

JURISDICTIONAL CONFLICT BETWEEN THE FEDERAL HIGH COURT AND THE NATIONAL INDUSTRIAL COURT IN MARITIME LABOUR MATTERS AS IT RELATES TO THE ENFORCEMENT OF CREW CLAIMS.





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INTRODUCTION

Black's law dictionary defines jurisdiction as "the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and parties."¹ In the case of *AG ANAMBRA v AGF*,² the Supreme Court Per Oguntade (JSC) defined jurisdiction as "the authority a court has to decide matters before it or take cognizance of matters presented in a formal way". Any decision made by a court without jurisdiction is a nullity.

By virtue of Section 6(5)(c)(cc) of the Constitution of the Federal Republic of Nigeria, 1999 (As amended), both the Federal High Court and the National Industrial court are superior courts of record. Section 251(1) of the 1999 constitution (As amended) and Sections 1, 2, 3, and 19 of the Admiralty Jurisdiction Act³ vest exclusive jurisdiction on maritime claims on the Federal High Court while section 254C of the 1999 constitution vest exclusive jurisdiction of the National Industrial Court on Labour related matters. Section 7(g) of the Federal High Court Act⁴ provides that the Federal High Court shall have jurisdiction on Admiralty which include maritime claims.

Crew claims is an integral aspect of the maritime industry, and it is an enforceable claim that is capable of being presented before the court. Crew Claims include a claim by a master or member of the crew of a ship as regard the contract of employment, wages, salaries and other entitlement.⁵ The Geneva Convention,⁶ and the Admiralty Jurisdiction Act, clearly states that Crew Claims are maritime claims capable of being enforced either in rem or personam.

For a person or party to invoke the admiralty jurisdiction of the Federal High Court for which Federal High Court have exclusive Jurisdiction such person must be able to prove and show that such claim is within the statutory definition of what constitutes a maritime claim. This was the decision of the court in the case of *M.V. "MED QUEEN" v ERINFOLAMI*.⁷

¹ Henry Campbell Black, St. Paul, Minn, West group, 6th ed. P.853

² (1993) 7 SCNJ

³ CAP A5 Laws of the Federation of Nigeria, 2004

⁴ Cap F12 Laws of the Federation of Nigeria 2004

⁵ Section 2(3) (r), of the admiralty Jurisdiction Act Cap A45 LFN 2004

⁶ International Convention on Maritime Liens and Mortgages, 1993, signed at Geneva in which Nigeria is a signatory to.

⁷ (2008) 3 NWLR (Pt.1074) 314 at P.327

Both the Geneva Convention and Section (3)(r) of the Admiralty Jurisdiction Act recognizes Crew wages as part of maritime claim as the Act provides that a maritime claim includes "a claim by a master, or a member of the crew of a ship for (i) wages; or (ii) an amount that a person, as employer, is under an obligation to pay to a person as employee, whether an obligation arose out of the contract of employment or by operation of law, including by operation of the law of a foreign country." Therefore, the Admiralty Jurisdiction Act gives exclusive jurisdiction on crew claims to the Federal High Court.

However, a cursory reading of the third Alteration to the constitution of the Federal Republic of Nigeria 1999 (as amended), Section 254(C)(1) shows that the jurisdiction as it relates to crew claims are no longer within the jurisdiction of the Federal High Court. This is because Section 254(c) of the 1999 Constitution (as amended) gives exclusive jurisdiction to the National Industrial Court on any labour related issue including employment and payment of wages and salaries which is synonymous with the crew claims thereby removing the said jurisdiction from any other court. S.254(C)(1) of the 1999 Constitution(as amended) provides that notwithstanding the provision of Section 251, 257, and 272 of the 1999 Constitution, the National Industrial Court shall exercise jurisdiction on labour matters thereby removing such jurisdiction as regards any labour matters in the items stated in S.251 of the 1999 Constitution as regards the Federal High Court. Section 254C (i)(a) and (k) of the 1999 Constitution (as amended) provide thus:

"Notwithstanding the provision of Section 251, 257, 272 and anything contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the national Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

- a) Relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of employee, worker and matters incidental thereto or connected therewith;***
- (k) relating to or connected with disputes arising from payment or nonpayment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of***

the federation and matters incidental thereto.”

