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# Interrogating the independence of the labour commission in the exercise of its adjudication and dispute resolution settlement function under the labour act, 2003 (act 651)

**Dr. Samuel Obeng Manteaw**
Senior Lecturer, Department of International Legal Studies, University of Ghana School of Law, Accra, Ghana

**Abstract**
One of the most pervasive issues confronting the judicial system in Ghana is the congestion of courts across the country. This has impeded the smooth administration of justice through delays and extensive bureaucratic procedures. Some administrative and quasi-judicial bodies have been clothed with jurisdictional and adjudicatory powers to deal with sector specific disputes. The Labour Act 2003, (Act 651) established the National Labour Commission (NLC) to be instrumental in the adjudication and the enforcement of labour rights and obligations.
The Act guarantees the independence of the National Labour Commission in an attempt to protect it from external interference. There appears to be some variance with the practice however, where several limitations can militate against the independence of the Commission. This article interrogates the extent of the NLC's independence and dispute settlement functions. It explores the regulatory framework of the Commission, its adjudicatory and dispute resolution powers under Act 651 and what forms of limitations, if any, impede the NLC in its dispute resolution functions. It further recommends viable solutions to safeguard the independence of the Commission.

**Keywords:** Court congestion, National Labour Commission, labour dispute resolution, Act 651, judicial independence

## Introduction

Industrial disputes have become a prominent aspect of labour relations. The wide array of labour disputes ranges from unfair termination, disagreements over wages, working hours, workplace and safety concerns, issues relating to employment contract, job security and unconscionable labour practices. The resultant effects of these issues have led to massive strike actions, lockouts, boycotts, disgruntled working staff, among others.
Inevitably, these issues require solutions and an appropriate forum to air grievances. With the establishment of the National Labour Commission under the Labour Act, 2003 (Act 651), as an independent adjudicatory body, it has been mandated to ensure an effective, impartial, and smooth administration of justice. The NLC also serves a critical role of ensuring labour peaceful relations by acting as a neutral adjudicatory body as well as monitoring compliance with labour laws in the country.
In the performance of its duties, the Act empowers the Commission to exercise certain functions as a High Court and perform functions as an autonomous body, independent of any interference to its duties. Despite its statutory independence, there are doubts as to the practicality of the independence of the Commission under section 138 of the Act. These limitations include, but are not limited to judicial oversight, political interference, regulatory and other financial constraints, and other factors which may undercut the independence of the Commission. The article is divided into three main parts.
The first part evaluates the adjudicatory and dispute resolution function of the Commission, emphasising on the dispute resolution processes outlined under Act 137, including the enforcement mechanisms of the decisions of the Commission and the right of appeal of aggrieved parties from the Commission's decisions.
The second part of the article critically examines the adjudicatory and dispute resolution procedure under the National Labour Commission.
The crux of the paper then examines the independence of the Commission in adjudication and dispute settlement of industrial disputes. The paper uses relevant judicial decisions from the Courts in Ghana on the Commission's authority and independence in its analysis.

## The Adjudication and Dispute Resolution Function of the National Labour Commission

The National Labour Commission is established under **Part XVIII** of the Labour Act 2003 (Act 651).
The functions of the Commission outlined under section 138 of Act 651 are as follows:

a. to facilitate the settlement of *industrial disputes*;
b. to settle industrial disputes;
c. to investigate labour related complaints, in particular unfair labour practices and take such steps as it considers necessary to prevent labour disputes;
d. to maintain a data base of qualified persons to serve as mediators and arbitrators;
e. to promote effective labour co-operation between labour and management; and
f. to perform any other function conferred on it under this Act or any other enactment.

An industrial dispute has been defined under section 175 to mean "any dispute between an employer and one or more workers or between workers and workers which relates to the terms and conditions of employment, the physical condition in which workers are required to work, the employment and non-employment or termination or suspension of employment of one or more workers and the social and economic interests, of the workers but does not include any matter concerning the interpretation of this Act, a collective agreement or contract of employment or any

matter which by agreement between the parties to a collective agreement or contract of employment does not give cause for industrial action or lockout"

In the exercise of its functions, section 139 of the Act mandates the Commission to exercise certain powers. The Commission has the power to:

a. receive complaints from workers, trade unions, and employers, or employers' organisations
b. on industrial disagreement; and (ii) allegation of infringement of any requirements of this Act and Regulations made under this Act;
c. require an employer to furnish information and statistics concerning the employment of its workers and the terms and conditions of their employment in a form and manner the Commission considers necessary; and
d. require a trade union or any workers' organisation to provide such information as the Commission considers necessary;
e. notify employers and employers' organisations or workers and trade unions in cases of contravention of this Act and Regulations made under this Act and direct them to rectify any default or irregularities.

Under subsection (2) of section 139, the Commission, in settlement of industrial dispute, shall have the powers of the High Court, specifically in respect of the following:

(a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; (b) compelling the production of documents; and(c) the issue of a commission or request to examine witnesses abroad.

