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# LEGAL ISSUES IN MARITIME LABOUR AND SEAFARERS CLAIMS

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## 3<sup>RD</sup> ADMIRALTY SEMINAR FOR JUDGES

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## LEGAL ISSUES IN MARITIME LABOUR AND SEAFARERS CLAIMS

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This paper will be divided into two main parts. The first part will delve into maritime labour regulation and administration in the course of which pertinent legal and regulatory issues would be identified. Thereafter, legal issues in maritime labour claims would be considered in the second part of the paper.

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### PART A – MARITIME LABOUR REGULATION AND ADMINISTRATION

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There have been several developments at national and international levels in the regulation and administration of maritime labour<sup>2</sup> which requires discussion.

Since 2003, there has been a flurry of maritime legislations that have had major impact on the administration and regulation of maritime labour in Nigeria. Please see the following:

- Coastal and Inland Shipping (Cabotage) Act No. 5, 2003 (the Cabotage Act)
- Guidelines on Implementation of Coastal and Inland Shipping (Cabotage) Act , 2003 Revised 2007 (the Cabotage Guidelines)
- Nigerian Maritime Administration and Safety Agency Act, 2007 (the NIMASA Act)
- Merchant Shipping Act 2007 (the MSA)

#### The Cabotage Regime

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<sup>2</sup> "Maritime Labour" is used in the wider context consistent with Section 64 of Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007 which defines 'maritime labour' as including dockworkers and seafarers and 'seafarers' as including every person except masters and pilots employed or engaged in any capacity on board any ship.

The cabotage regime introduced in 2003 via the Cabotage Act is the most effective legislation that has guaranteed employment for Nigerian maritime workers. The Cabotage Act has the lofty objective of, among other things restricting participation in cabotage trade to vessels that are wholly manned by Nigerian citizens.

The Cabotage Act and the Cabotage Guidelines have several inbuilt provisions that are intended to guarantee the right of employment of Nigerian maritime workers on cabotage vessels. For instance, though the Minister has discretion to grant waivers to a duly registered vessel from the requirements of the Cabotage Act for the vessel to be, wholly owned by Nigerian citizens, wholly manned by Nigerian citizens and built in Nigeria, such waivers are only granted for one year and only if there is no wholly Nigerian owned vessel suitable and available, or qualified Nigerian officer or crew, or Nigerian ship building company with capacity to construct that type of vessel.

Further, waivers and licenses are only renewable upon production of evidence of improved level of compliance with the provisions of the Act on manning, ownership and building. In this regard, there must be produced, among other things, evidence of provision of practical training for Nigerian cadets on board the vessel for the previous year and NIMASA Certificate of Manning Compliance.

The Cabotage Enforcement Officers have power, with or without a warrant or court order, to stop, board, search and detain any vessel and its officers which they believe on reasonable grounds to have contravened the provisions of the Act and to require the master of the ship to give information relating to the ship, cargo, stores, crew, passenger or voyage and to produce evidence of registration of the Nigerian crew and seafarers with NIMASA.

Despite the great strides recorded by NIMASA in ensuring that Cabotage vessels are wholly manned by Nigerian maritime labour, Nigerian seafarers in NIMASA pool are still under-utilized. This is clearly because –

- Enforcement Officers confine their enforcement on ports, jetties and terminals and neglecting Nigeria's Exclusive Economic Zone and Territorial Waters;
- Issues relating to the application of the Cabotage Act to FPSOs, FSOs and other offshore drilling units have remained unresolved with the IOCs;
- Waivers are still being granted to vessels employing foreign crew when there are qualified Nigerians for the position.

## **Maritime Labour Administration and Regulation under NIMASA Regime**

The Nigerian Maritime Administration and Safety Agency (NIMASA) emerged on the 1st of August 2006 from the merger of the erstwhile National Maritime Authority (NMA) and the Joint Maritime Labour Industrial Council (JOMALIC which was responsible for the regulation and administration of maritime labour in Nigeria).<sup>3</sup> By virtue of this merger, NIMASA is now responsible for maritime administration and safety as well as the regulation and administration of maritime labour in Nigeria.

