

**DELINEATING JURISDICTIONAL INDICATORS OF MARITIME CLAIMS IN NIGERIA: THE
CASE OF UNPAID CREW WAGES OF THE VESSEL
MT SAM PURPOSE (EX MT TAPTI) ***

Abstract

Comments have trailed the recent judicial pronouncement of the Lagos State division of the Nigerian Court of Appeal delivered on 5th March 2021, as it relates to the jurisdictional powers of the National Industrial Court and the Federal High Court when the crux of an action borders on unpaid wages of crew members. The decision reached by the Nigerian appellate court is to the effect that notwithstanding the admiralty jurisdiction conferred on the Federal High Court to entertain maritime claims to the exclusion of other courts by the Nigerian constitution and various statutes in Nigeria, the National Industrial Court has an exclusive jurisdiction to entertain any matter pertaining to unpaid wages of a crew member. Taking into account the difference of opinions created by this decision of the Court of Appeal amongst legal practitioners and legal scholars, the object of this work is to critically appraise the jurisdictional powers of both courts as it relates to unpaid crew wages. This work will also proffer possible solutions to this legal imbroglio caused by the constitutional amendment via the introduction of section 254C of the 1999 Constitution.

Keywords: Jurisdiction, Federal High Court, National Industrial Court, Wages, Maritime, Ship

1. Introduction

A maritime claim can partly be defined as a claim arising out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship whether by charter party or otherwise.¹ The nature of a claim which qualifies as a maritime claim is crucial in determining whether a court has admiralty jurisdiction or not.² By virtue of S 2 of the Admiralty Jurisdiction Act (AJA),³ maritime claims are classified into proprietary maritime claims and general maritime claims. A proprietary maritime claim includes a claim relating to the possession of a ship, a title to or ownership of a ship or of a share in a ship, a mortgage of a ship or of a share in a ship, a mortgage of a ship's freight.⁴ Proprietary maritime claim also includes a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship⁵ and a claim for the satisfaction or enforcement of a judgment given by the court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem.

A general maritime claim consists of amongst other things; 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 the law of a foreign country.⁶ General maritime claim also includes 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,⁷ a claim in respect of goods, materials or services (including stevedoring and lighterage service) supplied or to be supplied to a ship for its operation or maintenance or a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of any kind, in relation to a ship or a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship.⁸ Typically, the legal relationship between the owners of vessels, masters, officers and crewmembers is governed by admiralty law and practice. These legal relationships are a blend of private rights embedded in service and employment contracts, mandatory statutory provisions and rights emanating from international conventions on best practices.

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¹ See A. Omaka, *Fundamentals of Maritime, Admiralty and International Water Law* (Lagos: Princeton & Associates Publishing Co Ltd, 2018) p.342-343. *Bonavista Shipping Corporation v. Akrontrade & Transportate De Venezuela C. A & Ors* (2018) LPELR-44023 (CA).

² Omaka (n.1) 342.

³ Cap A5 Laws of the Federation of Nigeria, 2004.

⁴ S 2 (2) (a) AJA.

⁵ S 2 (2) (b) AJA.

⁶ S 2 (3) (r) AJA.

⁷ S 2 (3) (c) AJA. See also *Ijeoma v. Petromed Oil Nig Ltd & Ors* (2009) LPELR-8420 (CA).

⁸ S 2 (3) (p) AJA.

Accordingly, the enforcement of crew claims is recognised as a maritime claim at common law and statute law in England.⁹

Under the Nigerian legal system, both the Federal High Court and the National Industrial Court are superior courts of record as well as courts of coordinate jurisdiction. As superior courts of record, their establishment and jurisdictional powers are clearly spelt out in the Nigerian Constitution¹⁰ and other relevant statutes. For instance, S 251(1) (g) of the Constitution,¹¹ S 1 of the Admiralty Jurisdiction Act (AJA)¹² and Sections 7 and 8 of the Federal High Court Act¹³ confers on the Federal High Court, the admiralty jurisdiction as a court of first instance in Nigeria. One of the most attractive and most significant features of the admiralty jurisdiction of the Federal High Court is the possibility of instituting an action *in rem*, that is, directly against a vessel, and usually by getting an order arresting the vessel after a Writ of Summons has been issued, wherein the vessel is made the defendant to a suit. The aim of this is usually to ensure that the plaintiff is assured of reaping the fruits of judgment in the event of a successful outcome, due to the peculiar nature of the shipping industry.¹⁴