In the performance of its duties, section 138(2) guarantees the members of the Commission, privileges and immunities pertaining to proceedings in the High Court.

**Dispute Settlement Procedure of the National Labour Commission**

Act 651 deploys alternative dispute resolution (ADR) as the dominant mechanism for resolving labour and industrial disputes under Sub-Part II of Part XVIII of the Act. The Act primarily adopts negotiation, mediation, and arbitration as the main tools for resolving these disputes. It is observed that the adoption of alternative dispute resolution mechanisms has received further fortification under the laws of Ghana, particularly under the Alternative Dispute Resolution Act, 2010 (Act 798). Thus, the application of these methods in an industrial dispute must take into consideration Act 798, which is applicable mutatis mutandis.

In Republic v Charles Darkwa Antwi & GLAHCO Hotels and Tourist Development Company Limited, the Court of Appeal was approached to explain the progressive nature of dispute settling by the NLC under the Labour Act [1]. In that case, it was argued that sections 153, 154 and 157 of the Act oblige the NLC to facilitate settlement of a dispute first by negotiation, then by mediation if negotiation failed, and then by arbitration. Accordingly, the NLC as a lower adjudicating body is required to strictly exercise its mandate under the Labour Act. Aduama Osei JA stated that "it is important to recognise that each of the processes of negotiation, mediation and arbitration stands on its own as a dispute resolution process alternative to a court proceeding. There is nothing about them that makes their prescription as a package sine qua non for dispute resolution and any of them may be resorted to by the parties with dispute between them without any obligation to do so sequentially. Parties may decide to have their dispute resolved by mediation without first trying negotiation, and they are also entitled to go to arbitration with their dispute without first having recourse to negotiation or mediation … there is no provision in the [Labour Act] that precludes a party who has initiated proceedings under the Act from discontinuing the proceedings. In my view, parties who resort to the Act may decide not to proceed any further under the Act if they find it necessary to do so. And if they withdrew from the application of the Act, nothing stops them from resorting to a dispute resolution mechanism of their choice for the settlement of the disputes or from abandoning the disputes altogether. They must however not betray indecisiveness and there must be a clear indication that they had decided not to proceed any further under the Act."

From the foregoing assessment by Aduama JA, the parties to an industrial dispute may choose any alternative dispute resolution mechanism to resolve or settle their dispute provided there is clear indication that they do not want to resolve the dispute in accordance with the provisions in the Labour Act, if that is their preference.

Parties who choose not to resolve their dispute under the Labour Act may resort to the provisions in the Alternative Dispute Resolution Act 798 of 2010. They have the freedom to choose the dispute resolution mechanism that best suits and meets their interests. It follows then that when the parties choose to resolve their disputes outside the Labour Act the sequence for resolving disputes under that Act need not apply [2]. Unfortunately, the court did not address the sequential nature of the dispute resolution mechanisms provided under the Labour Act. Resolution of industrial disputes under the Act should follow the sequence prescribed by the Act [3]. The means by which these mechanisms are deployed under the Labour Act are as follows:

**Negotiation**

Negotiation is usually considered the first step in an ADR process. Roger Fisher and William Ury define negotiation as a "back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed [4]."

Negotiation is often an interactive process which covers shared interests, common concerns, and those in conflict. Fiadjoe observed that as a tool for dispute resolution, it may be employed to handle a wide variety of disputes [5]. He stated "a negotiation may be about a single issue or a multiple set of issues, be personal or impersonal, one off or otherwise, involve a single party or multiple parties, be distributive or zero sum, representative or for oneself." [6]

Act 651 under section 153 requires parties to an industrial dispute to negotiate in good faith with a view to reaching a settlement of the dispute in accordance with the dispute settlement procedures established in the collective agreement or contract of employment.

The obligation to negotiate in good faith requires parties to adopt a healthy approach toward the negotiation process. Usually, the rights of the parties to an industrial dispute (in most cases, employers, and employees), are at odds. This often leads to an impasse particularly, where both parties are unwilling to be amenable to a compromise. The most pragmatic approach parties may adopt in the process of negotiations is principled or interest-based negotiation. This

method of negotiation emphasises the interest of the parties as opposed to the dogmatic positions of the respective parties. It evaluates the root behind the dispute and guarantees a more equitable outcome for both parties. Principled negotiation was analysed by Roger Fisher and Richard Ury, in their seminal work, Getting to Yes. The authors justified the adoption of this technique as an all-purpose strategy for negotiation as it addresses the major limitations in negotiation. According to them, "principled negotiation can be used whether there is one issue or several; two parties or many, whether there is a prescribed ritual, as in collective bargaining, or an impromptu free-for-all, as in talking with hijackers. The method applies whether the other side is more experienced or less, a hard bargainer or a friendly one. Principled negotiation is an all-purpose strategy [7]"