From the above it appears there exist a jurisdictional conflict as regards the proper court to institute an action for the enforcement of crew claims and whether or not crew claims fall under a maritime claim. In the case of *ASSURANCE FORENINGE SKULD v. MT CLOVER PRIDE*⁸ the Federal High Court Settled the Jurisdictional conflict as regards crew claim. In the case of *ASSURANCE FORENINGE SKULD v. MT CLOVER* Supra, the fact of the case was that through various employment agreements, the demise charterer of MT Clover Pride (the defendant vessel) acquired the services of approximately 23 crew. The demise charterer had registered the vessel with the applicant (a protection and indemnity insurance club), but the cover was subsequently terminated due to the claims charterer's failure to pay the fixed premiums. In November, 2017 the vessel crew notified the applicant that the owner had abandoned the vessel and requested the applicant undertook to pay the crew's accrued wages and their repatriation costs. In this way, it acquired the crew's rights to the extent of payments made and expenses incurred. Having inherited the crew's right, the Applicant instituted an action in the Federal High Court claiming \$293,702.68 from the defendant losses suffered due to the defendant's breaches of its various employment agreement with the crew. The vessel was arrested to secure the Applicant's claim. Palm Spring Global Ltd, the owner of the defendant's vessel was joined as an intervener in the suit after its application through a motion to be joined. Palm Spring Global Ltd brought an application contending that as the claim concerned the wages of crew members employed on board the defendant vessel, the claim fell within the National Industrial Courts exclusive jurisdiction. In arriving at a decision, the court relied on the provision of S.254C (a) and (k) of the 1999 Constitution (as amended) and S.2 (3) (r), of the Admiralty Jurisdiction Act. In this regard the court held that S.2(3)(r) of the Admiralty Jurisdiction Act which differed from the S.254(C) of the constitution which conferred the Jurisdiction of crew claims on the Federal High Court was void to the extent of its inconsistency. The Court further found that even though S.251 of the constitution provides for the Admiralty Jurisdiction of the Federal High Court, Section 254C's express use of the word "notwithstanding" clearly made the former section subject to the latter. The Court thereafter held that it lacked the jurisdiction to hear the case and transferred the case to the National Industrial Court.

⁸ FHC/L/CS/1807

Also, in the Court of Appeal case of *THE VESSEL MT SAM PURPOSE (EXMT. TAPTI) & ANOR v. BAINS & ORS*,⁹ the Court of Appeal held that based on Section 254c of the Third alteration to the Constitution of the Federal Republic of Nigeria (CFRN), that a claim for crew wages was within the jurisdiction of the national Industrial Court of Nigeria and not the Federal High Court. The Court of Appeal set aside the decision of the Federal High Court Lagos that held that it had Jurisdiction to entertain a matter that involves crew claims. The Court of Appeal also held that based on S.245C of the constitution, crew claims were not a maritime claim.

In the case of *AKUPOMA DAWARIKUBU STEPHEN v. SEATEAM OFFSHORE LIMITED*,¹⁰ the Claimant brought an action before the National Industrial Court against the Defendant that caused the Claimant ill health which deteriorated as a result of lack of proper medical care, rendering the claimant incapacitated and not able to work and sought compensation and damages against the Defendant. The Defendant filed a notice of preliminary objection seeking to strike out the Claimant's suit on the ground that by virtue of Section 2 (3) (c) and (r), of the Admiralty Jurisdiction Act, the claim of the Claimant can only be entertained under the Admiralty jurisdiction of the Federal High Court of Nigeria as the Claimant had pleaded that he was employed by the Defendant as a Seaman assigned to man the relevant vessels owned by the Defendant. Justice P.I Hamman Of the national Industrial Court held that the position of the Defendant's preliminary objection would have been correct if it has happened before the coming into effect of the Third Alteration of the 1999 Constitution. That by the enactment of S.254C of the Third Alteration to the 1999 Constitution, the position of the Defendant's preliminary objection is wrong. The Court held that Section 254 (1) (a) clearly vest the National Industrial Court with the exclusive jurisdiction to hear and determine civil cases and matters relation to labour, employment, the conditions of service including health, safety, welfare of employees.