The Nigerian Supreme Court Per Rhodes-Vivour, JSC in *Pacers Multi-Dynamics Ltd v. The M.V. Dancing Sister & Anor*¹⁵, defined an admiralty action in rem as a proceeding against a ship, the res, where the ship is arrested. By the arrest, the owner of the ship is compelled to enter appearance and defend the ship. The owner is enjoined to answer to the judgment of the Court to the extent of his interest in the property. Another important aspect of maritime claims are maritime liens and they are enforceable by a claim in rem which also enables the arrest and seizure of the vessel by an order of a competent court within jurisdiction in fulfilment of the claims against her.¹⁶ Maritime liens are revered and restricted claims of admiralty rights which are enforceable in rem following the traditional practice of the sea merchants. These principles are developed for the convenience of resolving disputes which arise on the high seas and in relation to maritime related transactions and injuries suffered therefrom.¹⁷ In Nigeria, maritime liens are provided for under the Admiralty Jurisdiction Act¹⁸ and according to the Act, maritime lien means a lien for salvage, damage done by a ship, wages of the master or of a member of the crew of a ship¹⁹ or for master's disbursements. It is also pertinent to mention that the admiralty jurisdiction of the Federal High Court applies to all ships, irrespective of the place of residence or domicile of their owners.²⁰

Contrastingly, the National Industrial Court (NIC) was established during the Military Government under the Trade Dispute Decree No.7 of 1976. At the inception, the court was a court of limited jurisdiction. For this reason, it contended with several teething problems. These problems impacted negatively on the ability of the court to deliver on its mandate as a specialized court. Although the NIC was established as a superior court of record, it was not so recognised in the Nigerian Constitution. The court also at the inception enjoyed concurrent jurisdiction with other courts of coordinate jurisdictions such as: Federal High Court, State High Court and the High Court of Federal Capital Territory, Abuja. Due to the confusion with the jurisdiction of the Court with other Courts on the same strata, several cases which ought to have been instituted in the Court were instituted in the Federal High Court, State High Court or in the High Court of the Federal Capital Territory, Abuja.²¹ Similarly, some decisions of Nigeria courts which held that the Federal High Court, State High Court and the High Court of the Federal Capital Territory, Abuja have concurrent jurisdiction with the National Industrial Court did not help the matter.²²

⁹A, Olawoyin, 'Enforcement of Maritime Claims: The Unintended Consequences of Constitutional Change on Admiralty Jurisdiction in Nigeria' (2021) vol. 12(1): *The Gravitas Review of Business and Property Law*.P.3.

¹⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹¹ (n.10)

¹² (n.3)

¹³ Cap F12 Laws of Federation of Nigeria, 2004.

¹⁴ See *Ancomarine Services Co. Ltd v. The M/V. Sam Purpose (Ex-Tapti) & Ors.* (2018) LPELR-46763 (CA).

¹⁵ (2012) LPELR-7848(SC).

¹⁶ Maritime Leins, [https://www.multilaw.com/multilaw/multilaw-news/Memmember_Firm_News/Maritime_Liens.aspx](https://www.multilaw.com/multilaw/multilaw-news/Memember_Firm_News/Maritime_Liens.aspx) accessed on 23rd July 2021 at 9:41 AM.

¹⁷ See *Iroegbu v. MV Calabar Carrier & Ors* (2007) LPELR-5143 (CA); (2008) 5 NWLR (Pt 1079) 14.

¹⁸ S 5 (3) AJA.

¹⁹ Crew wages and salaries are subsumed under maritime liens capable of enforcement under a maritime claim. A maritime lien is a type of lien placed on a ship or other maritime properties to ensure that an individual is paid for services rendered or for damages awarded before such ship or maritime property can be sold and or put to other use.

²⁰ S 3 AJA.

²¹ C.C Ani *Understanding Legal Concepts in Nigeria*, Volume 1 (Enugu: CIDJAP,2020) P.191.