Principled negotiation is underpinned by five major elements. First, is the emphasis on interests over positions. Under this element, the authors shift the focus in the negotiation from the pre-determined position of the parties in respect of the dispute, to a more rationale-based approach by seeking to understand the basis for their respective positions. The second principle requires separation of people from the problem. This distinction allows the parties to negotiate with limited emotions and bias and rather focus on how to address the issues at hand. Principle negotiation also requires the parties to invent options for mutual gain. This often requires the parties to brainstorm and generate viable alternatives to addressing their interests. Another element of this strategy requires the parties to insist on an objective criterion for mutual gain. In positional bargaining, parties are less likely to compromise on their interest in the negotiation process. Insisting on an objective criterion protects parties in a weaker bargaining position by ensuring that standards adopted in the negotiation process are fair and reasonable to all parties. This reflects the requirement of good faith under section 153. Finally, principled negotiation requires the parties to develop a Best Alternative to a Negotiated Agreement (BATNA). A BATNA informs each party as to what the best outcome would be if the issues are not resolved through negotiation [8]. This guides the parties in being aware of their limitations when negotiating such agreements.

This approach deviates from the dichotomy of hard and soft negotiation, both of which have glaring drawbacks as methods of negotiation. Also, these principles are not applicable in isolation, they must be applied simultaneously to achieve the desired outcome.

Negotiation is a voluntary process between the disputants and is usually conducted without the intervention of an independent third party, although parties may elect representatives (lawyers or experts) to negotiate on their behalf.

**Mediation**

The Labour Act promotes the adoption of mediation as a means of resolving industrial disputes. As Fiadjoe defined, "mediation is a consensual process in which a neutral third party helps others to negotiate a solution to a problem. [9]"

To trigger mediation proceedings under the National Labour Commission Regulations, a complainant shall submit a written complaint to the NLC or complete a form (Form A) specified in the schedule to the Regulations - Reg 6 of the National Labour Commission Regulations 2006 (L.I 1822) [10]. The involvement of a third-party neutral is the main difference between negotiation and mediation. During mediation, the mediator has no authority to make binding decisions for the parties in dispute. Rather, he is merely a facilitator who deploys certain procedures, techniques, and skills to assist the disputing parties to amicably resolve their disputes without the process of adjudication.

Within the context of Act 651, specifically section 154, mediation is only applicable upon the failure of the parties to settle their dispute through negotiation. Section 154(1) states: "subject to the time limit in respect of essential services, if the parties fail to settle a dispute by negotiation within seven days after the occurrence of the dispute, either party or both parties by agreement may refer the dispute to the Commission and seek the assistance of the Commission for the appointment of a mediator."

From the above provisions, the following can be evinced. First, parties, except in the case of essential service providers, have only seven days to negotiate upon the occurrence of a dispute. Second, that upon the expiration of the seven days period, reference to mediation is optional, as one or either party may refer to the dispute to mediation. For essential services, negotiations must be within three days. This particularly, stresses the voluntary nature of a mediation process. Essential services have been defined under section 175 to include areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health and safety and such other services as the Minister may by legislative instrument determine. Subsection (2) of section 154 requires the parties to either exhaust or waive the procedures established in the collective agreement. Where such procedures have neither been exhausted nor waived, the Commission shall order the parties to comply with such procedures within a time stipulated by the Commission.

Section 154(3) provides that when the Commission is satisfied that: (a) the parties have exhausted the procedures established in the collective agreement; (b) the parties have failed to settle the dispute; and (c) none of the parties has sought the assistance of the Commission to appoint a mediator, the Commission shall request the parties to settle the dispute by mediation *within three days* of the Commission becoming aware of the non-resolution of the dispute.

Where the parties agree to mediate and at the end of the mediation proceedings there is settlement of the dispute, the agreement between the parties as regards the terms of the settlement shall be recorded in writing and signed by the mediator and the parties to the dispute as provided under section 154 (4).

According to section 154(5), the settlement agreement reached between the parties during the mediation process shall be binding on the parties unless the agreement states otherwise. This provision although highlights the flexible and voluntary nature of a mediation process, it also validates legitimate criticisms against this method as parties may deliberately enter mediation in bad faith and evade any settlement reached during this process. Where parties are unable to reach an agreement during mediation, the mediator shall declare the dispute as unresolved and refer the dispute to the Commission [11].

To guide the parties during mediation, section 155 requires the Commission to maintain a list of qualified persons who are knowledgeable in industrial relations to serve as

mediators or arbitrators for each region. Mediators may be appointed from the list of mediators and arbitrators.

**Arbitration**

The arbitration process under the Act 651 as evident in section 156 is subject to the provisions of the Alternative Dispute Resolution Act, 2010 (Act 798). Act 798 recognises two forms of arbitration (voluntary and compulsory). Arbitration is a private mechanism for the resolution of disputes which takes place in private, pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision or arbitral award of the arbitrator according to law, and it is enforceable by law.