The powers and functions of NIMASA are derived from the NIMASA Act, the MSA and the Cabotage Act. These Acts confer the following functions on NIMASA in relation to maritime labour:

- a) Pursue the development of shipping and regulate matters relating to merchant shipping and seafarers;
- b) Regulate and administer the certification of seafarers;
- c) Establish maritime training and safety standards;
- d) Provide direction on qualification, certification, employment and welfare of maritime labour;<sup>4</sup>
- e) Develop and implement policies and programmes which will facilitate the growth of local capacity in manning of ships;<sup>5</sup>
- f) Enforce and administer the provisions of the Cabotage Act 2003;
- g) Establish the procedure for the implementation of conventions of the International Maritime Organisation and the International Maritime Labour Organisation and other international conventions to which the Federal Republic of Nigeria is a party on Maritime Safety and Security, Maritime Labour, Commercial Shipping and for the implementation codes, resolutions and circulars arising there from.<sup>6</sup>

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<sup>3</sup> Section 63(1) of the NIMASA Act specifically repealed the Nigerian Maritime Labour Act 2003 which was the enabling law for JOMALIC.

<sup>4</sup> Section 22(1)(j) of NIMASA Act. A person who, without lawful excuse, refuses, neglects or fails to comply with any direction lawfully given by the Agency in exercise of its powers under this Act, or who fails to comply with any provision of this Act or of any regulation made under this Act, commits an offence and, unless another penalty is established for such offence in this Act, is, in addition to the forfeiture of any article seized, is liable on conviction, to a fine not exceeding N 1,000,000.00, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, and in the case of a continuing offence to a further fine not exceeding N200,000.00 for every day during which the offence continues. See Section 58(1) of NIMASA Act

<sup>5</sup> Section 22(1)(k) of NIMASA Act

<sup>6</sup> Section 22(1)(q) of NIMASA Act

The NIMASA Act further vests NIMASA with certain functions and powers relating to registration, employment, discipline and regulation of maritime labour. Among other things, the Act requires NIMASA to:

- a) register and maintain a register of every dock worker, seafarer,<sup>7</sup> stevedoring company and seafarer employer,<sup>8</sup> jetty, terminal operators and offshore platforms or terminals;<sup>9</sup>
- b) provide training, conduct examinations and regulate the certification of seafarers and the conditions of service of dock workers and seafarers;<sup>10</sup>
- c) ensure that dock workers and seafarer employers<sup>11</sup> comply with existing regulations and standards in relation to crewing, wages, safety, welfare and training of dock workers and seafarers at ports and on board vessels;<sup>12</sup>
- d) upon notification, investigate disputes relating to the employment of dockworkers and seafarers;<sup>13</sup>
- e) enter ports, terminals and vessels to monitor and investigate matters related to maritime labour, ship safety and security.<sup>14</sup>
- f) discipline, suspend, cancel or revoke the permit, approval, licence or certificates of dockworkers, seafarers and employers of maritime labour who contravene the provisions of this Act.<sup>15</sup>

### **NIMASA Labour Exchange/Pool Services**

To cater for the employment needs of dockworkers and seafarers, the Maritime Labour Services Department of NIMASA provides labour exchange/pool services functions in all the ports of the federation. NIMASA ensures that all national carriers employ 100% (one

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<sup>7</sup> A person who is not a registered dock worker or seafarer and engages in the performance of dock work in any port, terminal or offshore platforms or terminals in Nigeria or on board any Nigerian vessel in contravention of this section commits an offence and is liable on conviction to a fine of not less than N 50,000.00 or to a maximum term of imprisonment of 6 months or both. See Section 27(3) of NIMASA Act

<sup>8</sup> An employer of dock workers or seafarers including shipping companies, stevedoring companies, jetty or terminal operators who engages a dockworker or seafarer who is not registered with and certified by the Agency, commits any offence and shall, in addition to any penalty provided in any other law, be liable to a fine of not less than N1,000,000.00 for each person so employed. Section 27(4) of NIMASA Act

<sup>9</sup> Section 27(1)(a) of NIMASA Act

<sup>10</sup> Section 27(1)(b) of NIMASA Act

<sup>11</sup> Please note that the NIMASA Act in Section 64 defines "Employers of Dock Labour" to include terminal operators, stevedoring and cargo handling companies and "Employers of Maritime Labour" includes terminal operators, stevedoring and cargo handling companies, dock labour and seafarers employers.

<sup>12</sup> Section 27(1)(c) of NIMASA Act. NIMASA Conducts an in depth assessment of the activities of docklabour/seafarer employers on daily basis to ensure compliance.

<sup>13</sup> Section 27(1)(d) of NIMASA Act

<sup>14</sup> Section 27(5)(j) of NIMASA Act. A person who, at any time, hinders, obstructs or molests the Agency or any of its employees, agents or contractors in the performance and execution of their duty or of anything which they are respectively empowered or required to do so by virtue of, or in consequence of, this Act, commits an offence and is liable on conviction to a fine not exceeding N650, 000.00 or to imprisonment for a term not exceeding six months or to both such imprisonment and fine. See Section 59 of NIMASA Act.