²² See *Attorney General of Oyo State v. Nigeria Labour Congress Oyo State Chapter & Ors* (2003) 8 NWLR (Pt. 821) 1; (2002) LPELR-7077 (CA).

In a bid to proffer a lasting solution to the several problems which confronted the NIC at the inception, the Nigerian Government in 2006 enacted National Industrial Court Act, 2006 (NICA). One of the steps taken in NICA to solve the problems associated with the jurisdiction of the court was the enactment of S 11 of the NICA, which abated the jurisdiction of the Federal High Court, the State High Court and the High Court of Federal Capital Territory, Abuja to entertain labour or industrial disputes or any matter related thereto, except where such matter was part heard.

In spite of the above pragmatic steps taken by the Nigerian Government in identifying the jurisdiction of the NIC, litigants continued to institute their cases in other courts instead of the NIC. To completely checkmate this seemingly self-imposed problem on the part of the litigants, the Nigerian National Assembly in collaboration with the States House of Assembly in Nigeria in 2010 amended the 1999 Constitution of Nigeria thus incorporating the establishment of NIC, its composition and powers like other superior courts of record.²³ The jurisdiction of the NIC is a product of several enactments.²⁴ Apart from putting to rest the constitutional debates over the extent and scope of the NIC Jurisdiction and its status as a superior court of record, the constitutional amendment also expanded the jurisdiction and power of the NIC beyond those stipulated under the Trade Dispute Act of 1976 and the NICA 2006. The new S 254C (1) of the constitution vested on the NIC, a broad, expansive and comprehensive jurisdiction covering all aspects of labour, industrial and employment dispute and all connected matters, pertaining or in any way related to labour disputes.²⁵ This jurisdiction conferred on the NIC to try labour related matters which includes the jurisdiction to entertain any matter pertaining to unpaid wages or salaries of workers and employees informed the decision the Federal High Court to decline jurisdiction in the unreported case of *Assuranceforeningen Skuld (GJENSIDIG) v. MT "Clover Pride" & Anor*²⁶ wherein the Federal High Court held that a claim for crew wages is not within the purview of items it can adjudicate on.

The facts of the case show that through various employment agreements, the demise charterer of the MT Clover Pride (the defendant vessel) acquired the services of approximately twenty-three 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 demise charterer's failure to pay the fixed premiums. In November 2017 the vessel's crew notified the applicant that the owners had abandoned the vessel and consequently requested for the applicant's intervention in the repatriation of the abandoned crew from Nigeria; and payment of their outstanding wages (dating from August 2017 to November 2017). 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 the payments made and expenses incurred.

Having inherited the crew's rights, the applicant instituted an action in the Federal High Court, claiming \$293,702.68 from the defendant for losses suffered due to the defendant's breaches of its various employment agreements with the crew. The vessel was subsequently arrested to secure the applicant's claim. By an *ex parte* order dated 5 February 2018, Palm Spring Global Limited, the owner of the defendant vessel, was joined as an intervener in the suit. It immediately brought an application seeking, among other things; the unconditional setting aside or discharge of the order of arrest; and the striking out of the suit for want of jurisdiction. Palm Spring Global Limited contended that as the claim concerned the wages of crew members employed on board the defendant vessel, the claim fell within the National Industrial Court's exclusive jurisdiction. The decision was premised on the provisions of sections 254C(a) and (k) of the 1999 constitution to the effect that the said provision clearly clothes the National Industrial Court with the jurisdictional powers to entertain matters relating to unpaid wages and salaries of workers or employees in Nigeria. Consequently, the court held that the applicant's action, which was founded on claims for unpaid crew wages, fell outside the Federal High Court's jurisdictional competence.

Furthermore, the court defied the attempt to seek refuge under the provisions of S 2(3)(r) of the Admiralty Jurisdiction Act, which specifically clothes the Federal High Court with the jurisdiction to entertain a claim by a master, or a member of the crew, of a ship for wages or 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. In this regard, the court held that this section which differed from Section 254C of the constitution that conferred the same jurisdiction on the National Industrial Court was void to the extent of its

²³ See S 6 (3), (5)(a) to (i) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

²⁴ Abiri, K., *Identifying and Delineating the Frontiers of the Jurisdiction of the State High Court vis-à-vis other Courts of Concurrent Jurisdiction*. Course for the Newly Appointed Judges and Khadis, 15-23 June.