Section 135 of Act 798 defines it as the voluntary submission of a dispute to one or more impartial persons for a final and binding determination.

**Voluntary Arbitration**

The procedure for voluntary arbitration has been stipulated under section 157b of Act 651. As provided in section 157, where mediation under section 154 has failed and the parties have referred the dispute to the Commission, the Commission shall with the consent of the parties, refer the dispute to an arbitrator or arbitration panel. Parties to an industrial dispute are required within three days of the appointment of an arbitration or an arbitration panel to submit in writing a statement of the issues or questions in dispute signed by one or more of the parties or their representatives (section 157(2)). The arbitrator(s) shall appoint a time and place for hearing the dispute and notify the parties accordingly. If any party fails to appear before the arbitrator after the expiration of seven days after being so notified, the arbitrator shall proceed to hear and determine the dispute. Unlike negotiation and mediation where the parties are in control of the outcome of the case, in an arbitration, as seen in section 158**,** the decision of the arbitrator or the majority of the arbitrators shall constitute the award and shall be binding on all the parties. The arbitrator shall communicate the award in writing to the parties and the Commission within seventy-two hours after the award has been made except where the Commission is the arbitrator.

Under section 159, if parties fail to agree on voluntary arbitration or if arbitration does not resolve the dispute, either party intending to strike or lockout must give written notice to the other party and the Commission within seven days of the failure to agree or the end of arbitration proceedings. According to section 160, a party that has given notice under section 159 can only strike or lockout after seven days from the notice date, not before. If the dispute remains unresolved within seven days of the strike or lockout, it must be settled by compulsory arbitration under section 164. Section 161 prohibits a party from embarking on a strike or lockout during negotiation, mediation, or arbitration. A party found in breach of this provision is liable for damages, loss, or injury caused to the other party.

Section 163 requires the settlement of disputes involving essential services, to be negotiated within three days. If unresolved after three days, the dispute is then referred to the Commission for compulsory arbitration within 24 hours. The Commission must resolve the dispute by compulsory arbitration within three days of referral. Strikes or lockouts are prohibited for essential services in connection with industrial disputes under section 163.

Compulsory Arbitration (Section 164)

When a dispute is referred to the Commission for compulsory arbitration (under sections 160 or 162), the Commission serves a notice: (a) stating the unresolved issues, and (b) asking parties if they agree on those issues. The Commission must resolve the dispute by compulsory arbitration within 14 days of serving the notice. The arbitration panel consists of three members: one each representing the Government, organised labour, and employers' organisation. The majority decision of the arbitration panel is binding on all parties. Arbitrators under section 165 shall have the powers of the High Court to enforce attendance, examine witnesses under oath, and compel the production of documents.

Section 167 requires the Commission to publish the compulsory arbitration award in the Gazette immediately after completion. The award is final and binding unless challenged in the Court of Appeal on questions of law within seven days of publication. The award overrides any existing employment contract or collective agreement, modifying them as necessary to conform to the award.

**Power of the Commission to Make Orders**

The Commission is vested with powers under section 133 to make certain orders upon the determination that a person has been involved in unfair labour practice. Under this provision, the Commission may order such person to discontinue such practices.

Where the Commission finds that a person has been engaged in discriminatory practices, involving the termination of the employment of a worker, the alteration of his or her employment or of the conditions of his or her employment, the Commission may, if it considers fit, make an order requiring the worker's employer: to take such steps as may be specified in the order to restore the position of the worker; and to pay to the worker a sum specified in the order as compensation for any loss of earnings attributed to the contravention [12]. In respect of a person found to have interfered with the trade union affairs of employees under section 128, by making a contribution to a trade union, the Commission may, if it considers it fit, order that the trade union to refund the contribution [13]. The effect of orders made by the Commission in the exercise of its powers under section 133 shall have the same effect as the orders of the High Court.

The Act also empowers the Commission to enforce its orders or directions against persons who fail to comply with such orders or directions by making an application to the High Court for an order to compel that person to comply with the direction or order [14].

This has been affirmed in a plethora of judicial decisions including National Labour Commission v Nestle Ghana Ltd [15], National Labour Commission v Map Shipping Company Limited [16]; and National Labour Commission v Mantrac Ghana Limited [17]

**The Independence of the Commission in Adjudication and Dispute Settlement**

**a. Independence in the Context of Quasi-Judicial Bodies**

Historically, the performance of judicial functions has been the preserve of the courts. One of the limitations faced by

the courts is the increasing congestion within the judicial system. Courts are often inundated with more cases than they can handle. The cascading effect is prolonged delay in justice delivery. The establishment of statutory bodies to deal with activities of a quasi-judicial nature serves as a timely remedy to alleviate the pressure on the courts.