<sup>15</sup> Section 27(2) of NIMASA Act

hundred percent) of their crew and seventy-five of their ship board officers, including Captain and Chief Officer/Chief Engineer from the pool of Seafarers. The way it works is that:

- the pool centres supply Dockworkers to the Dock labour employers; and
- the pool centres supply seafarers for the crewing of vessels within the cabotage regime.

### **NIMASA Industrial Relations**

In order to ensure that the activities of dockworkers and seafarers are not inimical to the peace, security and industrial harmony at Ports or onboard vessels, the NIMASA has put in place industrial relations machinery that does the following:

- a) apprehends and resolves industrial grievances, complaints and crises at the ports;
- b) sets up guidelines for mediation, conciliation and arbitration between Stakeholders for settling disputes;
- c) sets guidelines for receiving and resolving labour union crises;
- d) documents and processes industrial accidents and prompt payment of workmen's compensation claims, pursuant to the Employee's Compensation Act, 2010;
- e) prevents or minimises industrial crises in the maritime industry through defined settlement of disputes procedure;
- f) Monitors and regulates maritime workers condition of service, recruitment, crewing, hours of work, leave/holidays etc.

### **Maritime Labour Regulation under the Merchant Shipping Act, 2007**

**Part IX of the MSA** makes provisions on matters relating to the employment of seamen. Among others, the provisions include:

- a) Establishment of Seafarers Services Office (with sub-offices in other places) where all business, as within Nigeria, connected with the engagement and discharge of seamen on Nigerian Ships are to be conducted. An officer of seamen (also referred to as superintendent) is appointed and given functions to conduct businesses connected with engagement and discharge of persons who serve on board Nigerian ships or are seamen of Nigerian citizenship serving on foreign ships, maintain certain registers and records relating to service of seamen and perform other functions connected thereto. Sections 91 and 92.

- b) Requirement of a master of a ship to enter into agreement with every seaman whom he carries to sea from any port in Nigeria and attaches penal sanctions to non-compliance with this requirement. The agreement, among other requirements must state clearly the rights and obligations of each of the parties. *Section 94*
- c) Indication of how an agreement between a seaman and a master may be terminated to wit:
  - (i) by mutual consent of parties;
  - (ii) the death of the seaman;
  - (iii) the loss or total unseaworthiness of the vessel; and
  - (iv) any other circumstance that may be provided by law. *Section 95*
- d) Special provisions on agreements with crew of sea-going ships, which *inter alia*, stipulates that the superintendent will cause the agreement to be read and explained to each seaman or otherwise ascertain that the seaman understands the agreement before signing it. The agreement is generally for one voyage (section 96(6)) but if the duration of the voyage averages less than six months, it may extend to two or more voyages, and in such case, the agreement is referred to as a '*running agreement*'. A running agreement shall not be for a period longer than six months or the first arrival of the ship at the ship's port of destination in Nigeria or the discharge of its cargo subsequent to the arrival (that is, where the six month period had elapsed).
- e) Sections 98 – 104 makes provisions on certain administrative functions such as payment of fees upon engagement and discharge, issuance of certificates as to agreements with crew of sea-going ship and ships other than a sea-going one, forgery and alteration of certificates etc.
- f) Section 105 specifically provides that in legal proceedings, a seaman may bring forward evidence to prove the contents of any agreement with the crew or otherwise to support his case without proving or giving notice to produce the agreement or any copy of the agreement.
- g) Section 110 makes elaborate provisions on procedure for the discharge of seamen etc. A seaman from any foreign ship in Nigeria can only be discharged with the approval of the superintendent or the consular officer, if any, representing the nation to which the ship belongs and due provisions must be made for the subsistence and maintenance of the seaman to the satisfaction of the consular officer (section 110(1)). This provision however does not extend to seamen engaged in Nigeria, or of Nigerian citizenship or domiciled in Nigeria (though foreign citizens) who are discharged in accordance with their agreements.

- h) Where a seaman is discharged, the master of the ship is required to give a certificate to him stating the time and nature of his service and discharge and also make a report of the superintendent.