²⁵ O.D. Amucheazi., P. Abba., *The National Industrial Court of Nigeria: Law, Practice and Procedure* (London: Wildfire Publishing House, 2013) P.62.

²⁶ FHC/L/CS/1807/2017.

inconsistency.²⁷ The court also took the position that, even though Section 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. Ultimately, the court held that it lacked jurisdiction to hear the case and thus transferred it to the National Industrial Court. Pursuant to this, the court made a further order discharging the *ex parte* order of arrest.²⁸ This line of reasoning followed by the Federal High Court in the foregoing case in arriving in its decision is akin to the line of reasoning that informed the decision of the Court of Appeal in the recent and unreported case of *The Vessel of MT Sam purpose (Ex MT.TAPTI) & Anor v. Amarjeet Singh Bains & Ors.*²⁹ This work in the succeeding paragraphs will in addition to an analysis of the *MT Sam Purpose's* case, also explore the admiralty jurisdiction of the Federal High Court and the exclusive jurisdiction of the National Industrial Court to entertain suits relating to unpaid wages and salaries of works and employees.

2. Admiralty Jurisdiction of the Federal High Court.

Generally, the jurisdictional powers of the Federal High Court are contained in section 251³⁰ while its admiralty jurisdiction is specifically contained in S 251(1) (g) of the Constitution³¹. The said S 251 (1) (g) which provides for its admiralty jurisdiction of the Court reads thus:

(1) *Notwithstanding anything* to the contrary 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 Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matter-

(g) *any admiralty jurisdiction*, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea. [Emphasis supplied]

This admiralty jurisdiction exercised by the Federal High Court is further strengthened by the provisions of the Admiralty Jurisdiction Act (AJA),³² Admiralty Jurisdiction Procedure Rules 2011 (AJPR), Federal High Court Act and the Merchant Shipping Act, 2007. Notwithstanding the clear delineation of the jurisdictional powers of the Federal High Court by section 251, jurisdictional rifts between the Federal High Court and other courts of coordinate jurisdiction have become a recurrent issue under the Nigerian legal system and this may be attributed to the exclusivity granted to the Federal High Court in respect of some matters. For instance, notwithstanding that one of the party to a suit is an agent of the Federal Government, which ordinarily would have clothed the Federal High Court with an exclusive jurisdiction to try such matter by virtue of section 251 (1) (p), it has been held that the federal High Court lacks the requisite jurisdiction to try such matter if it borders on the tort of negligence or on simple contract.³³ This divestiture of the powers of the Federal High Court also occur in some situations where the 1999 Constitution may specifically arrogate powers exercised by the Federal High Court to another court to exercise same concurrently with the Federal High Court.³⁴ The recent divestiture which forms the substance of this work is that the powers of the Federal High Court to entertain suits pertaining to unpaid crew wages which ordinarily would have been grouped under the umbrella of maritime claims by virtue of the S 251 (1) (g) has been sculpted out and same arrogated to the National Industrial Court by virtue of S 254C (k) of

²⁷Section 1 (3) of the 1999 Constitution provides for the supremacy of the Nigerian Constitution over every other statute applicable in Nigeria and in this regard any other law which is inconsistent with the provisions of the Constitution shall to the extent of the inconsistency be void.

²⁸Compare with a prior and unreported decision of the Federal High Court in *Moe OO & 26 Ors v MV Phuc Hai Sun*, Suit no. FHC/CS/L/592/11, wherein the plaintiffs, who were crew members of the vessel MV Phuc Hai Sun, brought an application pursuant to Order 17 of the Admiralty Jurisdiction Procedural Rules 2011. The plaintiffs applied that the Court determine the priority of the plaintiffs' claim against the defendant on the basis that a claim for crew wages attracted a maritime claim in preference to other claims. A secured creditor of the defendant owners, Vietcom Bank, challenged the court's jurisdiction to entertain the claim on the ground that it was an action for crew wages. In a concise and brief ruling, the court held that the National Industrial Court does not have jurisdiction in matters relating to unpaid crew wages. The court stated that the provision of section 254C (1) of the 1999 Constitution does not apply to claims by crew members onboard a vessel on a voyage to Nigeria and whose crew members are not Nigerians.

