs*, of which the *FHC* is one, besides the law that, the *NIC* must be read into the provisions of any statute that grants jurisdiction and powers to the *FHC*, *FCTHC* and *HC* as enjoined by S. 54(2)(a)&(b) of the *NICA*. The *NIC* therefore, must be read as included in the relevant provisions of the *AJA* and *MSA* that give the *FHC* powers of in-rem arrest of ships over admiralty labour claims. It thus has full statutory powers of arrests of ships as liens in in-rem actions, just like the *FHC* continues to have over all other maritime matters, aside admiralty labour causes, still retained in it. Exercise of powers, both statutory and inherent, are concurrent to all superior courts by virtue of SS. 6(3), 6(6)(a) & 287 of the *Constitution* because, they are there to lubricate their different jurisdictions alike. That takes the sail out of the arguments that; the *NIC* could not exercise the statutory powers of in-rem arrests of ships for the purposes of its maritime labour jurisdiction. It can, as has been shown. Now that it is clear the *NIC's* powers, are exactly the same with those of the *FHC*, to make orders of in-rem pre-judgment arrest of ships, it follows that, the arguments of the *FHC* erudite apologists on the alleged absurdity and the alleged negative economic implications on merchant shipping purportedly arising from the alleged lack of power of in rem pre-judgment arrest of ships as lien, in the *NIC*, are fallacious.

It has also been argued that, wages of seamen formed part of the admiralty jurisdiction because, S. 254C-(1)(a)&(k) of the *Constitution*, in granting jurisdiction on labour matters to the *NIC* did not specifically mention wages of seamen, but general wages, whereas, S. 2(3)(r) of the *AJA* directly mentioned seamen wages, as such, excludes the wages mentioned in S. 254C-(1)(k) of the *Constitution* because, the specific mention of one thing, excludes those not mentioned. The *Court of Appeal* has dealt with an aspect of the answer, by holding that, the *AJA* and *MSA*, being ordinary statutes, could not struggle with S. 254C-(1)(a)&(k) of the *Constitution*, which conferred exclusive civil jurisdiction over all labour matters on the *NIC*. The regnant rule is that, the rules of interpretation are inadmissible[55] to vary the clear words of a *Constitution* and that; only internal aids in the *Constitution* itself, could be used to vary the literal meaning of words used in the *Constitution*[56]. Therefore, the rules of interpretation cited by the pro-*FHC* writers, could not be used to bolster the provisions of an ordinary statute to take away from the exclusive liberal civil jurisdiction granted the *NIC* over all types of labour/employment relations and all

[53] Unreported Suit No. CA/A/344/2015 – delivered Sep 15, 2021.
[54] *INEC v. Musa* (2003) LPELR-24927 (SC) 36-37, D-C.
[55] *Adesanya v. FRN & Anor* (1981) LPELR-147 (SC) 16-17, B-D.
[56] *Abegunde v. The Ondo State House of Assembly & Ors* (2015) LPELR-24588 (SC) 60, A-C and. *Ifezue v. Mbadugha & Anor* (1984) LPELR-1437 (SC) 26-27, F-C.

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types of labour wages/remunerations in an unmistakable manner.

By using the word "any" S. 254C-(1)(a)&(k) of the *Constitution* demonstrates unmistakable intention to cover all types of labour relations and wages, both special and general. Logic supports this view in that, it would be unheard of, to imagine that, the provisions of ordinary statutes would be relied on, to restrict the logical extent of the exclusive civil jurisdiction expressly granted *NIC* by the *Constitution* and, which does not invite any danger of absurdity as has earlier been ably demonstrated in this article. It is in this wise that, the argument canvassed that, the *AJA* and *MSA* delimit the extent of admiralty jurisdiction granted by S. 251(1)(g) of the *Constitution*, cannot be right, when it concerns the interpretation of the limits specified in these ordinary statutes, to take away the exclusive civil jurisdiction the *Constitution* clearly and directly granted the *NIC*. Even if the arguments that, the *AJA* and *MSA*, by spelling out the extents of the admiralty jurisdiction of the *FHC* and the authorities cited thereto were correct for other purposes, they would not be correct, when it comes to using them to cut off parts of the exclusive civil jurisdiction of another superior court duly conferred by the *Constitution* because, the *AJA* cannot confer jurisdiction on the superior courts in Nigeria, only the *Constitution* can[57]. All the authorities cited, especially *Bronik Motors Limited v. Wema Bank Limited*[58] on deemed incorporation of the *AJA* by S. 251(1)(g) of the *Constitution* and, *Savannah Bank Limited v. Pan Atlantic Shipping & Transport Agency Ltd*[59] on concurrency of the jurisdictions of the *FHC* and the *NIC* on admiralty labour claims, did not deal with situations where an ordinary statute was interpreted by the *Supreme Court* to limit a non-obstante exclusive jurisdiction duly conferred by the *Constitution* on a superior court, as is the case with *FHC* and *NIC*, whereby the *NIC* is conferred with exclusive non-obstante all-embracing civil jurisdiction on all aspects of labour/employment causes. So, these authorities are not relevant in the instant scenario.

In the interpretation of new statutory provisions like S. 254C-(1)-(4) of the *Constitution*, regard must not be had to what the law used to be but only to what it is now, by giving them the plain meanings they suggest uncoloured by prejudice from the former position of things[60]. It is the reluctance to follow this sound precept of the law against prejudice that is partly the cause of the problem. S. 254C-(1)(a)&(k) of the *Constitution* is a new amending section, which comes after S. 251(1)(g) of the *Constitution* and clearly demonstrates amendment of all the other provisions of the *Constitution*, especially S. 251 of the *Constitution*, which it specifically named non-obstante, to find unobtrusive accommodation. So, where the plain interpretation of S. 254C-(1)(a)&(k) of the *Constitution* is inconsistent with that of S. 251(1)(g), there cannot be any argument, it means S. 254C-(1)(a)&(k) has amended it[61]. This simply means that, even where there is an alleged ambiguity, it must be resolved in favour of S. 254C of the *Constitution* because, that is the purport of the non-obstante clauses that surfeited the provisions of the section. This is more poignantly so when it comes to ordinary statutes. Ordinary statutes cannot interfere with the jurisdictions of the superior courts in Nigeria[62]. In effect, the *Court of Appeal*'s decision that, the provisions of S. 2(3)(c)-(d)&(r) of the *AJA* are void, is very sound, by virtue of the doctrine of covering the field, which forbids, even mere duplications in other statutes, of fields fully covered by constitutional provisions[63].

The arguments that, because, S. 254C-(1)(a)&(k) of the *Constitution* did not specifically mention seamen wages and admiralty labour claims, seafarers' wages and maritime labour claims remained within the exclusive civil jurisdiction of the *FHC* and not the *NIC*, is actually self-defeating. By the same logic, the *FHC* is divested of jurisdiction in favour of the *NIC* because, while S. 254C-(1)(a)&(k), which gives the *NIC* exclusive civil jurisdiction, specifically mentioned "**any** labour, employment…" and wages of "**any**…worker", which implied inexhaustive inclusiveness, S. 251(1)(g) of the *Constitution*, which grants exclusive admiralty jurisdiction to the *FHC* did not specifically mention wages, workers, labour and employment at all. By the same logic, the *FHC* is much more barred from adjudicating these, even though, arising from admiralty, since S. 251(1)(g) of the *Constitution*, which conferred it with exclusive civil jurisdiction did not mention workers, wages and labour. The argument forgot that, S. 251(1)(g)&(k) of the *Constitution* did not directly confer the *FHC* with admiralty/civil aviation labour jurisdiction and jurisdiction over seafarers' wages or civil aviators' wages and that, it is actually the *AJA* that did. And the *AJA* cannot be heard to contend with the express non-obstante provisions of S. 254C-(1)(a)&(k) of the *Constitution* to extend the jurisdiction of the *FHC* and, whittle down that of the *NIC* duly conferred by the *Constitution* [64]. Only the *Constitution* itself can do that[65].

It should be borne in mind that, the research has earlier shown that, the *Constitution* did not incorporate the *AJA* and that; as such, the *AJA* is like any other ordinary statute, subject to the invalidating powers of the courts under SS. 1(1)&(3) and 315(3)(d) of the *Constitution*. There is no vacuum at all in S.

[57] *NUEE v. BPE* op. cit.
[58] [1983] NSCC 226; [1983] 6 S.C. 158.
[59] [1987] 1 NWLR (Pt. 49) 212.
[60] *Sahara Energy Resources Limited v. Oyebola* op. cit.
[61] *Ibid*.
[62] *NUEE & Anor v. BPE* (2010) LPELR-1966 (SC) 40-42, F-D.
[63] *INEC v. Musa* op. cit.
[64] *NUEE v. BPE op. cit.*
[65] Ibid.

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254C(1)(a)-(b)&(k) of the *Constitution*, to warrant being filled up by another statute, as it mentions all generic types of labour/employment relations, together with all labour/employment related statutes and used incorporative words to capture the incidentals. It also covered all the generic types of wages by using similar words of inexhaustibility to capture all incidentals to wages. So, it looks strange to suggest that, S. 254C should embark on the unfeasible assignment of naming labour in relation to all types of places of work, like: naval [admiralty] labour, air-force labour, army labour, teachers' labour etc. or wages in relation to the peculiar works like: military wages, teachers' wages, etc. before their full constitutional imports could be deduced, and come to think of it, in contest with ordinary statutes!

Be it recollected that, it was because of the void in S. 7(g) of the *FHCA*, which S. 230(1)(b) of the *1979 Constitution* controversially and doubtfully incorporated that, the *AJA*[66], as a military Decree, needed to be promulgated in 1991, to clearly give the *FHC* admiralty jurisdiction and to delimitate the extent of its admiralty jurisdiction, to include labour/employment matters of seafarers and a host of other causes. Before then, the *SHCs* exercised jurisdiction on such matters. It must be noted that, even the *FHCA* itself came into existence originally via military Decree too. With the enactment of S. 251(1)(g) of the *Constitution*, which now directly gives admiralty jurisdiction to the *FHC*, the situation has become worse for the *AJA* because, the *AJA*, which, as a military decree, had superiority over the *1979 Constitution*, had, in its SS. 1&2, clearly specified what admiralty jurisdiction covers, and this was not replicated in S. 251(1)(g) of the *Constitution*, which now confers the *FHC* with exclusive admiralty jurisdiction and therefore, fully covers the extent of its admiralty jurisdiction and consequently, supersedes SS. 1&2 of the *AJA*, which is now an ordinary statute by virtue of SS. 1(1)&(3) and 315(1)&(3)(d) of the *Constitution*. And unfortunately, the *AJA*, not being the *Interpretation Act*, to which the *Constitution* subjects its provisions for interpretation[67], cannot interpret the provisions of S. 251(1)(g) of the *Constitution* to take away the exclusive non-obstante all-embracing civil jurisdiction on all types of labour causes/ wages/salaries, including maritime labour causes/ wages/salaries, duly conferred on the *NIC* by S. 254C-(1)(a)-(b)&(k) of the *Constitution*, delimitation of the admiralty jurisdiction of the *FHC*, which the *AJA* attempted, being an aspect of interpretation.