**Sections 151 to 164 MSA** makes detailed provisions relating to wages of seamen. Some of the provisions include:

- a) The right to wages and provisions of a seaman belonging to a Nigerian ship shall be taken to begin at the time the seaman commences work or at the time specified in the agreement for the seaman's commencement of work, whichever occurs first (section 151).
- b) A seaman cannot by agreement forfeit his lien on the ship, or be deprived of any remedy for the recovery of his wages to which, in the absence of the agreement, he would be entitled to, or abandon his right to wages in case of the loss of the ship, or abandon any right that he has or obtains in the nature of salvage. This however does not extend to a seaman who according to the terms of the agreement is to be employed in salvage service with respect to the remuneration to be paid to him for salvage services to be rendered by that ship to another ship (section 152).
- c) The right to wages of a seaman belonging to a Nigerian ship shall not depend on the earning of freight and where a seaman is entitled to demand and recover wages if the ship on which he has served on has earned freight, subject to all other rules of law and conditions applicable to the case, he shall demand and recover the wages notwithstanding that freight has not been earned (section 153).
- d) Where a seaman is discharged contrary to the terms of his agreement and before the commencement of the voyage or earning one month's wages, provided the discharge is done without his fault or consent, he is entitled to recover the wages he has earned and compensation for damage caused by the discharge (not exceeding one month wage) (section 159).
- e) A seaman may sue for his wage summarily in any court of competent jurisdiction in or near the place where his services was terminated, or at which he was discharged or at which any person on whom the claim is made resides and any order made by the court shall be final (section 161)
- f) Where proceedings are instituted or pending before any court of competent jurisdiction in relation to a dispute between an owner or master of a ship and a seaman or cadet arising out of or incidental to their relationship, the court, having regard to all the circumstance, has power to rescind any contract



entered into between them. This is in addition to any other powers the court may have under the Act (section 165).

- g) Sections 166 to 175 provide for the mode of dealing with property of a seaman who dies or is lost in voyage. Essentially, the master of the ship is to account for the property to the superintendent who takes custody of them and after defraying expenses incurred in the process, pay over the residue to the personal representatives of the seaman (where it exceeds twenty thousand naira) or to any claimant proved to the satisfaction of the superintendent to be entitled to the property of the deceased, or if there is none, require representations to be made and pay the residue to the personal representatives (section 171). Unclaimed property is to be paid into the consolidated revenue fund and if subsequently claimed to the satisfaction of the superintendent, will be paid out of the fund (section 174)

**Part X MSA** makes provisions relating to the welfare of seamen and some of these provisions are set out below:

- a) Section 177 (1) gives the Minister power to make regulations with regards to crew accommodation which shall be provided on board a Nigerian ship.
- b) Complaints may be made as to provision of water in a ship and such complaint is to be investigated by the superintendent, with sanctions attaching to either the master (where he does not comply with directives given in after the investigation), or the complainant (where the investigation reveals the complaint to be made without reasonable grounds) (section 178). Inspections may also be made on ships in respect of provision of water (section 179)
- c) Where there is bad or short provision for a seaman which is not in accordance with the regulations for reduction or where such bad or short provision is contrary to his agreement, he may recover compensation for the reduction or bad quality (section 180). Weights and measures for determining quantities to be taken on board are to be carried on the ship, and so are medicines and medicinal stores in accordance with the scale (sections 181 and 182). The inspection of medicine and medicinal stores is also provided for (section 183). The medical expenses (and burial expenses where applicable) of a seaman incurred in the course of his duty is to be borne by the owner of the ship and where expenses are incurred by or on behalf of the Federal Government of Nigeria in the treatment of a seaman or cadet belonging to a Nigerian ship, it shall constitute a charge on the ship and is recoverable from the owner or master of the ship (sections 184 and 185 respectively). Ships proceeding from Nigeria and carrying more than 50

persons is required to carry on board as part of its compliments, a qualified medical practitioner (section 187)

- d) Sections 190 to 193 make provisions relating to accidents. Accidents are to be reported and investigated (sections 190 and 191). The Minister may make regulations for the prevention of accidents, protection of health in employment and may specify preventive measures.
- e) Section 194 makes provision for complaints. A master of a ship must allow a seaman who states to him that he intends to make a complaint to the superintendent to do so as soon as the service of the ship permits if the ship is in a port in Nigeria or where it is not, soon after it arrives at a port in Nigeria. There is penal sanction for unreasonable non-compliance.