In Ghana, powers are conferred on such bodies to carry out investigations and make findings of fact concerning such matters as chieftaincy disputes, the determination of boundaries between two communities, the settlement of trade disputes, etc [18]. Thus, despite their limited role, they constitute an essential appendage in the justice delivery process.

Quasi-judicial bodies are adjudicating bodies that exercise judicial authority but do not form part of the regular court system. They are administrative tribunals. They have the power to make decisions and resolve disputes, akin to what the courts do, but they are not bound by the same procedural rules and formalities. The quasi-judicial bodies can be established by statute or by custom and are subject to the supervisory jurisdiction of the High Court. The National Labour Commission is one such quasi judicial bodies established by the Labour Act, 2003 (Act 651).

Administrative tribunals and agencies can fall on the judicial side of the division of powers and their adjudicative functions can be closely analogous to those of the courts. However, tribunals can be hybrids, and their adjudicative functions can be moderated by or combined in likely and unlikely ways with administrative and even legislative functions. It is the disregard of the notion of separation of powers that makes the analysis of the issues of independence relating to administrative tribunals so difficult and generalisations about them so difficult. An inherent aspect of judicial independence is the balance of powers and the principle of separation of powers, which provides a more robust protection of judicial independence.

Caution should be used when comparing the independence of the court with administrative tribunals. Except in certain circumstances, no administrative tribunal may perform judicial duties that substantially resemble those of the superior courts; even in these cases, the superior courts retain supervisory authority over the tribunals.

The Labour Act, 2003 (Act 651) establishes the Commission as the main adjudicatory body for labour and employment disputes in section 135. The Commission shall consist of a chairperson to be nominated by the employer's organisation and organized labour and to be appointed by the President in consultation with the Council of State and six representatives [19].

The independence of the Commission has been affirmed under section 138(2) of Act 651. This provision states that, "in the exercise of its adjudicating and dispute settlement function, the Commission shall not be subject to the control and direction of any person or authority."

This means that the Commission in the performance of its adjudicatory role and in settlement of disputes shall operate independently, without any control or direction of any individual, organisation, or external authority. In other words, the Commission has the autonomy to make decisions based on its own judgment and the applicable rules or laws, free from external influence or interference. This ensures fairness, impartiality, and integrity in its decision-making process. The Commission is meant to be independent in the resolution of labour related disputes, investigating labour related complaints in the whole of Ghana.

While the language of the Act reflects the independence of the Commission, there are several drawbacks to the independence of the National Labour Commission. The subsequent paragraphs will analyse the Act, highlighting provisions that address both the independence and the limitations on the independence of the Commission.

**Assessing the Independence of the National Labour Commission**

Invariably Act 651 has been instrumental in advancing and limiting the independence of the NLC in dispute adjudication processes.

**The Role of Act 651 in Promoting the Independence of the NLC**

The Labour Act has been instrumental in advancing the independence of the NLC in the following regard:

**a. The text and language of section 138(2)**

Section 138(2) of Act 651 affirms the independence of the NLC by ensuring that the Commission shall not be subject to the control and direction of any person and authority. The express stipulation of the independence of the Commission reflects the commitment of the law to protect the NLC in its administrative and dispute resolution function from external influence. The express use of "shall" in the enactment means that the independence of the Commission is an imperative and not merely suggestive. It is provided under section 43 of the Interpretation Act 2009 (Act 792), that in an enactment the expression "may" shall be construed as permissive and empowering, and the expression "shall" as imperative and mandatory. Therefore, the letter and spirit of the Labour Act seeks to affirm the independence of the Commission. In other words, the Commission has the autonomy to make decisions based on its own judgment and the applicable rules or laws, free from external influence or interference. This ensures fairness, impartiality, and integrity in its decision-making process.

**b. Immunities and Privileges**

The immunities and privileges enjoyed by members of the Commission is another vital aspect of its independence. The Commission in the settlement of industrial disputes, shall have the powers of the High Court in respect of: (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; (b) compelling the production of documents; and (c) the issue of a commission or request to examine witnesses abroad [20].

In respect of its dispute settlement and adjudicatory functions, the Act grants the Commission, the same privileges and immunities pertaining to proceedings in the High Court [21].

Justices of the High Court (as members of the Superior Courts of Judicature) are clothed with immunity in the performance of their judicial functions. Such independence is manifestly evident in its immunity against suit and actions rising from the performance of their functions. Article 127(3) affirms such immunity status. These privileges have been extended to other bodies in the performance of quasi-judicial functions. For instance, Commissions of Enquiry established under the 1992 Fourth Republican Constitution shall not be liable to any action or suit in respect of any

matter or thing done by him in the performance of his functions as a commissioner or member [22]. Immunity and privileges in the performance of their official duties afford them the independence and free-will to adjudicate disputes without any fear of prosecution and witch-hunting. The essence of such privileges provides a congenial environment for Commission and its members to perform their statutorily required functions without any fear from any person or institution.