What S. 251(1)(g) of the *Constitution* did was to reproduce verbatim the provisions of S. 7(g) of the *FHCA*, leaving out completely, the provisions of the *AJA*. This means S. 251(1)(g) of the *Constitution* reverted the *FHC* back to the position it was under the *1979 Constitution*. It simply means the areas of admiralty jurisdiction [labour and wages of labour] not covered by S. 251(1)(g) of the extant *Constitution* before the enactment of the *Third Alteration Act*, reverted back to the *SHCs* by dint of the decision of the *Supreme Court* in *NUEE & Anor v. BPE* [supra] that, an ordinary statute cannot derogate from the jurisdiction of the *SHCs*. The logic of this reasoning underpinned the *Supreme Court's* decision, as recent as 2018, in *TSKJ Nigeria Limited v. Otochem Nigeria Limited*[68] that, it is not in all causes involving the hire of a ship that the admiralty jurisdiction of the *FHC* is invoked and that, matters of simple contracts, disputes on non-payment of ship-hire fees, are not covered by the *AJA*. Though, it is conceded that, the *Supreme Court* actually considered S. 2 of the *AJA*, which defined maritime claims and held that, it did not cover simple contracts, in the circumstances of the case, whereas, S. 2(3)(r) of the *AJA* actually covers wages of seafarers, but this does not detract from the ratio in *NUEE & Anor v. BPE* [supra] that, an ordinary statute cannot wrestle jurisdiction from the *SHC*. In like manner, the *AJA* cannot wrestle jurisdiction from the *NIC*, a superior court: that is the logic.

The *SHCs* retain residual jurisdiction on all subjects for which no other superior court is constitutionally conferred with jurisdiction. This is why, as unintentionally pointed out by erudite Olawoyin [supra], the *Court of Appeal* and *Supreme Court* have repeatedly held that, the admiralty jurisdiction of the *FHC* does not extend to matters of simple contracts[69]. The maxim applies: the express mention of one thing is the exclusion of those not mentioned[70]. S. 251(1)(g) of the *Constitution* spelt out the extent of the extant admiralty jurisdiction of the *FHC* and left out maritime labour claims and wages of seafarers in their entirety and, incidentally, the *AJA* no longer enjoys the supremacy it previously enjoined under military interregnum. Therefore, going by the state of the extant S. 251(1)(g) of the *Constitution*, the *FHC* even actually lacked jurisdiction over maritime labour claims before the advent of the *Third Alteration Act* because, as the *Supreme Court* held in *NUEE & Anor v. BPE* [supra]: "the jurisdiction of State High Court can only be restricted by the provisions of the 1999 Constitution[71]…" and, not the *AJA*, an ordinary statute. It means the *FHC* had actually been unlawfully exercising this jurisdiction against the *SHCs*, even before the enactment of the *Third Alteration*

[66] SS. 1 & 2 of the *AJA*.

[67] S. 318(4) of the *Constitution*. By specifically providing that the *Interpretation Act* is applicable to the interpretation of the provisions of the *Constitution*, all other statutes are excluded from interpreting the provisions of the *Constitution* by dint of *expressio unius est exclusio alterius* rule.

[68] (2018) 11 NWLR (Pt. 1630) 330.

[69] *Federal University of Technology Akure v. BMA Ventures (Nig) Ltd* (2018) LPELR-44429 (CA); *Savannah Bank Limited v. Pan Atlantic Shipping & Transport Agencies & Anor* (1987) 1 NWLR (Pt. 49) 212; (1987) LPELR-SC 139/1985 and, *TSKJ Nigeria Limited v. Otochem Nigeria Limited* op. cit.

[70] *Jegede & Anor v. INEC & Ors* (2021) LPELR-55481 (SC) 74, A-E.

[71] *NUEE & Anor v. BPE* op. cit. 41, A-B.

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Act simply because, this legal position escaped the attentions of jurists. This must be the position at the immediacy of the *Constitution* in 1999, which shared no rivalry with military decrees for superiority, all military decrees, having become ordinary Acts of the *NASS* at the inception of the *Constitution* in 1999 by virtue of S. 315(1) of the *Constitution*. So, SS. 1&2 of the *AJA* could not have conferred civil maritime labour jurisdiction, which the *FHC* actually lacked constitutionally. This is what erudite Olawoyin [supra] unintentionally hinted at when he said the *FHC* would lack jurisdiction if admiralty labour claims are treated as simple contracts; the only thing that connect maritime labour claims with admiralty, being the need to arrest ships in rem.

Now, S. 254C-(1)(a)-(b)&(k) of the *Constitution* directly and specifically gives *NIC* jurisdiction over all types of employment/labour claims and wages of all types of workers/employees. It means, in line with the *Supreme Court's* ratio in *NUEE & Anor v. BPE*, S. 254C-(1)(a)-(b)&(k) of the *Constitution* exclusively conferred on the *NIC* non-obstante civil jurisdiction on all labour/employment matters and thus, effectively wrestled the jurisdiction from the *SHCs* and, not from the *FHC*, which never had the jurisdiction at the inception of the *Constitution* in 1999 in the first place. Respectfully, it is therefore totally untenable, to argue against the clear non-obstante constitutional provisions of S. 254C-(1)(a)-(b)&(k) of the *Constitution* in the absence of any other direct constitutional provisions whittling down the all-encompassing provisions[72]. In effect, it does not matter whether maritime is attached to labour claims and wages of labour, the important thing is that, they are labour claims, which S. 251(1)(g) did not cover. It follows too, that, there is actually no conflict between the provisions of SS. 251(1)(g) and 254C-(1)(a)-(b)&(k) of the *Constitution*, to even warrant the interpretative invocation of the non-obstante clauses of S. 254C-(1)(a)-(b)&(k) of the *Constitution*, aside the other clarifications earlier made.

The argument that, the *NIC* was not established to effect radical changes in the *status quo ante* with regard to the *FHC*, but just to make it a superior court, mouthed by erudite Olawoyin and others, seemed not to appreciate the essence of the *Third Alteration Act*. The *Third Alteration Act* actually set out to effect radical changes in the jurisdictional *status quo ante* and it would be difficult to fathom how it could be logically argued that its clear intendment to excise completely the *FHC's* jurisdiction on labour/employment matters does not extend to maritime labour/employment claims. There is no argument that the *NIC* is a single-subject matter jurisdiction Court. Why would the *Third Alteration Act*, which sets out to make it a specialised court over that single subject matter, rationally leave a portion of the single subject matter to another court of general jurisdiction? It does not sound rational. If it must be so, it cannot be by way of clumsy interpretation but must be by clear constitutional exclusion of that special aspect. And which special aspect of the single subject matter would still be better treated by a general jurisdiction court, which the *FHC* is, than the specialisation of the adjudication of the whole composite single subject matter before a special court specially created for the whole composite single subject matter? It is axiomatic that there could logically be none. The *Third Alteration Act* reestablished the *NIC* to achieve both aims of changing the *status quo ante*, by making the *NIC* a superior court and, making it a truly specialised Court, by excising completely employment/labour jurisdictions from the *FHC*, *FCTHC* & *SHCs* in favour of the *NIC* and, S. 254C-(1)(f)-(h)&(2) of the *Constitution* further answered the question, as the provisions effected radical changes in labour law in Nigeria and, gave the *NIC* exclusive jurisdiction to effectuate them, and also made the *NIC*, truly the first and only specialised court in Nigeria.

Hence, there is no other method by which these objectives could be achieved than by subjugating the provisions of SS. 251, 257 & 272 of the *Constitution* to the provisions of S. 254C-(1)&(2) of the *Constitution* in order to avoid confusion arising from overlapping of jurisdictions. The latest of the courts, that is the *NIC*, and the latter of the provisions, that is, S. 254C-(1)&(2) of the *Constitution*, must clearly and effectively subjugate the earlier provisions, to have an existence completely divorced from SS. 251, 257 & 272 of the *Constitution*, in order to avoid controversies arising from overlapping of jurisdictions. That is the only rational way to create two separate courts of coordinate but mutually exclusive jurisdictions. Be that on maritime labour claims.

Having carefully examined the case of maritime labour claims, we shall now examine the case of civil aviation labour claims. The case of civil aviation labour claims is slightly a different kettle of fish. And the fact that, S. 251(1)(k) of the *Constitution* just tersely provides that, the *FHC* has exclusive civil jurisdiction over: "aviation and safety of aircraft" without further explanation is in focus. Ordinarily, "aviation and safety of aircraft" do not include labour relations in aviation. *Aviation and safety of aircraft* deal with the rules and regulations governing safe flights, the enforcement and, sanctions for breaches[73]. S. 1(1)(c) of the *AJA* that grants the *FHC* prior jurisdiction over aircraft seems to be talking about waterborne aircrafts[74] and did not talk at all, about civil aviation labour relations and its incidents, like it did for admiralty labour relations. No statutory provision talks about labour relations in aviation, except S. 7 of the *CAA*, which talks about

[72] *NUEE & Anor v. BPE* op. cit.

[73] The whole of the *CAA* did not make any provision for aviation workers.

[74] S. 2(3)(j) of the *AJA*.

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power to recruit staff for the *Civil Aviation Authority*. These are not staff of aircrafts and, incidentally, S. 63(1) of the *CAA* grants jurisdiction to the *FHC* on the offences created under the *CAA* but left out the court with civil jurisdiction on labour relations of its staff. It comes to be that, since S. 251(1)(k) of the *Constitution* did not talk at all about labour/employment relations in aviation or labour/employment disputes arising therefrom and, S. 1(1)(c) of the *AJA* is deemed to talk only about waterborne aircrafts by virtue of S. 2(3)(j) of the *AJA*, and not, at all about civil aviation or labour and wages in aviation, the *NIC* logically has exclusive civil jurisdiction over labour relations in aviation, inclusive of civil aviation, as duly conferred on it by S. 254C-(1)&(2) of the *Constitution*, without any ado. Following the previous arguments too, no ordinary statute can wrestle this jurisdiction from the *NIC*. The *NIC*, *ipso facto* the previous arguments, also has the powers to make any relevant orders coterminous with its jurisdiction exercised in *vires* thereto.