### **Domestication of International Conventions relating to Maritime Labour**

Nigeria joined the IMO on 15 March 1962 and as a member State, she is bound by Art 2.6 of the Vienna Conventions on Law of Treaties 1969 and 1986, which provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith”.<sup>16</sup>

As at 2001, Nigeria had only formally accepted 13 out of the 43 IMO International Conventions which were then in force. Out of the 13 Conventions only 3 had been domesticated while the remaining 10 Conventions were merely ratified or acceded to.<sup>17</sup> The International Convention on Standards of Training, certification and Watch keeping for Seafarers (STCW) 1978 domesticated was domesticated through the rule making authority of the Minister<sup>18</sup> by way of subsidiary legislation in the Merchant Shipping (Medical Examination of Seafarers) regulations 2001, Merchant Shipping (Safe Manning, Hours of Watch keeping) regulations 2001<sup>19</sup>, Merchant Shipping (Training and

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<sup>16</sup> It is pertinent to note that by reason of Section 12(1) of the 1999 Constitution of the Federal Republic of Nigeria “no treaty between the Federation and other country shall have force of law except to the extent any such treaty has been enacted into law by the National Assembly.”

<sup>17</sup> See Dr. Bola Fajemirokun’s paper titled, “New Maritime Regulatory Statutes” published in the book 9<sup>th</sup> Maritime Seminar for Judges at pages 217 - 218.

<sup>18</sup> Section 408 of the MSA empowered the Minister to make regulations for the general carrying into effect of the Act.

<sup>19</sup> *Regulations 3 & 4 places duties on masters of Nigerian ships to ensure, so far as is reasonably practicable, that a seafarer on board a ship does not work more hours than is safe in relation to the safety of the ship and performance of the seafarer’s duties. Section 5 places the duty on both masters and seafarers, so far as is*

Certification of Seafarers) Regulations 2001 and Merchant Shipping (Training Institutions) regulations 2001.

NIMASA recently began the implementation of the ILO Convention on Seafarers' Identity Document (SID) of 2003. Seafarers' Identity Document (SID) is a document to identify all seafarers engaged on a job and on board a vessel. It qualifies them to proceed on shore, leave or join a ship in any of the ILO member states without Visa.

Article 6, of the SID Convention permits seafarer with valid identity document to enter a country where the provision of the convention is being applied especially when his ship is in the port of such country. The Article states that:

"Each member state for which this convention is in force shall in the shortest possible time, and unless clear ground exist for doubting the authenticity of the seafarers identity document, permit the entry into its territory of a seafarer holding valid seafarers identity document, when entry is requested for temporary shore leave while the ship is in port."

It continues:

"For the purpose of shore leave, seafarers shall not be required to hold a visa. Each member for which this convention is in force shall in the shortest possible time also permit the entry of seafarers holding a valid seafarers identity document supplement by a passport when entry is requested for the purpose of joining their ship or transferring to another ship, passing in transit to join that ship in another country or any other purpose approved by the authorities of the member concerned."

The ILO, which revised its Seafarers Identify Document Convention of 1958 in Convention 185 of 2003 states that the provision of the revised convention which came into force in July 2004 ought to have applied to any person who was employed or was engaged to work in any capacity on board a vessel, other than a ship of war, which ordinarily engaged on maritime navigation.

Nigeria is a member state of the ILO and ratified the convention almost immediately it was adopted at the ILO headquarters in General in 2003. The provision of the convention was expected to be implemented in 2004 by the then JOMALIC which has

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*reasonably practicable, to ensure that they are properly rested before commencing duty on a ship and that they obtain adequate rest during periods when he is off duty*

now merged with former NMA to form NIMASA which has on behalf of the Nigerian government began to issue the document to Nigerian seafarers.

With the introduction of the new MSA 2007, a lot of lost grounds were recovered in the area of domestication of international maritime conventions. A quantum leap was made by Section 215 of the new Act which in one fell swoop, incorporated into the Act twelve (12) important International Conventions relating to maritime safety and maritime labour. The following international conventions relating to maritime labour were domesticated under the MSA:

- a) The International Convention on Standards of Training, certification and Watch keeping for Seafarers (STCW) 1978 as amended;
- b) The International Labour Organization (ILO) Convention (No. 32 of 1932) on Protection Against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932);
- c) The Placing of Seamen Convention, 1920.

It is pertinent to note that the detailed rules incorporated in Parts IX and X of MSA 2007 set out above relating to the employment and discharge of Seamen, payment of wages, property of deceased Seamen, welfare of Seamen, prevention of accident to Seamen and the discipline of Seamen are based on the provisions of the Conventions of the ILO.