²⁹ CA/LAG/CV/419/2020.

³⁰ (n.10)

³¹ (n.10)

³² (n.3)

³³See *Rahman Brothers Ltd v. NPA* (2019) LPELR-46415 (SC). *GSK Ltd & Anor v. Oben* (2016) LPELR -40351 (CA). (2016) ALL FWLR (Pt 839) 110. *Federal Staff Hospital Jabi & Anor v. Ohanaka & Anor* (2018) LPELR-45830.

³⁴ See S 46 (n.10). See also *FUTMINNA & Ors v. Olutayo* (2017) LPELR-43827 (SC); (2018) 7 NWLR (Pt 1617) 176.

the 1999 Constitution. It is pertinent to mention that despite the foregoing recent decision of the Nigerian Court of Appeal,³⁵ The Federal High Court still enjoys wide jurisdictional powers over maritime claims in Nigeria. For instance in *Westcom Technology & Energy Services Ltd v. Transclear S.A.*,³⁶ the appellant and the respondent were involved in a business transaction under which the respondent supplied the appellant various cargoes of bulk cement on credit, which after being supplied, accumulated demurrage due to the alleged failure of the appellant to discharge the cement as and when due. Upon the failure of the appellant to discharge the sum allegedly owed under the transaction, the respondent instituted an action before the Federal High Court vide a Writ of Summons dated 9th December, 2010, claiming the following reliefs; the sum of US\$12,064,435,000 (Twelve Million, Sixty-Four Thousand, Four Hundred and Thirty Five United States Dollars) being demurrage that accrued on several shiploads of bulk cement sold to the defendant (appellant) on credit by the plaintiff (respondent) which amount, the defendant acknowledged and agreed was due and payable to the plaintiff as far back as September 29, 2011 and which amount has remained unpaid till date. Judgment was entered in favour of the respondent and this prompted an appeal. One of the issues raised was whether the learned trial Judge was right in holding that the action of the respondent before the lower court was truly for a claim for accrued demurrage for goods that has not been discharged from the ship so as to bring the matter within the admiralty jurisdiction of the Federal High Court. Affirming the decision of the lower court, the Court of Appeal held that since demurrage was the charge for the goods that had not yet been discharged from the ship, the matter was firmly within the parameters of what would constitute admiralty jurisdiction.³⁷ However in *Bua International Ltd v. Mediterranean Shipping Co (Nig) Ltd & Anor*³⁸ the second issue for determination resolved by the Court of Appeal is as to whether the lower court has the jurisdiction to entertain the 1st respondent's claim which bordered on an agreement relating to carriage of goods by a ship. In his argument counsel for the appellant contended that Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) via its provisions made it clear that carriage of goods by sea and other ancillary civil matters arising from carriage of goods by sea fall within the exclusive jurisdiction of the Federal High Court. Qualifying the argument, counsel for the 1st respondent was of the legal opinion that for a claim to arise in admiralty, the cargo must still be on board the vessel, and once the cargo is discharged from the vessel, in the harbor or delivered to the point of destination, the claim cannot be founded in admiralty and it is immaterial that the transaction involved a bill of lading. It was further submitted by counsel to the 1st respondent that since the goods had been discharged from the vessel and delivered at the destination in Abuja where the Appellant detained the containers subject matter of litigation, the matter was rightly instituted at the Lagos State High Court. Pitching its tent with the 1st respondent, the court held thus:

From all I said herein, it is very clear to me that, the claim cannot be founded in admiralty, the cargo was successfully discharged and delivered at the point of destination, the only issue is with respect to return of unstuffed containers. I think the Appellant has no reason to conceive that the claim falls within the Admiralty jurisdiction of the Federal High Court this contention is with all due respect grossly misconceived. The issue constituting the subject matter of claim falls within the jurisdiction of the High Court of Lagos State.³⁹

3. Jurisdiction of the National Industrial Court (NIC) to Entertain Matters Relating to Unpaid Wages and Salaries of Workers and Employees in Nigeria.