After all, whether it is maritime labour or military labour or aviation labour claims or police labour claims or whatever labour claims, the fact remains that, they are labour claims, regardless of the adjectives attached and, would remain so without the appellations. All labour relations are parts of specific human endeavours; labour being the midwife of all human endeavours, cannot be an end by itself. It must therefore be or exist in relation to an endeavour and for that reason, must be preceded by an adjectival appellation. The agents of labour are workers [human beings], the reward of labour are wages. The nature of labour relations and challenges [disputes], remains constant in all endeavours. Lifting the veil of peculiarities, all workers face the same challenges since time immemorial. And these are the incidences that the *NIC* is established to adjudicate, with cutting-edge labour expertise, and, not shipping contracts and commerce on the high seas, which are for the *FHC*. Attaching appellations to a particular labour relation cannot therefore be a veritable reason to take it out of the labour court. S. 254C-(1)(a)-(b)&(k) of the *Constitution* has unambiguously fully covered the field of all labour/employment claims regardless of the place of work.

If we inordinately cling to the appellation of maritime or admiralty labour claims, instead of simply, labour claims, then, since maritime/admiralty labour claims nonetheless remain labour claims, notwithstanding the appellation of maritime/admiralty attached to them, the *NIC* continues to have exclusive civil jurisdiction over maritime/admiralty labour claims and therefore, exercises part of the maritime/admiralty jurisdiction hitherto exercised by the *FHC*, so far, it is for the purposes of adjudicating labour claims, just like it adjudicates military and police labour claims, without the tag –'military' or 'police' – divesting it of jurisdiction. There is nothing incongruous in that. That has been the nature of the dichotomy between the jurisdictions of the *FHC* and the *NIC*. Parts of the hitherto jurisdiction of the *FHC,* were cut off in favour of the *NIC*, while the *FHC* continues to exercise jurisdiction in the vast remaining parts: ditto between the *FHC* and *SHC*. For example, while the *FHC* exercises exclusive civil jurisdiction on banking and corporate matters, the *SHC* still retains residual jurisdiction on contractual relationships between bankers and customers[75], which undoubtedly are a part of banking.

While each type of work might have some peculiarities that would demand special measures, since they still remain labour, it is still far better for all types of labour/employment relations to be coalesced into a coherent whole and ceded to a specialized labour court, which the *NIC* is, than for a section of the labour force to be ceded to another court, manned by non-specialist general jurisdiction judges, which the judges of the *FHC* are. To reason otherwise, would deny the seamen and civil aviation workers the advantages of the expertise of the specialized labour court, specifically created and devoted entirely to only labour issues. It is indubitable: specialization is the invisible handmaid of efficiency and efficacy. Thus, the nation and the international community, which the *Third Alteration Act* had in mind, via the applications of international best practices[76] and international labour standards[77], would definitely receive better service in all labour matters being consigned to the specialized labour court, which the *NIC* is, to receive the same measure of specialized adjudications in all labour matters. To this extent, the fear of economic jeopardy in the grant of exclusive civil jurisdiction to the *NIC* on admiralty labour disputes on merchant shipping is totally unfounded.

It is actually the erroneous consignment of jurisdiction to the *FHC* in this regard that is injurious to commerce in merchant shipping and the national economy because, the stakeholders, the nation and the international community will lose the advantages of the *NIC's* expertise in that regard. Any lingering doubt is put to rest by the direct and unequivocal statement of the Nigerian President on March 4, 2011 when the *Third Alteration Act* was assented:

> "It is my hope that with the Constitutional establishment of the National Industrial Court of Nigeria, we have institutionalized the process for ***quick, fair and efficient*** resolution of disputes relating to labour, employment, industrial relations… *This Court is conferred with exclusive jurisdiction in those areas considered critical to the sustenance of our economy and industrial development*. Its effective discharge of its mandate will serve; not only to promote industrial harmony, but also to boost the

[75] *FBN Plc v. Standard Polyplastic Industries Ltd* (2022) LPELR-57684 (SC) 40, A-F and the proviso to S. 251(d) of the *Constitution*.
[76] S. 254C-(1)(f) of the *Constitution*.
[77] S. 254C-(1)(h) of the *Constitution*.

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confidence of both local and foreign direct investors in our national economy."

The *Supreme Court* reinforced and confirmed the validity of the above when it held in *Skye Bank v. Iwu* [*supra*] that:

> "The Third Alteration to the 1999 Constitution…recognised 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 increasing 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 Section…254C(1)…of the Constitution of the Federal Republic of Nigeria should be interpreted*."

The above excerpts, the first from the country's President, who assented the *Third Alteration Act* and, the second, from the *Supreme Court*, the final oracle on what the law is, put to final rest, the fallacious arguments that, ceding exclusive civil admiralty labour jurisdiction to the *NIC* is inimical to the national economy. We cannot have better testimonies to the central place of the *NIC* to the economic development of the nation in all aspects of its jurisdiction, including maritime labour claims and civil aviation labour claims. In construing the *Third Alteration Act*, we must therefore also constantly bear this fact in mind. That is why the *Supreme Court* says; the *NIC* is a *specialised business court* with exclusive jurisdiction "*over all labour and employment issues*", whereas, the *FHC* is not a specialised business court, but a court of general exclusive jurisdiction on federal matters. And *NIC's* businesslike nature, no doubt, redounds better on merchant shipping/commercial aviation than the *FHC's* general exclusive federal jurisdiction.

In fact, because of the peculiar nature of seafaring and aviation works, the *ILO*, a world-renowned organisation totally devoted to decent work agenda and the welfare of labour, has devoted the most attention to the labour relations abuses therein, with a whopping 37 conventions[78] for seafarers alone and, similar measures for civil aviation workers by the *ILO* and, *International Civil Aviation Organisation* [***ICAO***], another agency of the *UN*, culminating in the March 15, 2022 cooperation agreement between the *ILO* and *ICAO*[79]. Seafarers and civil aviation workers actually need the attention of a specialist labour court like the *NIC* than other type of workers. The fact that the *ILO* had devoted substantial attention to admiralty/civil aviation labour relations is a signal that, the *NIC* set up specifically to interpret, apply and enforce *ILO* instruments[80], is the Court specially cut out for the adjudication of admiralty/civil aviation labour disputes and, not the *FHC*.

The sectors also need speedy dispensation of justice than most of the other sectors because of the: huge financial losses involved in tying down ships and aircrafts for long, the negative impacts on international commerce and, the very peculiar trans-boundary nature of the works/workers in the sectors, reinforcing the fact that, delay is dangerous, which could better be avoided at the *NIC* than *FHC* because of the expertise of *NIC's* judges and *NIC's* special rules, which dispense with delay and technicalities and, promote quick and efficient dispensation of justice than the regular common law courts[81], which the *FHC* is. And these would assist the growth of international commerce in the merchant shipping/civil aviation sectors better. The *Supreme Court* testified to the above when it opined on the *NIC* thus: "The resolution of labour and employment disputes is guided by *informality, flexibility and* ***speed***[82]".

Besides, only the *NIC* is imbued with the exclusive non-obstante civil jurisdiction to apply international labour-related conventions[83] and standards[84] in the resolution of labour disputes. It is also only *NIC* that is imbued with exclusive civil jurisdiction to eschew unfair labour practices[85] and, the only Court burdened with the mandatory sacred duty to apply international best practices[86] in the adjudication of labour cases thus, ensuring that, the *NIC* is constantly abreast of cutting-edge issues in the adjudication of labour disputes; making Nigeria's adjudication of labour relations disputes cosmopolitan. *NIC* judges are equally and, singularly amongst all the superior courts in Nigeria, extraordinarily equipped with the expertise in this area of the law by the additional specialisation and expertise in labour law and employment relations and considerable experience of the labour relations market in Nigeria, as additional prerequisites, aside the general prerequisites, for judgeship of the *NIC*[87], these additional requirements which are absent for the appointments of judges of all the other superior courts of first instance in Nigeria, which just require general legal practice experiences of the requisite length of time for the appointment of their judges. The same thing is applicable to the appellate courts [*Court of Appeal* and *Supreme Court*], except with respect to Customary and Islamic laws.

[78] Recently consolidated into *Maritime Labour Convention 2006* [***MLC***] – see ILO, "*International Labour Standards on Seafarers*" at https://www.ilo.org [accessed Nov 03, 2020].
[79] ILO, "*Important cooperation agreement concluded between the ILO and ICAO*" [posted March 17, 2022] at https://www.ilo.org [accessed Jan 08, 2023]. See also "*Acts and occurrences onboard aircraft*" at https://britanica.com [accessed Nov 09, 2020].
[80] S. 254C-(1)(f)-(h)&(2) of the *Constitution*.
[81] Unreported *Court of Appeal's* decision in *Suit No. CA/IL/20/2021: Adegboyu v. UBA* [Delivered April 14, 2022].
[82] *Skye Bank v. Iwu* op. cit 146, D-E.
[83] S. 254C-(2) of the *Constitution*.
[84] S. 254C-(1)(h) of the *Constitution*.
[85] S. 254C-(1)(f) of the *Constitution*.
[86] Ibid.
[87] S. 254B-(3)&(4) of the *Constitution*.