Nigeria is yet to ratify the Maritime Labour Convention ("MLC") which was adopted by the International Labour Conference of the ILO in February 2006. The MLC consolidates, and updates where necessary, the current 68 maritime labour instruments, creating a comprehensive set of global standards which sets out seafarers' rights relating to working conditions and which aims to foster an atmosphere of fair competition amongst ship owners. The standards set down by the Convention include ones relating to conditions of employment, hours of work and rest, accommodation, health protection, medical care and general welfare. The MLC also regulates the services by which seafarers are recruited and placed with vessels.<sup>20</sup>

The key rights given to seafarers under the MLC include the following:

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<sup>20</sup> See [The Maritime Labour Convention: a review by Ruth Bonino and Laurence G. Rees](http://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692ebe845f0) of Reed Smith LL.P. Sourced at <http://www.lexology.com/library/detail.aspx?g=59d3bdd3-03f1-4a58-b6cd-5692ebe845f0>

- a) Seafarer must be provided with an employment agreement that sets out the terms and conditions of the seafarer's employment, which is signed by the seafarer and the employer (or the employer's representative).
- b) the employer is required to pay wages at least on a monthly basis, in accordance with the employment agreement and any relevant collective agreements;
- c) working hours are limited to 14 hours within any 24 hours period, and 72 hours in any 7 day period;
- d) rest hours are required to be at least 10 hours within any 24 hour period, and 77 hours in any 7 day period;
- e) The employer must pay for a seafarer's repatriation in the event of illness, injury, insolvency, sale of the ship or shipwreck.
- f) the Convention sets out specific requirements (depending on the size of the ship in question) for accommodation and recreational facilities on the ship, including minimum room sizes, satisfactory heating, ventilation, sanitary facilities, catering, lighting and hospital accommodation;
- g) The seafarer must be given access to prompt medical care when on board and in port.

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## PART B – LEGAL ISSUES IN MARITIME LABOUR CLAIMS

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Maritime labour claims recognized under the admiralty jurisdiction of the Federal High Court which may be pursued by a dockworker or seafarer are general maritime claims and are set out under Section 2(3) of the Admiralty Jurisdiction Act (AJA) 1991. The recognized claims may be divided into two broad categories:

- loss of life and personal injury claims; and
- Master's disbursements/master and crew wages claims.

### Loss of life and personal injury claims

These are:

- a) a claim for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship. (section 2(3)(c) AJA); and
- b) a claim for loss of life or personal injury arising out of an act or omission of the owner or charterers of a ship, or a person in possession or control of a ship, or a person for whose wrongful act or omission the owner, charterer or person in possession of the ship is liable. (Section 2(3) (d) AJA). A claim shall not be made under this section unless the act or omission is in relation to the management of the ship, including an act or omission in connection with (a) the loading of goods on to or unloading of goods from a ship; (b) the disembarkation of persons from a ship; and the carriage of goods or persons on a ship. (Section 2(4) AJA).

The burden is on the plaintiff to prove injury, damage and defendant's culpability. In **Akinbuli Adebayo v. NNSL Ltd**<sup>21</sup> the Appellant (Plaintiff in the High Court), an employee of the Respondent (Defendant in the High Court) sustained serious injuries whilst on duty aboard the Respondent's vessel, "El Kanemi". The injury was alleged to have occurred as a result of the negligence of a co-employee who was alleged to have negligently slackened a chain block on a compressor machine which violently struck the Appellant on the back.

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<sup>21</sup> (1988) 3 NSC 365 (CA)

The matter went to trial and the trial judge found that the story of the Appellant and his witness had been so violently contradicted by the evidence of the defence and the documents tendered that it was difficult to accord it any credence. The evidence before the court did not establish that there was an accident on board the "El Kanemi" or that the Appellant was injured at all. The court accordingly dismissed the Appellant's case. The Court of Appeal affirmed the decision of the trial court.

### **Master's disbursements/master and crew wages claims**

These are:

- a) a claim by a master, skipper, charterer or agent in respect of disbursements on account of a ship. (section 2(3)(p) AJA); and
- b) a claim by a master, or a member of the crew, of a ship for wages or for an amount that a person, as employer, is under an obligation to pay to a person as employee, whether the obligation arose out of the contract of employment or by operation of law, including by operation of law of a foreign country. (section 2(3)(r) AJA).

In *The Rhodian Trader*<sup>22</sup> the Federal High Court, per Belgore, J (as he then was) construed Section 1(1)(o) of the Administration of Justice Act 1956<sup>23</sup> which is *in pari materia* with (section 2(3)(r) AJA) and came to the conclusion that the provision is wide enough to cover claims for food, money and transport allowance for the crewmen.