The Court further held that Section 2(3)(c)(d) & (r) of the Admiralty Jurisdiction Act which gives the Federal High Court the Jurisdiction to entertain claims relating to loss of life or for personal injury sustained in consequence of a defect in a ship, and claim by master or member of the crew of a ship for wages or

⁹ (2021) LPELR- 56460 (CA)

¹⁰ NICN/PHC/124/2017 before the National Industrial Court, Port Harcourt Judicial Division.

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 operation of the law are in clear conflict with the provision of S.254(C) of the 1999 Constitution (as amended) which has donated jurisdiction over such subject matters to the National Industrial Court to the exclusion of other Courts. The Court thereafter declared the said provision of the Admiralty Jurisdiction Act void for its inconsistency with the provision of S.254(c) of the 1999 Constitution. The preliminary objection of the Defendant was dismissed.

THE EFFECT OF THE COURT'S DECISION IN THE CASES OF ASSURANCE FORENINGE SKULD v. MT CLOVER PRIDE, THE VESSEL MT SAM PURPOSE (EXMT. TAPTI) & ANOR v. BAINS & ORS, AND AKUPOMA DAWARIKUBU STEPHEN v. SEATEAM OFFSHORE LIMITED AS REGARDS ADMIRALTY JURISDICTION AND CREW CLAIMS IN NIGERIA

By virtue of the decisions of the Federal High Court, the National Industrial Courts and the Court of Appeal in the above stated cases, crew claims are no longer maritime claim and no longer within the Admiralty jurisdiction of the Federal High Court. Section 2(3)(c)(d) and (r) of the Admiralty Jurisdiction Act are void by virtue of its inconsistency with Section 254(c) of 1999 constitution (as amended). The National Industrial Court is the proper court to file a crew claim as it has the jurisdiction to entertain such cases.

Section 254C of the 1999 Constitution (as amended) transferring the jurisdiction for adjudication of crew claim to the national Industrial Court of Nigeria, the seafarers are been deprived of the right to maritime lien on the vessel in which serves as security for their wages. The National Industrial Court lacks admiralty jurisdiction and cannot grant a maritime lien on any vessel of the ship owner as maritime lien can only be exercised in a maritime claim. It is only the Federal High Court that can grant a Maritime lien. Section 5(3) of the Admiralty Jurisdiction Act provide thus:

"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. Salvage; or*

- b. Damage done by a ship; or*
- c. Wages of the master or of a member of the crew of a ship; or*
- d. Master's disbursements.*

Claimants having no direct right against the vessel would be unable to obtain an *ex parte* order of arrest from the National Industrial Court in order to secure their claim. Rather they are faced with the difficult task of enforcing a favourable judgment against an employer who in many cases is resident in a foreign country with no fixtures or assets within the court's jurisdiction.

CONCLUSION

We highly recommend that the legislature (National Assembly) amend the Admiralty Jurisdiction Act and expunge Section 2 (3)(c)(d) and (r), which relates to crew claims from the Admiralty Jurisdiction Act as same is inconsistent with section 254(c) of the 1999 constitution (as amended). This will ensure jurisprudential harmony, and avoid Jurisdictional conflicts.

Also, there is need to amend the National Industrial Court Act to include a section that will give the National Industrial court the powers to grant an *ex parte* order attaching the properties (ship or any other assets) of the ship owners who employ seafarers pending the determination of a suit before it so as to ensure that the enforcement of judgment of a court is not difficult or complicated since getting a favourable judgment without enforcement is a waste of time, resources and injustice.