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Ceding exclusive civil jurisdiction to the *NIC,* a constitutionally well-structured specialised court, on all labour causes, including admiralty/civil aviation labour disputes, would definitely, without further proof, make Nigeria attractive to international commerce in merchant shipping/civil aviation thus, furthering national economic growth and development. Unwittingly ceding jurisdiction to *FHC*, which lacks jurisdiction and expertise in these areas of vital labour reliefs, would definitely negatively impact merchant shipping/civil aviation and *ipso facto*, the national economy. This is part of the factors that are not obvious to the proponents of the *FHC's* exclusive civil jurisdiction on maritime/aviation labour claims. By this, it is abundantly manifest that the opinion of learned Olawoyin [supra] and other writers of similar view that, granting all-encompassing labour jurisdiction that covers maritime labour claims to *NIC*, was unintended, and thereby led to absurdity, cannot be correct. It is clear it is the other way round. That is settled. Let us go further to examine the other factors.

d) International Labour Instruments, Doctrines of Unfair Labour Practices and International Best Practices: Implications on the Contest for Jurisdiction on Labour Matters Between the FHC and the NIC

To further show the incongruity of the views that, the *FHC* has civil jurisdiction over maritime/civil aviation labour claims because of its general admiralty/aviation jurisdiction, the question is: are workers onboard merchant vessels/civil aircrafts entitled to the benefits of the worker-friendly provisions of S. 254C-(1)(f)-(h), (L)(i) and (2) of the *Constitution*, like all other workers? These benefits are derived from international labour conventions & standards, constitutional protections against unfair labour practices & discriminations in labour relations and; power to apply international best practices in resolving labour claims and the relevant conventions made specifically for seafarers[88] and civil aviators[89]. If the answer is in the affirmative, then, which court is imbued with the expertise and exclusive civil jurisdiction to apply all these? The answer is, of course, the *NIC,* because; the *Constitution* specifically says[90] the *NIC* shall have the exclusive civil jurisdiction to apply these instruments in adjudicating labour claims, and the *NIC* is also solely created as a specialized labour Court, manned with cognate experts and experienced judges[91] to effectively and efficiently do these. And the *NIC*, exercising its expertise, vide the *Third Alteration Act*, has positively revolutionised labour/employment law and practice in Nigeria in several aspects[92], the benefits, which this teething problem has not allowed the merchant-shipping sector to enjoy, and possibly, the commercial aviation sector in the near future, unless urgent steps are taken to proactively and anticipatorily remedy the situation.

For example, compensations are now payable for: unfair dismissal, psychological tortures, mental agonies, discrimination and harassments[93]; collective bargaining agreements [***CBAs***] are now enforceable without incorporation into the individual contracts of employment[94], contrary to the previous situation under common law[95]; inordinately long suspension is now regarded as constructive dismissal[96] and, remedied with compensations[97]; the *NIC* can now pry into the internal affairs of employers to redress unfair labour practices and, can now order promotions in deserving cases of vindictive denial of promotions or discriminatory denial of promotions or order payment of adequate compensations where it is impracticable to order promotions or both[98]; etc., all which were not possible under the erstwhile common law regime. So much has the nature of the legal regime of labour relations been radically transformed by the *Third Alteration Act* that, the world under the present legal regime is totally strange to the previous world of common law, the essence of the *Third Alteration Act* being, mainly to whittle down the rigours of common law labour relations. The *FHC* has no jurisdiction to do all these, as it still lives in the bygone

[88] *International Labour Standards on Seafarers op. cit*. See also *Wages, Hours of Work and Manning (Sea) Convention, 1946* at www.ilo.or [accessed Oct 01, 2022].

[89] *Acts and occurrences onboard aircraft* op. cit.

[90] S. 254C-(1)(f)-(h), (L)(i) & (2) of the *Constitution*.

[91] S. 254B-(3)&(4) of the *Constitution.* Specific veteran expertise is demanded above being just a lawyer for ten years.

[92] *Sahara Energy Resources Limited v. Oyebola* op. cit; Tonye Krukrubo et al of Aluko & Oyebode, "*Innovative NICN judgments could rewrite labour law jurisprudence*", in *Lexocolgy* [Published Sep 22, 2021] at https://www.lexology.com [Accessed Jan 24, 2024; and Templars, "*Is Termination of Employment without Reason Still Valid in Nigeria?*" *Templars ThoughtsLab* [Published Jun 20, 2023] at https://www.templars-law.com [Accessed Jan 24, 2024].

[93] *Mrs. Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative Nigeria & Ors* [Delivered Nov 11, 2011] reported by the *ILO* at https://www.compendium.itcilo.org [Accessed 2024-01-27], in which the *NIC* held unlawful, the discrimination, harassment and dismissal of a pregnant woman because of her pregnancy and awarded punitive damages. See also *Aneke Arinze Leonard v. Ecobank Nigeria Limited* at https://nicnadr.gov.ng/judgment/details.php?id=8515 [Accessed Jan 27, 2024], where the *NIC* awarded 50Million punitive damages for abuse of employer's power over deductions from the claimant's salaries on employee loan.

[94] *Ezechukwu v. Tecon Oil Services Nigeria Ltd* [NICN/LA/27/2017 delivered March 25, 2021] at https://www.nicnadr.gov.ng/nicnweb/display2.php?id=5799 [Accessed Jan 27, 2024]; *Enugu State Government v. Odo* [NICN/EN/01/2022 Delivered March 08, 2022] at https://www.nicnadr.gov.ng/nicnweb/diplay2.php?id=6846 [Accessed Jan 01, 2024].

[95] *Osoh & Ors v. Unity Bank Plc* (2013) LPELR-19968 (SC) 24-26, E-A.

[96] *Ogbaka v. OHHA Microfinace Bank Ltd* [NICN/EN/03/2020 – Delivered Dec. 13, 2022] at https://www.nicnadr.gov.ng/nicnweb/display2.php?id=7514 [Accessed Jan 27, 2024].

[97] Ibid.

[98] *Mariam v. University of Ilorin Teaching Hospital Management Board & Anor* (2013) 35 NLLR (Pt. 103) 134-136, C-E and, *Elizabeth v. Alex Ekwueme Federal University, Ndufu Alike-Ikwo* [NICN/ABK/02/2021 delivered Dec. 15, 2021] 26, para 3.

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world of pure common law, which implies that, seafarers and workers in civil aviation would be unwittingly debarred from these benefits in ceding jurisdiction to the *FHC*. That is an absurdity, which cannot be the constitutional intendment.

In fact, the *NIC* is the first and only specialised superior court in Nigeria. The *FHC* is not a specialised court but a court of exclusive general jurisdiction on all matters involving the *Federal Government* and its agencies, except labour. This fact should sink deep into the psyches of stakeholders in the legal and judicial circles. It is an error repeatedly made, to say *FHC* is a specialised court. It is not. It is a general jurisdiction court like the *SHC*, but exclusively for all federal matters, except labour and, land matters[99]. Hence, labour expertise is not constitutionally available[100] in the *FHC*. The further signal to the exclusive competence of the *NIC* in this regard against the general jurisdiction courts, like the *FHC* and the *SHC*, is further found in the special provisions in S. 254C-(1)(f)-(h) & (2) of the *Constitution*, SS. 12-19 of the *NICA*, the *NIC's Rules*[101], which further enabled the *NIC* to do a host of other things totally alien to the *FHC*[102]. The provisions of SS. 12-19 of the *NICA* are *sui generis*[103] in the adjudication of labour/employment disputes and, only the *NIC* is constitutionally empowered to exercise all the powers listed in SS. 12-19 of the *NICA*, which are *sui generis* to labour courts around the world and, applicable in Nigeria by virtue of S. 254C-(1)(f) of the *Constitution*, as examples of international best practices in labour relations. Note that, the *Constitution* directly granted exclusive jurisdiction and not ordinary power, to the *NIC* to exercise these powers[104]. Peculiarly, S. 254C-(2) of the *Constitution* directly and specifically mentioned non-obstante 'jurisdiction and power'. This implies that, any other court could not jointly exercise the power with the *NIC* thus, creating an exception to SS. 6(1)&(3) of the *Constitution* by reason of the non-obstante provisions of S. 254C-(2) of the *Constitution*.

By S. 12(2)(b) of the *NICA*, the *NIC* can bypass the *Evidence Act* in the interest of substantive justice; and as such, can admit pieces of evidence not admissible in the *FHC*[105], which might make a world of difference between the decisions of the two courts. The *NIC* can grant a range of reliefs, even if unclaimed, that are unavailable to the other superior courts of first instance in Nigeria by virtue of S. 254C-(1)(f)-(h) & (2) together with S. 254D-(2) of the *Constitution*, which combined to invigorate SS. 12-19 of the *NICA*. This is the international best practice in labour courts around the world and the *NIC* is bound to follow suit by virtue of S. 254C-(1)(f)-(h)&(2) of the *Constitution*[106]. *NIC's* civil procedure rules are tailored to avoid reliance on technicalities. Order 1, Rule 9(3) of the *NIC Rules* allows it to disregard technicality that can lead to miscarriage of justice. The result of these special provisions, as shown in the few instances already cited, is that, similar facts would normally produce different adjudicatory results between the two courts and that; if seafarers and civil aviators/aircrew are wrongly consigned to the *FHC*, they would be unwittingly denied the benefits of the civilizing ambience of these worker/employee-beneficent provisions over which only the *NIC* can exercise jurisdiction, by being tied to the apron of the common law; these radical provisions being essentially in favour of workers[107].

Even if it is granted that the *FHC* has limited jurisdiction to enforce international labour treaties, which is actually not the case, in view of S. 254C-(1)(h)&(2) of the *Constitution*, it would be tied to the apron of S. 12(1) of the *Constitution*, which would limit it to only ratified and domesticated international labour instruments, the limitation, from which S. 254C-(1)(f)-(h) & (2) of the *Constitution* has completely unfettered the *NIC*. The argument that, the *FHC* also has jurisdiction, by virtue of the *AJA*, *MSA* and *CAA*, to apply international labour instruments like the *NIC* in the realms of admiralty/civil aviation labour relations, is therefore highly erroneous because, it fails to take cognisance of the derogating effect of the *Third Alteration Act* – S. 254C-(1)(f)-(h)&(2) of the *Constitution*. With the ascendance of the *Third Alteration Act*, the jurisdiction of the *FHC* in that regard evaporates in favour of the *NIC*. By virtue of S. 254C-(1)(a)-(b), (f)-(h) & (2) of the *Constitution*, midwifed by the *Third Alteration Act*, only the *NIC* now has the exclusive vires to interpret and apply the provisions of all international labour instruments, international best labour practices and, all labour legislations.

The *FHC* is therefore, not equipped to dabble into the nuances of labour/employment jurisprudence, for which *NIC* is expressly created and constitutionally manned with the requisite labour law jurists. It is not generally known that, the gulf between what they do at

[99] *Commissioner of Police, Borno State & Anor v. Umar & Ors* (2016) LPELR-40819 (CA) 22-34, B-C.

[100] S. 250-(3)&(4) of the *Constitution*. All that is required to be judge of the *FHC* is being a lawyer with ten years general experience, compared to judges of the *NIC*, whom S. 254B-(3)&(4) of the *Constitution* says, apart from having the general qualifications, must additionally be highly experienced specialists in labour laws.