Per Belgore, J., "But the plaintiffs in this case are claiming more than wages. They are claiming in addition to wages, food allowance at the rate of \$3 per day per person; one month salary each for termination of their services and repatriation allowance of N1,000 per person. Are these additional claims within the admiralty jurisdiction for determination and if so do such claim have any lien on the vessel? It was held in the case of *The Tergeste* [1903] P.26 that an allowance for victualling was equivalent to wages and enjoyed maritime lien. With regard to the claim of one month's salary in lieu of notice, I do not accept that the case of *The British Trade* [1924] P. 104 laid down a

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<sup>22</sup> (1985) 2 NSC 339 (HC)

<sup>23</sup> Section 1(1)(o) of the Administration of Justice Act 1956 provides – "Any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of a crew of a ship for any money or property which, under any of the provisions of the Merchant Shipping Act, 1894 to 1954, is recoverable as wages in the court and in the manner in which wages may be recovered, comes within the admiralty jurisdiction."

principle that such a claim cannot now be regarded as wages or having the privileges of a maritime lien in view of section 1(1)(o) of the Administration of Justice Act 1956. I hold therefore that all heads of claim of the plaintiff are within the admiralty jurisdiction of this court and that each of the claims enjoy maritime lien. There is the point as to what extent the plaintiffs can make their claim. Can the claim be up to the time the writ was issued or up till the time judgment is given? The case of *The Fairport No. 2* (1966) Vol. 2 Lloyd's Law Report 7 was on this point. In that case it was held that since the institution of wages claim did not terminate the Contract of Service, wages continued to accrue after proceedings were commenced and they were recoverable by action.... With regard to the claim for repatriation ... where are they to be repatriated to, is it to their country of origin or to where they were employed? ... I am of the view that they should be repatriated to where they were employed."

The obligation to pay the wages is on the shipowner and not on any other third party. In *The Chaika*<sup>24</sup> it was held that the owners have the primary responsibility to provide the master and the crew with food and necessaries."

The seafarer is entitled to claim for wages accrued after the date of filing of the writ. In *The Fairport*<sup>25</sup> it was held that the rule that claims in an action could be made only in respect of causes of action that had accrued at the commencement of the action was a rule of practice rather than a rule of law and was subject to exceptions. It was well established that claims for travelling money for the repatriation of seamen covering expenses incurred after the date of the writ could be made in actions in rem against a ship by seamen and the same should apply to claims for wages.

An action in rem may be brought against a ship or maritime property in respect of a claim relating to the wages of a master, or a member of the crew of a ship or in connection with master's disbursements. This has been made possible by Section 5(3) of AJA which provides as follows:

"In any case in which there is a maritime lien or other charge on any ship, aircraft, or other property for the amount claimed, an action in rem may be brought in the Court against that ship, aircraft or property; and for the purpose of this subsection, "maritime lien" means a lien for:

(a) ..... not applicable ....

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<sup>24</sup> (1997) 1 FHCLR 467 (HC) at page 485

<sup>25</sup> [1966] 2 All E.R. 1026



- (b) .... Not applicable .....
- (c) wages of the master or a member of the crew of a ship; or
- (d) master's disbursements."

The advantage of the availability of an action in rem is that:<sup>26</sup>

- the provisional remedy of arrest is available;
- specified claimants are given preferred creditor status in relation to a particular asset or its substitute;
- a sale of the asset by the court wipes off all such claims which could have been made in relation to the asset prior to the sale and transfers them to the proceeds.<sup>27</sup>

#### **Expansion of the class of maritime liens under the MSA 2007**

Section 66 of MSA 2007 provides that the following claims shall be secured by maritime liens on the ship:

- a) Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- b) Disbursements of the master on account of the ship;
- c) Claims in respect of loss of life or personal injury occurring whether on land or on water in direct connection with the operation of the ship;
- d) Claims for salvage, wreck removal and contribution in general average;
- e) Claims for ports, canal and other waterways, dues and pilotage dues.

It is interesting to note that the MSA has conferred the status of maritime lien on claims in respect of loss of life or personal injury occurring on water in direct connection with the operation of the ship which was not available under the AJA. L.N. Mbanefo, SAN<sup>28</sup>

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<sup>26</sup> D.C. Jackson: Enforcement of Maritime Claims, 2<sup>nd</sup> Edition, Lloyd's Law Publishers, 1996 pg. 506-507.

