

DOES THE NATIONAL INDUSTRIAL COURT OF NIGERIA HAVE JURISDICTION OVER CLAIMS FOR UNPAID COMMISSION ARISING FROM A DISTRIBUTORSHIP CONTRACT?

09 March 2023

The subject-matter jurisdiction of the National Industrial Court of Nigeria (“NICN”) is limited to labour and employment disputes. However, questions as to what amounts to labour and employment disputes continue to linger as litigants attempt to weave their claims to fall within the jurisdictional remit of the NICN.

A recent decision of the NICN in **Cornelia Marsh-Okoro v. Swiss Pharma Nigeria Limited (NICN/LA/205/2021)**, handed down on November 17, 2022, turned on the question of whether a claim for unpaid commissions arising from a distributorship relationship between an employer and a former employee, amounts to a labour and/or employment dispute.

The claimant’s employment with Swiss Pharma Nigeria Limited (“**Swiss Pharma**”) had come to a mutual end, pursuant to which the parties executed a severance agreement. The severance agreement provided, relevantly, that the claimant would be appointed as a distributor of Swiss Pharma’s products under certain terms and conditions.

When a dispute arose between the parties on the distributorship arrangement, the claimant filed an action against Swiss Pharma at the NICN for unpaid commissions. Instructively, the action did not raise any issue relating to the claimant’s employment and/or the termination thereof.

Swiss Pharma objected to the jurisdiction of the NICN to entertain the suit, on the basis that the claim arose from a purely commercial arrangement between the parties. In response, the claimant argued that the unpaid commissions were connected to her mutual separation from Swiss Pharma and to that extent, the claim was incidental to her employment.

Although a severance agreement typically records the terms of an employee’s departure from an employment relationship, and, where applicable, the payment(s) to be made to the employee in return for a waiver of any claims against the employer, it is not inconceivable, that a severance agreement may create other contractual relationships that are unconnected with the employment relationship.

In the present case, the severance agreement not only severed the employment relationship between



the claimant and Swiss Pharma, but also created a parallel contract pursuant to which the claimant was appointed a distributor of Swiss Pharma’s products.

Ultimately, the NICN agreed with Swiss Pharma and declined jurisdiction to entertain the suit. The NICN’s decision confirms that the scope of its jurisdiction is limited to labour and employment disputes. In other words, to properly activate the NICN’s jurisdiction, the claim must directly relate to, arise from, or be connected with, labour and/or employment.

The NICN’s decision is consistent with the strategy adopted in the case of **Olumide Olayomi v. Emerging Markets Telecommunication Services Limited (NICN/LA/125/2014)**, which concerned

DOES THE NATIONAL INDUSTRIAL COURT OF NIGERIA HAVE JURISDICTION OVER CLAIMS FOR UNPAID COMMISSION ARISING FROM A DISTRIBUTORSHIP CONTRACT?

alleged breaches of an employment contract and a lease agreement between the parties. While the claimant unsuccessfully challenged the termination of his employment, at the NICN, the defendant was constrained to institute a breach of contract claim at the State High Court, in connection with the lease agreement.

Subject matter jurisdiction questions are a recurring issue in Nigerian litigation landscape and are often litigated up to the appellate courts. In **Akpan v. University of Calabar (2016) LPELR-41242(CA)**, the Court of Appeal affirmed the decision of the NICN which declined to entertain a claim for defamation, on the basis that a defamation claim, “stands on its own” and “cannot be considered as being ancillary to a claim for wrongful dismissal”.

A valid claim can be derailed where the court lacks subject-matter jurisdiction. It is therefore important for intending litigants at the NICN to frame their claims carefully, bearing in mind the limited scope of the NICN’s jurisdiction.



DISCLAIMER: This publication is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specific advice on the subject of this newsletter, as may be required.

Contact Persons:



Abimbola Akeredolu, SAN, FCI Arb.

Partner

E: aakeredolu@banwo-ighodalo.com



Chinedum Umeche, FCI Arb.

Partner

E: cumeche@banwo-ighodalo.com



Oluwamayokun David

Associate

E: odavid@banwo-ighodalo.com