[101] Order 1, Rules 4, 5, & 9 & Order 5.

[102] *Sahara Energy Resources Ltd v. Oyebola* op. cit, in which the *Court of Appeal* upheld the exclusive power of *NIC* to utilise the innovative SS. 13-19 of the *NICA* to grant new radical reliefs not applicable under common law and, *Adegboyu v. UBA* op. cit, where the *Court of Appeal* upheld the radical power of the *NIC* to admit evidence against *Evidence Act* in the interest of justice. All these innovations are not available at common law and therefore at the *FHC*.

[103] Ibid.

[104] S. 254C-(1)(f)-(h) & (2) of the *Constitution*.

[105] *Adegboyu v. UBA* op. cit.

[106] *Elizabeth v. Alex Ekwueme University & Ors* op. cit. and *Mr. Godwin A. Ogbonna v. Nigeria Postal Service* [Delivered Jul 18, 2023] at https://nicnadr.gov.ng/judgment/details.php?id=8131 [Accessed Jan 27, 2024].

[107] *Sahara Energy Resources Ltd v. Oyebola* op. cit.

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the *NIC*, as a specialized labour court and, what they do at the *SHC*, *FCTHC* and *FHC*, as general jurisdiction courts, still tied to the apron of the common law, is so wide and divergent that, almost in all instances, sharply divergent results would come out from adjudications on the same set of facts, from the two streams of courts; and the majority of which would be at the detriment of the seafarers and civil aircraft workers, unwittingly consigned to the *FHC*[108], such that, it would be unfair in the extreme, almost tending to inhumanity, to subject any categories of workers to such deprivations without just cause. That cannot be the intendment of the *Constitution*. The *Third Alteration Act* has completely revolutionised labour law such that, all the traditional overbearing employers' rights, to which the *FHC* would still be tied, in the event of its retaining admiralty labour jurisdiction, have been invaded in favour of the new lease of life granted workers/employees under the *Third Alteration Act*. Few examples have been given earlier.

The real purpose of the *Third Alteration Act* is to ensure that; all categories of workers, without exception, are beneficiaries of this new lease of life[109]. Thus, applying purposeful interpretation, as posited by the proponents of exclusive admiralty labour jurisdiction for the *FHC*, actually favours the *NIC* against the *FHC*, though, there is actually no basis for the invocation of any other cannon of interpretation, than literal rule, to the very clear provisions of S. 254C-(1)(a)-(b)&(k) of the *Constitution*. Its invocation is devoid of any absurd result, as evidently shown in the preceding discourses. In effect, it is conceding jurisdiction to the *FHC* that would actually produce the absurd result of injustice, in denying certain class of workers their constitutional right to fair and better labour justice innovated in S. 254C-(1)(f)-(h) & (2) of the *Constitution*. And it is trite that, where two options are available, the option that conduces to safeguarding justice and vested rights of people must be preferred[110], particularly that constitutional provisions enjoy broad benevolent interpretation[111]. But the issue of two options does not even arise. *NIC* has exclusive non-obstante civil jurisdiction over all labour causes without exception.

The incorrect ascriptions to the provisions of SS. 251(1)(g) and 254C-(1)(a)-(b)&(k) of the *Constitution* against their spirits, are therefore, with respect, wrong, as the provisions of S. 254C-(1)(a)-(b), (f)-(h), (k) & (2) of the *Constitution* do not contain any self-limiting clause; and thus, applicable to all workers/employees and labour/employment relations without exception. Unambiguous constitutional provisions are given literal and liberal interpretations in favour of the people, except the contexts otherwise clearly suggest[112]. To toe the line the *FHC* adopted in *Bains' case*, which is being championed by the pro-*FHC* writers, would mean, the *Constitution* is being interpreted to discriminate against some classes of workers, by denying these hapless workers the rights enjoyed by other workers, simply because of the fora of their works, without any justification. This would be directly contrary to S. 254C-(1)(f)-(g) of the *Constitution*, which forbids unfair labour practices, discrimination at work places and, discriminatory application of labour impinging statutes. The *NIC* has the sacred mandatory constitutional duty to prevent unfair labour practices and, to entrench international best practices in the world of labour/employment relations in Nigeria, which adherence to the tenets of the pro-*FHC* writers would violate with impunity. Apart from the foregoing, such unjustifiable discrimination against workers onboard merchant ships and civil aviation would also violate *Nigeria's* obligation under the *ILO Convention No. 111*, which forbids discriminatory employment practices thus, making Nigeria, a pariah in comity. It might be necessary to mention that, part of the reasons for which the *Third Alteration Act* ceded exclusive non-obstante civil jurisdiction to the *NIC* to apply *ILO* and other labour-related instruments, was to escape the annual queries Nigeria used to receive from the *ILO* for failing to implement *ILO* instruments[113].

It was felt that, with a court directly burdened with the sacred and solemn constitutional duties to apply and enforce these treaties, Nigeria would, with a masterstroke, solve the problem of perennially failing to meet its *ILO* obligations[114]. This background information goes a long way to further show that, the object of the *Third Alteration Act* was purely, to make the new labour legal regime applicable to all workers, employees and labour relations without exception and, to have all labour claims adjudicated in one labour court with the requisite expertise to apply these innovations to all workers without exception. It is in this regard that, the *ILO* said, courts saddled with jurisdiction on labour/employment matters and, jurists in that area of practice too, have crucial roles to play, in entrenching the best international

[108] Under common law, there is no compensation, beyond payment in lieu of notice, for wrongful termination, unfair dismissal and unfair labour practice. By virtue of the *Third Alteration Act*, damages [compensations] are granted for a host of things hitherto unheard of – see *Sahara Energy Resources Limited v. Oyebola* op. cit., where the *Court of Appeal* approved this new state of the law.

[109] *Presidential Assent Speech on the Third Alteration Act* op. cit. and *Skye Bank Plc v. Iwu* op. cit.

[110] *Egbebu v. The IGP & Ors* (2016) LPELR-40224 (CA) 50-51, F-B.

[111] *FGN v. Nganjiwa* (2022) LPELR-58055 (SC) 64-67, E-D.

[112] *Ladoja v. INEC & Ors* (2007) LPELR-8915 (CA) 16-17, E-D.

[113] B.B. Kanyip, *"Labour Justice and Socio-Economic Development: Welcome Remarks and Setting the Tone for the Public Lecture on the 'Role of Industrial Courts and International Labour Standards in Promoting Good Governance to Support Economic and Social Development"*, presented at the *2022/2023 Legal Year Celebrations of the National Industrial Court of Nigeria, October 6, 2022*, p. 4-5. See also, Eromosele Abiodun, "*Nigeria Ratifies 40 IMO, ILO Conventions on Maritime Safety*" [posted 4 years ago] at https://www.thisdaylive.com [accessed Jan. 09, 2023].

[114] Ibid.

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practices in the labour regimes of their nations[115]. Therefore, the specialised labour court, which the *NIC* is, has a vital role to play in the area of maritime/aviation labour disputes adjudications to bring Nigeria in comity with the civilized nations of the world and thereby meet its obligations to the *ILO*.

How is the *FHC* going to fit into this role, if jurisdiction is wrongly ceded to it, with its total lack of expertise to appreciate the nuances of modern labour jurisprudence, including maritime labour jurisprudence and, its lack of jurisdiction to apply the international labour instruments that anchor these nuances? A court should not be hungry for jurisdiction but must guard its jurisdiction jealously for the public interests the court serves. No wonder that, even after the re-establishment of the *NIC* with exclusive civil labour jurisdiction, Nigeria still continues to receive queries on failure to implement international maritime instruments, which include maritime labour instruments, as the *FHC* unwittingly continues to adjudicate admiralty labour disputes while litigants and lawyers unwittingly continue to file maritime labour cases in the *FHC*. Dakuku Peterside[116], the then *Director-General of Nigeria Maritime Administration and Safety Agency* [***NIMASA***], while reporting at a seminar organised for judges, of which it was not stated that, the *NIC* judges were invited, said that, Nigeria recently ratified 40 conventions of both the *ILO* and *International Maritime Organisation* [***IMO***], covering maritime safety, **labour**[117] and marine **environment**[118] and that, *NIMASA* was working with stakeholders to ensure that, all queries raised in the *2016 IMO Audit Report on Nigeria Maritime Sector*, were addressed to boost Nigeria's chances of re-election into the *IMO General Council* and, ended up by making this frightening economic remarks regarding the damning effects of failure to implement international conventions in the Nigeria municipality:

> "It is a herculean task trying to sell Nigeria to the international community for investments, because in some cases the investors had raised the issue of *uncertainty in dispensation of litigation and implementation of laws*."

When it is not known that, the *FHC* lacks jurisdiction on labour matters and, lacks expertise on the application of *ILO* and other international labour conventions/instruments: why would this unsavoury state of affairs not continue to happen? From the horse's mouth, we have heard the direct negative impacts of ceding jurisdiction to the wrong court on the national economy. Be that as it may, to cede jurisdiction to *FHC* in labour matters would also mean that, labour cases in admiralty/civil aviation would lose the advantage of timeous adjudication, which only the expertise of the *NIC* and its less cumbersome procedures would have guaranteed, coupled with the fact that, the *FHC* cases would enjoy right of appeal to the *Supreme Court*[119], contrary to the *NIC* cases, which appeals end[120] at the *Court of Appeal*, to worsen the delay thus, negating one of the principal reasons the *Third Alteration Act* repositioned the *NIC* as an economic support court[121]. The basic reasons why the rights of appeal on civil labour cases emanating from the *NIC* stop at the *Court of Appeal* is the realisation that, labour cases cannot afford delay because, they touch directly on the economic nerves of the nation[122] and, are equally often about rights in *personam*, which die[123] with the owners and therefore, cannot afford to be delayed. It was thought that, quick dispensation of justice in the labour sector would encourage local and direct foreign investments and ginger economic growth[124]. This shows that, the argument that, ceding exclusive civil jurisdiction to the *NIC* on maritime labour claims would engender grave negative economic implications in the maritime/ merchant shipping sector, is actually turned on its head.