<sup>27</sup> See *The Acrux* (1962) 1 Lloyd's Rep. 405; *The Igor* [1956] 2 Lloyd's Rep. 271; *The Cerro Colorado* [1993] 1 Lloyd's Rep. 58. A sale by the court pursuant to an in personam judgment does not confer the clear title which a judicial sale in an in rem action confers. See Jackson, op. cit., pg. 507.

<sup>28</sup> L.N. Mbanefo, Nigerian Shipping Practice and Procedure, page 72.

has opined to the effect that “maritime lien” within the meaning of Section 5(3) AJA is limited to the four subject matters mentioned.

The question that would arise is whether such a claim for personal injury can properly form the basis of a maritime action in rem? It would appear that a claim for loss of life or personal injury arising in connection with the operation of a ship may be commenced as an admiralty action in rem under Section 5(4) AJA which provides as follows:

“In any other claim under section 2 of this Decree, where the claim arise in connection with a ship and that person who would be liable on the claim in an action in personam (in this Decree referred to as “the relevant person”) was, when the cause of action arose, the owner or charterer of or in possession or in control of the ship in an action in rem may (**whether or not the claim gives rise to a maritime lien on that ship**) be brought against –

(a) that ship, if at the time the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of the ship under a charter by demise”.

### **Priorities in Relation to a Maritime Labour Claims**

Priorities of claims implies that there is competition between interests which –

- are not only enforceable against the person creating them but are based on an interest in the asset itself; and
- when regarded individually are valid and enforceable through the asset i.e. they are “proprietary”.

Priority becomes important when the total amount of all valid proprietary claims exceeds the total value of assets available to meet them. The question of priorities in maritime law is usually taken to mean priority between holders of maritime security interests in relation to a fund in court representing the res against which an action in rem has been brought.<sup>29</sup>

Section 67 of the MSA 2007 provides that the maritime liens set out in Section 66 of the Act shall have priority over mortgages and preferential rights registered under the Act or which arise under the law relating to bankruptcy or any other law and no claim shall have priority over the maritime liens listed except as provided in the Act. This provision is

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<sup>29</sup> D.C. Jackson, Enforcement of Maritime Claims, 2<sup>nd</sup> Edition, Loyd’s Law Publishers, 1996 pg. 471

supported by judicial decisions. In *The Turiddu*<sup>30</sup> the Admiralty Court held that claims of seamen for wages gave rise to a maritime lien and thereby had priority over the claims of a mortgagee of the ship. This decision was upheld by the English court of appeal.<sup>31</sup>

Furthermore, Section 68 provides that the maritime liens listed in Section 66 shall take priority in the order they appear except that the lien contained in Section 66(1)(d) (i.e. Claims for salvage, wreck removal and contribution in general average) shall take priority over others if the others were registered prior to the time when the operations giving rise to the said lien were performed.

Going by Section 68, maritime liens would rank as follows:

- Claims for salvage, wreck removal and contribution in general average;
- Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- Disbursements of the master on account of the ship;
- Claims in respect of loss of life or personal injury occurring whether on land or on water in direct connection with the operation of the ship; and
- Claims for ports, canal and other waterways, dues and pilotage dues.

It was held in *The Ruta*<sup>32</sup> that the claims of seamen for unpaid wages ranked ahead of a maritime lien for damages resulting from a collision. It should be noted that *The Ruta* was decided based on its peculiar facts. The conundrum which confronted the court was that unless the wages claim had priority over the damage claims, the entire fund would be absorbed by the claims of the damage claimants. The general principle remains that the lien for wages ranks below that for collision damage. It is in this tradition that the status of a damage lien is summarized in McGuffie, *Admiralty Practice*<sup>33</sup> as follows:

"Damage has priority over: (a) earlier salvage; (b) wages; (c) subsequent possessory liens; (d) necessities; (e) execution creditors; (f) mortgages."

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<sup>30</sup> [1998] 2 Lloyd's Rep 278

<sup>31</sup> See *The Turiddu* [1999] 2 Lloyd's Rep 401

<sup>32</sup> [2000] 1 Lloyd's Rep 359

<sup>33</sup> (1964) p. 1574

It was also held in *The Halcyon Skies*<sup>34</sup> that a seaman can recover, in an admiralty action for wages, and with the priority accorded by a maritime lien, the amount of pension contributions which the ship owners employing him should have paid to a pension fund on his behalf but had failed so to pay.

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<sup>34</sup> [1976] 1 All E.R. 856 (QBD)