**c. Power to Make Appropriate Orders**

Another factor that strengthens the independence of the NLC is its powers to make appropriate orders during its adjudicatory functions. Several provisions under the Act, empower the NLC to make appropriate orders in the settlement of industrial disputes. These include the power to order the employer to: re-instate the worker from the date of termination of employment; an order to the employer to re-employ the worker in the work for which the worker was employed before the termination or in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or order the employer to pay compensation to the worker [23]. These powers as provided under the Act has been affirmed by the Supreme Court in Felix Yaw Bani v Maersk Ghana Ltd [24]. Similar orders may be made under section 133(2) involving unfair labour practice. Another level of protection granted the Commission is the power to make an application to the High Court for an order to compel a person to comply with its directions and orders [25].

**Limitations on the Independence of the National Labour Commission**

Despite the efforts made under the Act to guarantee the independence of the Commission in the performance of its functions, there are severe drawbacks to the autonomy of the NLC. This paragraph analyses the key impediments to the independence or otherwise of the Commission:

**a. Non-Enforcement Powers of the Commission**

One of the factors that undermine the independence of the Commission is lack of power to enforce its orders. Under section 172 of the Act, the Commission in the enforcement of its orders, may apply to the High Court for an order to compel a person or body to comply with its directions and orders. This provision has several implications.

First, the provision tacitly suggests that the orders of the Commission are in themselves not able to elicit compliance. As such, where the Commission has made orders against a person, or institution, such person or body may refuse to comply with the orders of the Commission. The only instance under which such a person or body may comply is if the Commission applies to the High Court to enforce its orders. Thus, without a court order, an order of the Commission may be otiose due to non-compliance. It is critical to note that the Commission, unlike the courts, has no power to commit for contempt. These powers granted to a court allows the court to penalise individuals who fail to comply with its decision. The Commission in this respect, relies solely on the Court to ensure that parties to an industrial dispute, complies with its orders.

Another key observation here is that the powers to enforce the orders of the Commission is at the sole discretion of the court. Although the court in most instances, exercises this discretion judiciously, the reliance on the court undermines the Commission's independence, since the enforcement of its orders is subject to the control of the High Court.

There have been instances where the High Court has declined to enforce the orders of the NLC. For instance, in National Labour Commission v Ghana Telecommunications Ltd, the NLC approached the High Court to enforce its order against Ghana Telecommunications Limited [26]. The High Court refused to enforce the order because the order fell outside the scope of section 133 of the Labour Act, which deals with unfair labour practice. On appeal, the Supreme Court affirmed the position of the High Court.

**b. The Effect of the Court's Supervisory Jurisdiction**

Article 132 of the 1992 Constitution states that the Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power. Similarly, Article 141 states that the High Court shall have supervisory jurisdiction over all lower courts and any adjudicating authority; and may in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power.

These two provisions establish the supervisory jurisdiction of the High Court and the Supreme Court. Similarly, sections 5 and 16 of the Courts Act, 1993 (Act 459) affirms the supervisory jurisdiction of the Supreme Court and High Court respectively.

Article 23 of the Constitution also states that administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal. In Aboagye v. Ghana Commercial Bank Ltd, the learned Bamford -Addo JSC said: "Acting fairly implies the application of the rules of natural justice, which have been elevated to the constitutional rights and are binding on all adjudicating and administrative bodies as well as courts [27]". In Awuni v. West African Examination Council, the Supreme Court took the view that to act "fairly and reasonably" in terms of Article 23, there was no distinction between acts done in the exercise of administrative functions and quasi - judicial functions [28].

Adjudicating authority refer to quasi judicial bodies or administrative tribunals like the National Labour Commission. The supervisory jurisdiction of the court is its power to oversee and review decisions of lower courts and adjudicating bodies to ensure that they follow due process and natural justice, act within their legal authority and that they do not act arbitrarily or unfairly. The courts in Ghana, the High Court especially, flowing from the Article 141 can exercise supervisory jurisdiction over the Commission. Ensuring that administrative and quasi-judicial bodies like the NLC function within the parameters of their legal authority and uphold the values of justice, legality, and due process is a crucial component of the rule of law and constitutional governance, and it is the duty of the courts to guarantee that. One of such clear applications in section 172 as previously discussed.

The Labour Act, 2003 which establishes the Commission does not explicitly oust the jurisdiction of the courts. It is contrary to the law and public policy to oust the supervisory

jurisdiction of the High Court or the Supreme Court or the final judicial power of the court.

Final judicial power on a matter cannot be eroded from the court even though the invocation of the court's jurisdiction could be postponed. Most institutions have internal mechanisms or domestic tribunals which are given first bite in all disputes arising from the institution, akin to the function of the Commission and labour related disputes. This means that the decisions, rulings and judgments of the Commission are subject to judicial oversight and the High Court can exercise its supervisory jurisdiction.