Besides, the fact remains that, S. 254C-(1)(b) of the *Constitution* gives exclusive civil jurisdiction to the *NIC*, to apply the provisions of all other statutes, apart from those expressly listed therein, relating to labour/ employment relations, conditions/environment of work and work places. From the moment of the ascendancy of the *Third Alteration Act*, the *FHC* lacked the jurisdiction to apply the provisions of the *AJA*, *MSA* and *CAA* on admiralty/civil aviation labour relations. From that moment, the *NIC* became the sole court with jurisdiction and expertise to apply all the cognate provisions of the municipal statutes and international conventions on maritime/civil aviation labour claims, without exception by virtue of the non-obstante S. 254C-(1)(f)-(h)&(2) of the *Constitution*. And to strengthen this, the *NIC* also has the sole jurisdiction to apply ratified, but undomesticated international conventions, while the *FHC* is still tied to the apron strings of S. 12(1) of the *Constitution* that, debars it from applying undomesticated international conventions.

This implies that, unwittingly ceding jurisdiction to the *FHC* in this wise will produce the absurd result of the *FHC* not being able to apply some relevant but

[115] "*International Labour Law and Domestic Law: A Training Manual for Judges, Lawyers and Legal Educators*" (ILO ITC, Turin, 1st Ed., 2010) 137.
[116] Eromosele Abiodun, op. cit.
[117] S. 254C-(1)(a) of the *Constitution*.
[118] Ibid: "… conditions of service, including health, safety, welfare of labour…" definitely covers "marine environment" as environment of work.
[119] S. 233(1)&(2)(a)-(c) of the *Constitution*.
[120] S. 243(4) of the *Constitution*.
[121] Presidential Assent Speech on the *Third Alteration Act* op. cit.
[122] *Adegboyu v. UBA* op. cit. and, *Skye Bank Plc v. Iwu* op. cit.146, D-F.
[123] *Anam v. Abuo & Ors* at https://www.nicnadr.gov.ng/nicnweb/displayr.php?=8452 [accessed Dec 25, 2023] and *Rhodes v. NDIC* (2017) LPELR-41925 (CA) 39-40, E-A.
[124] [The *Presidential Assent Speech* [supra]; *Adegboyu v. UBA* [supra] and, *Skye Bank Plc v. Iwu*, 146, D-F [supra].

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undomesticated conventions to seafarers and civil aviation workers, meaning, while the world had moved on and the *Third Alteration Act* had ensured that, the *NIC* is constantly abreast of cutting-edge issues in labour jurisprudence, the *FHC* is tied to the anachronistic common law jurisprudence of labour relations: an absurd consequence clearly unintended by the *Constitution*! In like manner, erudite Olawoyin's [supra] hint of concurrent jurisdiction; would create the absurd result of institutionalizing forum shopping, with two divergent jurisprudences, against the unified labour jurisprudence intended by the *Third Alteration Act*, besides the fact that, concurrent civil jurisdiction is totally impossible between both courts, in view of the mutual exclusivity of their civil jurisdictions, earlier espoused. These would therefore automatically and unwittingly compound the delay in adjudications of maritime labour disputes and, create uncertainty of judicial precedents in maritime labour law, both, which absences are central to institutionalization of healthy maritime labour law adjudication and jurisprudence.

All these facts, with the greatest respect, were not obvious to the erudite judges of the *FHC* because, they, not being, experts in labour laws and the *Court of Appeal* too, which is also a general jurisdiction appellate court, without a special panel, headed by labour law jurists, set aside for labour matters. The lawyers too, fell into this error because, from the cases and articles on this issue, none of them alluded to these wider negative implications, being that, lawyers rarely specialize in Nigeria. For these additional reasons, it is now obvious that, the *Court of Appeal's* decision in *Bains' case*, ceding exclusive civil jurisdiction to the *NIC*, though, without giving these additional reasons, is unassailable, while the decisions of the *FHC* holding that, the *FHC* has exclusive civil jurisdiction and, those of the writers towing the same line, are with respect, irredeemably wrong. The philosophy behind the grant of exclusive civil jurisdiction to the *NIC* over all types of employment/ labour causes without exception, is to bring all types of workers and labour relations, regardless of their places of work and nature of works, within the same court to enable them take full advantage of the benefits of the civilizing essences of the innovations brought about by the *Third Alteration Act*, in a bid to fulfill Nigeria's obligations to the *ILO*[125]. To hold otherwise, without clear contrary constitutional provisions to that effect, is to take some categories of workers back to servitude, without reasonable justifications, contrary to S. 254C-(1)(f)-(h) of the *Constitution*, which forbids unfair labour practices/ discriminations and, enjoins the institutionalization of international best labour practices and international labour standards in the national domestic arena. Be that, as it may, the discussion moves to another part of the article.

[125] Kanyip op. cit.

e) Whether NIC has Jurisdiction on Foreign Seafarers?

The point was made by the *FHC* in *Bains' case* that, the *NIC* lacks jurisdiction because, S. 254C-(1)(k) of the *Constitution* limits its jurisdiction to wages of Nigerian workers. The proponents of the exclusive jurisdiction in favour of the *FHC*, in their articles, reinforced this view. We have earlier examined an aspect of this objection. We shall now examine the other aspects. The ratio was that, the *NIC* lacked jurisdiction by virtue of S. 254C-(1)(k) of the *Constitution* because, the plaintiffs/claimants were foreigners whereas, S. 254C-(1)(k) of the *Constitution* limits the jurisdiction of the *NIC* over wages, to causes that arose within Nigeria and involved only Nigerian workers. Unfortunately, the *FHC* did not examine this aspect of the arguments further, and it was unfortunately not examined at all at the *Court of Appeal*'s level; and the pro-*FHC* writers have harped on it, without better arguments. The error appears to arise from a conflation of the doctrines of *Flag State* and *Port State* controls[126], whereas, the two doctrines are distinct. *Flag State Control* is a doctrine in admiralty, which gives jurisdiction over a ship on sail, its staff and seafarers, to the courts of the state whose flag is hosted on the ship, to adjudicate any dispute arising therefrom, while *Port State Control* gives jurisdiction to the courts of the state in whose port the ship berthed, irrespective of the hosted flag. The purposes are to meet the special exigencies peculiar to shipping. The *Port State Control* is corollary to the doctrine of in rem prejudgment arrest of ships as liens to secure the reliefs claimed in the actions. This particularly takes care of abandonment/starvation on the high seas, as the ships could be sold to defray any damages granted.

The *Port State Control* is particularly useful for ship workers or seafarers because of the transnational nature of their works at large on the vast landless high seas, which naturally gives room for abuse of human and contractual rights, which might prove fatal if they have to wait till they get to the state, whose flag is hosted on the ship, to challenge these. So, starvation, very grievous inhuman maltreatments and abandonment of ships and their crews without provisions do occur on the high seas and, would prove fatal without the *Port State Control* that allows seafarers to take advantage of the first human settlement the ship reaches to challenge the violations or breaches of contracts. This also affords the local municipalities rights to enforce compliance with international instruments on seafaring. The *Flag State Control* usually inures in the state in which the ship was registered. The *Flag State Control* ties jurisdiction to the state of the flag hosted on the ship, while the *Port State Control* ties jurisdiction to the municipality of the port at

[126] Simon O. Williams, "*Maritime Security: State Jurisdiction Over PCASP*" in *The Maritime Executive* at www.maritime-executive.com [accessed Nov 04, 2020] for incisive discussion on the distinction between the terms.

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which the ship berthed and in which the cause of action arose or continued, irrespective of the state of the hosted flag, the *NIC's* jurisdiction being tied, in this instance, to the nature of the dispute and its connexion to labour relations and, not to the nationality of the workers.

Assuming the imputation is true that, the *NIC* has no jurisdiction over foreign seafarers, as alleged: which provision of the *Constitution* gives the *FHC* jurisdiction on labour and employment matters? None. The *FHC* is a court of enumerated exclusive general civil jurisdiction, while the *NIC* is a single-subject jurisdiction specialized court, with exclusive civil jurisdiction on labour/employment relations alone. Exclusion of the items lying outside any enumerated list is cardinal in the interpretation of statutes, including the *Constitution*[127]. So, the non-obstante clauses of S. 254C-(1)&(2) of the *Constitution*, which grants the *NIC* exclusive civil jurisdiction on all labour matters as confirmed by the *Supreme Court* in *Skye Bank v. Iwu* [supra], debars all other courts in Nigeria from the *NIC's* enumerated sphere of influence. So, head or tail, only the *NIC* has exclusive civil jurisdiction on merchant shipping labour claims in all ramifications.

It is clear that, what S. 251(1)(g) of the *Constitution* stressed, is the military and commercial aspects of the admiralty jurisdiction, admiralty being essentially a naval [military] issue. It did not stress the subject of labour/employment relations in admiralty. Though, admitted, the word "including", as used in S. 251(1)(g), expands the scope covered under the *ejusdem generis rule*[128], but it did not cover the enactment of any other statutes to widen the scope, especially, in the case of S. 251(1)(g), where it specifically states that, the only area where the *NASS* could enact further statute, to widen the extent of the admiralty jurisdiction conferred on the *FHC*, relates only to upgrading of inland waterways to international waterways. So, the *NASS* cannot go beyond the limit of upgrading the inland waterways, which is the *ejusdem generis* in issue, to create additional jurisdiction, as it has done in the *AJA*.

Words of permissiveness or inexhaustibility, like 'including' in the *Constitution* and statutes, do not warrant the enactment of new statutes, to interpret what they mean, but are for the courts to construe the breadth in application. And anything that does not come within the breadth cannot be imported from another statute, especially when another superior court's jurisdiction covers such item[129]. S. 318(4) of the *Constitution* impliedly bars any other statute from interpreting the provisions of the *Constitution*, by expressly providing that, only the *Interpretation Act* can interpret its provisions. To enact a statute to say, this is what the words/provisions of the *Constitution* mean, infringes S. 318(4) of the *Constitution*, and is also a usurpation of the duty of courts, besides the fact that, an ordinary statute **cannot** subtract from or add to the jurisdiction of the superior courts as conferred by the *Constitution* other than by means of constitutional amendment[130]. This is what the *Supreme Court* unambiguously demonstrated in its holding that:

> "Again, it is trite law that the jurisdiction of the State High Court as conferred by the Constitution can only be curtailed or abridged or even eroded by the Constitution itself and *not by an Act or Law respectively of the National Assembly or State House of Assembly*, meaning that where there is conflict in that regard between the provisions of the Constitution and the provisions of any other law of the National Assembly or House of Assembly respectively, the constitution [sic] shall prevail, if I may emphasize excepting as I have observed above by direct and clear provision in the Constitution itself to that effect[131]."

The only thing an ordinary statute can do is to give additional powers to the superior courts, as distinct from jurisdiction[132]. The jurisdiction of the superior courts are exhaustively granted by the *Constitution*[133] and, the doctrine of covering the field[134], which forbids duplication of fields sufficiently covered by the *Constitution*, would not allow such duplication. The *SHC* has exclusive residual jurisdiction. So, any statute that attempts to confer additional jurisdiction than expressly conferred by the *Constitution*, on any superior court, would definitely infringe on the jurisdiction of one of the superior courts, at least, on the exclusive residual jurisdiction of the *HCs* and, would by that, be unlawful and void[135]. Besides, there is no vacuum left in the *Constitution* with regards to the jurisdictions of all the superior courts of records, which an ordinary statute can fill up, as there is no subject on earth not already covered by the jurisdiction of one of the superior courts of records. And in the instance of S. 251(1)(g) of the *Constitution*, the only area where the enactment of further statutes was allowed to delimitate the scope of the admiralty jurisdiction of the *FHC* relates only to upgrading of inland waterways, to international waterways. The express mention of one thing, excludes those not mentioned[136]. As S. 251(1)(g) did not cover the issue of admiralty labour disputes, the *NASS* could not have enacted a statute to widen the jurisdiction of the *FHC* in that regard.

[127] *Mogagi v. Ogele* (2012) LPELR-9476 (CA) 88, A-C and *Buhari & Anor v. Yusuf & Anor* (2003) LPELR-812 (SC) 20, B-E.
[128] *Buhari & Anor v. Yusuf & Ors* op. cit., 15-16, E-B.
[129] *NUEE v. BPE* op. cit. 38-42, A-D.
[130] *Ibid* 40-42, F-D.
[131] *Ibid*, 38-39, A-F.
[132] Ibid, 40-42 op. cit.
[133] Ibid, and *Job Ike & Ors v. PatricK Nzekwe & Ors*. (1975) LPELR – 1468 (SC) at 9–10, C–A.
[134] *INEC v. Musa* op. cit.
[135] *NUEE v. BPE* op. cit.
[136] *Oloja & Ors v. Governor, Benue State & Ors* (2015) LPELR-24583 (CA), 21, B-D.

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So, S. 2(3)(c)-(d)&(r) of the *AJA* cannot widen or delimitate the admiralty jurisdiction of the *FHC* to include maritime labour claims without direct authorisation by S. 251(1)(g) of the *Constitution*, more so, when in conflict with S. 254C-(1)(a)-(b)&(k) of the *Constitution*. If such is done, as was done in the *AJA*, the provisions are simply void by the doctrine of covering the field[137]. So, the decision of the *Court of Appeal* that, these provisions were void for inconsistency with S. 254C-(1)(a)&(k) of the *Constitution* was right. If the employment relations of naval officers, around whom admiralty revolves, and who clearly performed highly specialised naval duties, are subject to the exclusive civil jurisdiction of the *NIC*, it looks strange to argue that, other categories of workers in the admiralty sector, like merchant seafarers, who are not more specialists than naval officers, ought not to be equally subject to the civil jurisdiction of the *NIC*. None of the pro-*FHC* authors and the contrary decisions of the *FHC* have posited that naval officers' employment causes are not subject to the exclusive civil jurisdiction of the *NIC*. This further shows the incongruity of their objections.

The textual anchor of S. 251(1)(g) is even against that position. In effect, the scope of the admiralty jurisdiction of the *FHC* is left to the areas specifically spelt out in S. 251(1)(g) and, are those areas that are traditionally within the normal scope of admiralty jurisdiction, by virtue of the word "including" and, when constitutional amending provisions [S. 254C-(1)(a)-(b)&(k)] subsequently took away the civil jurisdiction on all labour/employment/wage claims without exceptions and gave them to the *NIC*, it would amount to deliberate obfuscation to continue to argue that, such jurisdiction remains in the *FHC* and, worse still, base these arguments on the provisions of ordinary statutes. If S. 251(1)(g) did not even approve of the provisions of S. 2(3)(c)-(d)&(r) of the *AJA*, it goes without much ado that, the issue of whether S. 254C-(1)(k) relates only to wages of Nigerian workers is, red herring because, without S. 254C-(1)(k), the *NIC*, by virtue of S. 254C-(1)(a), already has sufficient exclusive non-obstante jurisdiction to deal with wage issues arising from any part of the federation, whether from foreigners or citizens or from foreign seafarers or not and, to apply any relevant statute by virtue of the equally non-obstante S. 254C-(1)(b) of the *Constitution*. Wage issues are labour issues, the profit or reward of labour being wages [salaries or remunerations]. Wages, the twin side of profits, are the incentives for labour and, the invisible hands that drive commerce and capitalism. Hence, wages and profits are the Siamese twins of labour.

Assuming, the contrary arguments that S. 254C-(1)(k) did not cover wage claims of foreigners, were right, a close examination of the ratio and the arguments show that, by the same token, the *FHC* too, lacks jurisdiction because, ordinarily, no municipal court could exercise jurisdiction over a cause that arose in foreign land and involves foreigners under the principles of *Public International Law*, even if both parties subsequently reside in Nigeria without more. That section 254C-(1)(k) of the *Constitution* includes the phrase "…in any part of the federation…" which has been wrongly leveraged, as meaning that, the workers must be Nigerian workers alone, is clearly, with respect, a misconception. First, the phrase does not detract from the *NIC's* exclusive civil jurisdiction over labour and employment matters arising onboard merchant ships and civil aviation involving foreigners, foreign merchant ships and foreign civil aircrafts.

The right to exercise of the *NIC's* exclusive civil jurisdiction in these instances derives from the doctrine of *Port State Control,* which allows foreign seafarers rights to sue in foreign courts other than courts of the *Flag State*. It is from this doctrine that the *FHC* originally assumed jurisdiction over merchant-shipping/civil aviation labour claims before the bifurcation of its civil jurisdiction in favour of the *NIC*. So, with the bifurcation in favour of the *NIC*, the *NIC* takes over the doctrine, in that aspect of the law, to exercise the admiralty labour jurisdiction hitherto exercised by the *FHC*. That is the natural consequence of the grant of exclusive jurisdiction to the *NIC* in that area of labour claims that warrants the invocation of this common law doctrine. This doctrine gives the requisite municipal court, the *NIC* in this respect, the condition precedent to exercise its exclusive civil jurisdiction on labour/employment matters in admiralty/civil aviation. A very careful examination shows that, the doctrine of *Port State Control* is actually an extension of the plenaries of the subject matter, parties and territorial jurisdiction of a court. By stepping into Nigeria with the regnant contract intact, but breached in Nigeria or, with the breach happening outside Nigerian shores, but continuing on the Nigerian shores or coasts, the *NIC*, by virtue of S. 254C-(1)(a)&(k) ordinarily has the exclusive jurisdiction for which the doctrine is a condition precedent. S. 254C-(1)(k) of the *Constitution* did not talk about the nationality of the workers who made the wage claims and also did not talk about the workers being employed by Nigerians or Nigerian companies, but that; the wage claims [cause of action] must come from "*any worker or employee in any part of the federation"*.

Thus, it is the worker/employee being within any part of Nigeria, which matters: not, whether the worker is a Nigerian or employed by a Nigerian or a Nigerian company or statutory corporation or institution. It follows that, once a ship berths in a Nigerian port, the workers are automatically in a part of Nigeria in which the ship on which they work has berthed, and any breach of the contract of employment at that point or a breach that continued to that point, brings about a cause of action within the Nigerian shores or coasts [the cause of action

[137] *NUEE v. BPE* op. cit.

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arose at that point or continued to that point] as envisaged by S. 254C-(1)(k) and, the ship and its workers are automatically under the territorial and subject matter jurisdiction of the *NIC* and, can therefore bring in-rem actions to arrest the ship as pre-judgment lien[s], unless adequate bonds are provided[138]. The seafarers who come within the confines of "*any worker or employee*" as used in S. 254C-(1)(k), and are in Nigeria by virtue of their ships berthing in Nigerian ports [any part of the Federation] where the issues of non-payment of wages arose or continued in that part of the federation, gives the foreign workers the right to bring actions at *NIC* in Nigeria and, the *NIC* has the right to place reliance on the doctrine of *Port State Control* to invoke its municipal jurisdiction thereon. There is no other logical way of looking at the issue, considering the law that, constitutional provisions must receive broad constructions[139].

The doctrine of *Port State Control* operates when ships enter a municipal port, whereby the municipal port logically exercises certain measures of territorial control over the ships and parties and, on sundry issues, including issues connected with unpaid wages of the seamen and other labour/employment issues on the high seas, because of the urgent nature of these issues, which cannot be postponed till the return of the ships to the flag states. So, by virtue of this doctrine, seamen can bring legal claims on unpaid wages in the court of the port state with the requisite municipal jurisdiction[140], irrespective of where the contracts were concluded and the flag states of the ships, provided the breaches occurred or continued to that point. Where the breach occurred, as in general law of contract and, the parties are present and, especially the ships, which can be arrested in rem, in the local jurisdiction, confers the right to exercise *Port State Control*. It is analogous to the *doctrine of necessity*[141] by which the acts of usurpers of sovereign mandates may be given validity because of the urgency and necessity dictated by the peculiar situation at hand. By virtue of the doctrine of *Port State Control*, a vessel can be arrested and detained pre-judgment by the municipal court with the requisite jurisdiction for a host of issues, including non-compliance with international conventions, such as the *MLC*[142], *SOLAS*[143] and *STCW*[144] and; these could include matters affecting crew conditions, such as, excessive working hours and outstanding wages[145] and other labour/employment disputes on the high seas.

It is certain that, the doctrine of *Port State Control* is not the conferrer of jurisdiction on the municipal court, as wrongly assumed, but only specifies the condition precedent for the municipal court to assume the prior jurisdiction it has over the subject matter, territory and parties in the suit. It could not have been otherwise. An international treaty or custom could not have spelt out the particular municipal courts in the member states that should exercise jurisdiction on issues covered by the treaty or custom. It is purely the domestic affairs of the member states to donate which courts will exercise jurisdiction over the convention. Since the *FHC* lacks municipal jurisdiction over labour/ employment matters and wages of workers, it lacks jurisdiction to utilize the doctrine of *Port State Control* over wages of seafarers, by relying on its general admiralty jurisdiction, which has been whittled down by S. 254C-(1)(a)-(b)&(k) of the *Constitution*. It is in this wise that, it is unnecessary to shy away from saying, the *NIC* exercises admiralty/civil aviation jurisdiction over maritime/civil aviation labour relations, as the *NIC* attempted to do in its very brilliant landmark decision in *Stephen's case*, by saying, the *NIC* was not exercising admiralty jurisdiction, in assuming jurisdiction on torts arising from labour relations onboard a merchant ship, but that, it was exercising purely labour jurisdiction; as if admitting it had admiralty jurisdiction was an anathema that would have automatically derobed it of that jurisdiction. It needs not avoid the use of that jargon. It has admiralty jurisdiction on admiralty labour matters, whether by way of torts, wage disputes or terminations of employment or any other labour/employment matters or matters related to or connected with or ancillary to or arising from: period.