Thus, in Ghana the right of every person to go to court is a constitutional guarantee that is safeguarded in the 1992 Constitution. Accordingly, a decision of the NLC is subject to the supervisory jurisdiction of the High Court. The decisions of the NLC may thus be the subject of judicial review. Indeed, the issue of review of the decisions of the NLC has been a subject of judicial consideration, particularly by the Supreme Court in James David Brown v The National Labour Commission & Ahantaman Rural Bank Ltd, where the Supreme Court commented on the question of the finality of a decision by the NLC in the following manner [29]:

"We have reviewed the entire provisions of the Labour Act, especially the remedies available to the dissatisfied parties after the determination by the NLC. Under sections 134 and 167(2) of the Act, the Court of Appeal is given power to hear appeals from the determination of the NLC in unfair labour practice cases and compulsory arbitration awards. For some unexplained reasons, in other provisions of the same Act where the NLC is required to make a determination, no remedy is provided to the dissatisfied party. The presumption then would be that the NLC's decision in those provisions is either final or one could appeal to the High Court. However, the NLC being an adjudicating body, cannot have its decisions clothed with finality. Its decisions are and would continue to be subject to the supervisory jurisdiction of the High Court in cases falling within the purview of Judicial Review. It would also be subject to the appellate jurisdiction of the courts in final decisions on merit [30]."

### c. Right of Appeal Against the Decisions of the Commission

Section 134 of the Act provides that 'A person aggrieved by an order, direction or decision made or given by the Commission … may, within fourteen days of the making or giving of the order, direction or decision, appeal to the Court of Appeal'. The Court of Appeal decision in ***National Labour Commission v Southern Fried Chicken*** reiterates the fact that only orders, directives or decisions of the NLC in respect of complaints of unfair labour practices can be appealed against [31]. Aside the decisions of the Commission, awards published by the Commission through compulsory arbitration may also be challenged before the Court of Appeal on questions of law within seven days after the publication of the award [32].

### d. Possible Political Interference

The composition of the Commission lends itself to interference from political actors. Beyond judicial oversight in supervisory and appellate powers of the court, the Commission may also be prone to political interference. Akin to most administrative bodies, appointment to the leadership of the NLC is vested with political actors. The composition of the Commission shall consist of the following persons: (a) a chairperson who shall be nominated by the employers' organisation and organised labour except that where there is failure to nominate a chairperson within sixty days as provided, the employers' organisation in consultation with organised labour shall submit the matter to a mediator agreed on by them; and (b) six representatives, two each nominated by the Government, employers' organisation and organised labour [33]. The Chairperson and the other members of the Commission shall be appointed by the President acting in consultation with the Council of State [34].

The appointment of the Chairperson and members of the Commission implies a level of political leverage the government has in the appointment process. The Commission may by virtue of political affiliation be influenced in the performance of its duties. For instance, the Chairperson who is nominated by the employers' organisation and organised labour may be under the apprehension of loyalty to the body responsible for the appointment. Similarly, the representatives of the Commission appointed by the Government, employers' organisation and organised labour may still be influenced by the biases and appointed stakeholders in their adjudicatory functions.

This may impair the ability of the Commission to remain impartial and be free from external control, particularly when their appointment is tied directly to critical stakeholders within the sphere of industrial relations.

### e. Financial Constraints

The Commission provides adjudication and dispute resolution services for free without charging for services rendered and it does not levy parties any filing fees. The Commission has however in various fora indicated its desire for an opportunity to at least charge filing fees due to the financial constraints it faces. The Commission does not have the mandate to charge for its services or filing fees for labour issues. It is not permitted to generate funds internally. It keeps bemoaning its dependence on government subvention, which is woefully inadequate and delays for months and thereby affects the efficient running of the Commission's offices and activities and ultimately impedes its dispute resolution functions.

As a result of the lack of funds, the Commission is at times not able to file court cases for settlement. The Commission's lawyers are overburdened with numerous cases and it makes the need for reforms very necessary and urgent. Sometimes cases of the Commission are struck out from the court because of lack of prosecution of the cases. Petitioners have had to pay for the filing of their cases at the court, although such payments are the responsibility of the Commission. Lack of funds constrain the Commission in fulfilling its mandate**.**

## The Way Forward

The protection of labour rights is an integral component of Ghana's national agenda. Indeed, this is reflected in Article 24 of the 1992 Constitution, which among others, guarantees the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind; the right to leisure and rest; the right to form or join trade union, among others. As

part of the country's economic objectives, the Constitution enjoins the state to safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians [35].

To fully realise and enjoy these rights enshrined under the Constitution, Labour Act 2003 (Act 651) has been established as a watershed legislation which seeks to protect these rights and advance the course of our national agenda. The main mechanism through which the realisation of these aspirations can be achieved is through the National Labour Commission established under the Act. The NLC through this enactment has been mandated to resolve labour and industrial disputes. However, this article acknowledges that while the Commission has been guaranteed independence and protection in the performance of its duties, and such independence is prima facie evident in the performance of its duties, the independence is highly limited in scope and application, due to the limiting factors discussed above.