The important thing is: if the exercise of the exclusive civil jurisdiction is fully covered by the *Constitution*. Jargons cannot have the effect of thwarting the *Constitution* on an issue on which it duly grants exclusive jurisdiction to a particular court. After all, different courts simultaneously exercise jurisdictions over different parts or all parts of admiralty in different nations[146]. In the *USA*, a federalism like Nigeria, and

[138] Douglass G. Schmitt et al, "*The Action In Rem And Arrest*", *Federal Court and Federal Court of Appeal Education Seminar, Maritime Law*, Sponsored by the *National Judicial Council and Canadian Maritime Law Association,* May 23, 2014 at www.cmla.or [accessed Oct 01, 2022].

[139] *ACN & Anor v. INEC & Ors* (2013) LPELR-20300 (SC) 27, D-E.

[140] '*Port State Law*' in "*Your Legal Rights | ITF Seafarers*" at https:// www.itseafarers.org [accessed Nov. 03, 2020]. *Port State Jurisdiction – Oxford Public International Law*" *OUP* www.opil.ouplaw.com [accessed Nov 03, 2020]. *Arrested and Detained Vessels, and Abandoned Seafarers*" at https://www.ics-shipping.org [accessed Nov 03, 2020].

[141] *Oguebie & Anor v. Odunwoke & Ors* (1973) LPELR-2315 (SC) 11-31, B-C.

[142] *ILO Maritime Labour Convention, 2006*.

[143] ILO *Convention for Safety of Life at Sea 1974*.

[144] International Maritime Organisation, *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*.

[145] "*Arrested and Detained Vessels, and Abandoned Seafarers*" *op. cit*.

[146] Will Kenton, "*Admiralty Court*" [updated June 07, 2022] at www. investopedia.com [accessed Oct 08, 2022]. See also Courts and Tribunals Judiciary, "*How are Tribunals decisions challenged*" op. cit. See Case No. 2400214/2017 – delivered by the *Employment Tribunals, London Central*, 25 October 2017 op cit. whereby the inferior *Tribunal*

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whose *Constitution* Nigeria substantially copied, both state court and the federal *District Court* share in admiralty jurisdiction, though, the *District Court* has essentially exclusive admiralty jurisdiction in specific areas[147]. Nigeria is not therefore the first to bifurcate admiralty jurisdiction in different courts. Hence, whether the *NIC* exercises admiralty jurisdiction is irrelevant. What is relevant is whether the *Constitution* actually conferred it with the jurisdiction and, whether it can add value to labour jurisprudence, by its jurisdiction thereon and, ultimately the legal regime of labour relations in that sector and, boost the national economy in line with the objectives of the *Third Alteration Act*. And, as has been adequately shown before now, the *Constitution* actually duly conferred the *NIC* with full exclusive civil jurisdiction on seafarers/civil aviation crews' labour claims with full statutory and inherent powers of pre-judgment in-rem arrest of ships, as liens to secure damages awardable in the in-rem actions. And the innovations that abound in the *Third Alteration Act*, which only the *NIC* can apply, are evidence that, the *NIC* adds more value in this area of the law than the *FHC*, propping up positive healthy labour relations and economic development, being the very reasons for the first creation and, the current re-creation and repositioning of the *NIC* for greater efficiency[148].

In this wise, the argument of erudite Olawoyin that, subjugating S. 251 of the *Constitution* to S. 254C-(1) is unsavoury, because both courts are specialised courts, with respect, cannot be right. The *FHC* is not a specialised court but a general jurisdiction court just like the *SHC*, but with exclusive jurisdiction on issues pertaining to the *Federal Government*. The *NIC* is the only superior court, as of today in Nigeria that, is truly a specialised court. And even if the *FHC* is actually a specialised court, which it is not, the only way to avoid confusion and overlapping of the frontiers of the jurisdictions of both courts, as is being currently created in spite of the clear language of the *Constitution*, is the method adopted by the drafters of the *Third Alteration Act*, which subjugates S. 251(1)(g) of the *Constitution* to S. 254C-(1)(a)-(b)&(k) of the *Constitution* in order to effectively secure the *NIC's* specialisation. To tow the line that S. 254C-(1)(a)-(b)&(k) did not subjugate S. 251(1)(g) of the *Constitution* and, to agree to concurrent jurisdictions for *FHC* and *NIC*, suggested by the learned author, is to create unwittingly, unimaginable confusion. The proper thing had been done; and it should left undisturbed.

Therefore, there is no unintended consequence flowing from the conferment of exclusive merchant shipping/civil aviation labour jurisdiction on the *NIC*. Erudite Olowayin's admission that, when it comes to the issue of arbitral awards and their enforcements that, the question of the simple contract fulcrum of the maritime labour contracts would deprive the *FHC* jurisdiction in favour of the *NIC* is a further clear pointer to why the *FHC* cannot share at all in the civil jurisdiction on maritime/civil aviation labour claims, exclusively ceded to the *NIC*. It is clear now that, the research has thoroughly examined all the issues it sets out to examine to clear the fogs on the frontiers of the jurisdictions of the *FHC* and the *NIC* in the areas of merchant shipping/civil aviation labour disputes. Therefore, in the natural course of a treatise, it must now necessarily cruise to an end.

III. Conclusion

It is thus clear that; *NIC* is the exclusive civil court for maritime/civil aviation labour claims in *Nigeria*, and not the *FHC*. The *FHC* only has exclusive civil jurisdiction in the vast remaining parts of admiralty/civil aviation claims unconnected with labour relations. *Ipso facto*, the *Court of Appeal's* decision overruling the *FHC's* decision in *Bains' case*, which wrongly ceded exclusive civil jurisdiction over maritime labour claims to the *FHC*, is unassailably right. It is clear that, with the *NIC's* labour expertise and its flexible rules and procedures, it better meets the aspirations of speedy and efficient disposition of cases. It is clear too that, with exclusive civil jurisdiction ceded to the *NIC* on merchant shipping and civil aviation labour claims, the rights of workers in the two sectors are better protected by the exclusive civil jurisdiction of the *NIC* to apply ratified international labour instruments [domesticated or not] and, its equally exclusive civil jurisdiction to eradicate unfair labour practices and, emplace international best practices thus, meeting Nigeria's obligations to the *ILO* and other labour organisations. No doubt, these contribute to adjudicatory efficiency and better protection of labour rights in line with the Nigerian *ILO* obligations, which are not available in the *FHC*. These support the unassailable correctness of the *Court of Appeal's* decision in view.

The clear constitutional demarcations of the frontiers of the jurisdictions of *FHC* and *NIC* by the non-obstante clauses of S. 254C-(1)&(2) of the *Constitution* solved the problem of any possibility of overlapping jurisdictions and the consequential conflicting decisions. Bypassing these non-obstante clauses is the cause of all these controversies. We should just obey the *Constitution*, since there is no absurdity arising therefrom. It is thus clear that, the non-obstante clauses

heard the admiralty labour claims involving foreigners. But being an inferior tribunal, it lacked the power to order in-rem arrest of ships, since inferior tribunals have no inherent powers – see Vivet Kumar Verma, "*Difference between superior and inferior court*" at www.indian caselaws.wordpress.com [accessed Oct 01, 2022].

[147] Marilyn Raia, "*Admiralty Jurisdiction – What Does That Mean?*" Buuivanthouser [posted 11.01.13] at www.bullivant.com [accessed Oct 01, 2022].

[148] Presidential Assent Speech on the *Third Alteration Act* op. cit.

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that conferred *NIC* with exclusive civil jurisdiction over all labour matters, including admiralty/commercial aviation labour matters, was deliberate, to eschew this type of controversies, which have been shown to be products of misconceptions arising from non-familiarity with the purports of the *Third Alteration Act* and other cognate constitutional provisions and, the salient provisions of other relevant statutes.

The *Court of Appeal* should, therefore, not be invited to a self-defeating macabre circus of conflicting decisions on this issue. Needless to say that, the suggestions for: constitutional amendment, case stated to the *Supreme Court* and, advocation for concurrent jurisdictions, are not justifiable in law and the economics of labour and adjudicatory efficiency. As a matter of urgency, the *NIC* should amend its civil procedure rules, to incorporate civil procedures on its maritime/civil aviation labour jurisdiction, which take into consideration its peculiarities as a specialised labour court. Taking this proactive step timeously will reinforce the *NIC's* commitments to optimum adjudicatory efficiency. In the meantime, it can rely on the *FHC* rules by virtue of S. 254D-(1) of the *Constitution* and Order 1, Rule 9(1) of the *NIC Rules*, to manage its exclusive non-obstante civil jurisdiction on maritime/civil aviation labour claims.

It has been a worthwhile journey into charting a sure course into these labyrinthine and thorny legal issues that have been agitating the legal circle for some time now. This could not have been achieved without piping from the exalted shoulders of the previous erudite scholars on these issues, into the ethereal and esoteric natures of knowledge and understanding. I therefore acknowledge all the erudite legal scholars, jurists and practitioners, especially those that I have specifically cited, in assisting me to advance understanding in these recondite areas of the law. I especially thank the peer reviewers, whose suggestions, I have leveraged to improve this research.

It is hoped this research has significantly contributed to the elucidation of the thorny issues; and if not, it should be accepted in the manner in which friends accept gifts amongst themselves, where the intentions behind the gifts are more cherished than the material qualities of the gifts. The intentions of the research were: to elucidate and provide solution to the thorny controversies on the frontiers of the admiralty/civil aviation jurisdictions of the *FHC* and the *NIC* and thereby, ensuring the fruition of the objectives of the specialisation of the *NIC* and, the much needed certainty in these areas of the law, for the benefits of the international community in merchant shipping/civil aviation industries and, for national economic growth and development, considering the centrality of merchant shipping/civil aviation to international commerce. It should be accepted as such. *C'est fini*.

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