This paragraph identifies clear legislative gaps which have sought to limit the autonomy of the Commission as well as provide recommendations, if possible, to strengthen the independence of the Commission.

First, it is recommended that the Act be amended to stipulate the scope and nature of the independence of the Commission. Although there is an express stipulation to the effect that the Commission is independent and not subject to external control, it is crucial to properly ascertain the meaning and scope of the independence. The Act must be unequivocal and clearly state the terms of the Commission's independence. An approach similar to one under Article 127 of the Constitution may be deployed. Under that provision, the Constitution outlines the scope of the independence of the judiciary, just as it has set out the scope of independence accorded the legislature in the performance of its duties under the Constitution.

Also, a repeal of section 172 would significantly enhance the independence and credibility of the Commission. By allowing the National Labour Commission to enforce its own decision without recourse to the High Court for enforcement, the adjudicatory process of the Commission is likely to become more efficient and incentivise compliance. Requiring a court order to enforce its decision often leads to undue delays and exorbitant costs from the Commission, which may be severely underfunded due to limited funding by the Executive including increasing the burden on court dockets, further exacerbating congestion. One of the reasons for establishing the Commission is to ease congestion in the courts. Resorting to the court as a forum for enforcement of its orders is akin to the court determining the outcomes of such disputes.

The provision of free and highly subsidized adjudication and dispute resolution services and the substantial reliance on government funding may have to be reviewed to enable the Commission use standard assessment criteria to levy some modest fees for its services, on the basis of ability to pay. Patrons or complainants or disputants can even be made to pay such fees from a minute or small percentage of the claims or compensation received.

An amendment of Act 651, to limit government's influence in the composition of the Commission as well as expanding the scope of the immunities and powers of the Commission would enhance its efficiency.

**Conclusion**

There is a chasm between the independence of the Commission in theory and practice. Although it is germane that the Commission is not clothed with unfettered powers in its dispute settlement and adjudicatory functions, it is equally imperative that it is accorded adequate independence while performing its duties. The scope of the current framework under section 138(2), is severely inadequate to protect the independence of the Commission. This article in its assessment of the independence of the Commission has observed that although the Commission may be considered independent by virtue of immunities and powers granted the Commission under the Act including the power to make orders as it deems appropriate, the limitations to the independence is glaring and cannot be overlooked.

The National Labour Commission is an essential fulcrum in the machinery of the industrial disputes in Ghana. Thus, the independence of the Commission is not merely desirable but necessary to guarantee the protection of labour and industrial rights in the country in accordance with the dictates of the laws of the country.

**References**


1. Suit No. H1/150/2016 (unreported).
2. Letlhokwa GM, Coleman TE, Labour Law in Ghana, LexisNexis (Pty) Limited, 2022,188
3. Ibid
4. Fisher R, Ury W, Getting to Yes: Negotiating Agreement Without Giving In, Penguin Publishing Group, 2011, p xvii.
5. Fiadjoe A, Alternative Dispute Resolution: A Developing World Perspective, Cavendish Publishing Limited, 38
6. ibid
7. Getting To Yes, p xix
8. Supra note 1, 42
9. Fiadjoe,58
10. See also National Labour Commission v Map Shipping Company Limited Suit No. INDLM/45/11 (unreported).
11. Section 154(6)
12. Section 133(2)
13. Section 133(3)
14. Section 172
15. No. H1/42/ 2013 (unreported);
16. Suit No. INDLM/ 45/11 (unreported);
17. Suit No. IDLM 1/11 (unreported).3
18. S.Y Bimpong-Buta, The Legal Effect of Executive Confirmation of Findings or Awards by Quasi-Judicial Bodies, Journal of African Law 01 Mar 1988 (Cambridge University Press) Vol. 32, Iss: 1, pp 95-111
19. Section 136
20. Section 139(2)
21. Section 139(3)
22. Article 279(2), 1992 Constitution of Ghana
23. Section 64(2)
24. [2011] 2 SCGLR 796
25. Section 172

26. Civil Appeal No. J4/53/2010 (unreported). See also National Labour Commission v Barclays Bank
27. Ghana Ltd Suit No. H1/12/2018 (unreported); National Labour Commission v Nestle Ghana Ltd Suit No. H1/42/2013 (unreported); Barclays Bank Ghana Ltd v Ivan Yelipoe Civil Appeal No. H1/86/ 2011 (unreported)
28. (2001 – 2002) SCGLR 797 at 806
29. (2003 – 2004) 1 SCGLR 471
30. Civil Appeal No. J4/74/2018 (unreported)
31. Ibid
32. Suit No. H1/97/2008 (unreported).
33. Section 167(2)
34. Section 136(1)
35. Section 136(2)
36. Article 36(10), 1992 Constitution of Ghana.