The exclusive jurisdiction of the National Industrial Court (NIC) to entertain matters relating to unpaid wages and salaries of workers and employees is expressly provided for in S 254C (1) (k) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 and for a clearer understanding of the section, it is reproduced below:

Notwithstanding the provisions of Section 251, 257 and 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 cases and matters. [Emphasis supplied]

(k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlements of any employee, worker, political or public office holder, Judicial officer or any civil or public servant in any part of Nigeria and matters incidental thereto.

³⁵ The said judgment still requires a judicial endorsement by the Nigerian Supreme Court.

³⁶ (2018) LPELR-44794 (CA).

³⁷ See also *Mobil Oil (Nig) PLC & Ors v Kena Energy Intl Ltd* (2000) LPELR-5863 (CA); (2001) 1 NWLR (Pt 695) 555.

Touton S.A v. Grimaldi Compagnia Di Naviga Zioni S.P.A & Ors (2010) LPELR-5033 (CA); (2011) 4 NWLR (Pt. 1237) 1.

³⁸ (2018) LPELR-44794 (CA).

³⁹ See also *Onyekumbaru v. FRN* (2018) LPELR-46040 (CA).

The obvious and literal interpretation of the foregoing section is to oust the jurisdiction of other courts from entertaining any suit related to non-payment of salaries or wages of any worker or employee in Nigeria. If the literal interpretation of the section is adopted, it then follows that regardless of the clear provisions of S 251 (1) (n) of the 1999 Constitution which clothes the Federal High Court with the jurisdiction to try matters relating to mines and minerals (including oil fields, oil mining, geological surveys and natural gas), any matter relating to non-payment of the remuneration due to the mine workers can only be instituted in the National Industrial Court. Reiterating this position of the law as it regards to the exclusive jurisdiction of the National Industrial Court to entertain suits of unpaid wages and salaries, the Nigerian Court of Appeal in *Mainstreet Bank Registrars Ltd v. Ahaiwe*,⁴⁰ opined that from the construction of the relevant provisions of the constitution, it is obvious and crystal clear that the National Industrial Court has the jurisdiction, indeed exclusive one to adjudicate the respondent/claimant's action which bordered on unpaid gratuity at the trial Court. According to the court *Per Danjuma JCA*, the constitutional endowment of the power bestowed lavishly upon the National Industrial Court, for good reasons makes it *ex abundantia cautela*, and that notwithstanding the provisions of Sections 251, 257 and 272 of the Constitution, the National Industrial Court shall exercise the powers enumerated in the Constitution. The appellate court resolving the issue in favour of the respondent stated that since S 251, 257 and 272 relate to the jurisdictions of the Federal High Court of the Federal Capital Territory and the State High Courts respectively, it therefore, means that the National Industrial Court has the exclusive jurisdiction over those genre or species of matters. Toeing the same line of reasoning, the Court of Appeal in *Ido Local Government v Musaibu & Ors*,⁴¹ opined thus:

Section 254C(1)(k) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states as follows:- Notwithstanding the Provisions of Sections 251 , 257 , 272 and anything concerned 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 (k) relating to or connected with disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances 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. In the case of *N.D.I.C. VS OKEM ENTERPRISE LTD & ANOTHER* (2004) 10 NWLR PART 880 PAGE 107, it was held among others that: - When the term notwithstanding is used in a section of a statute, it is meant to exclude an impinging or impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself. It follows that, as used in Section 254C(1) of the 1999 Constitution, no Provision of that Constitution shall be capable of undermining the said section. Put in other words Notwithstanding used in Section 254C (1) of the 1999 Constitution means that no provision in the Constitution itself or any statute or legislation shall be allowed to prevail over the Provisions of Section 254C(1) . Notwithstanding is a term of exclusion. The effect of Section 254C(1)(k) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is to oust the jurisdiction of any other Court to adjudicate on matters listed in the Section.

The conflict between S 254C(1)(k) and S 251 (1)(g) is intensified by some provisions of the Admiralty Jurisdiction Act, the Federal High Court Act and the Admiralty Jurisdiction Procedure Rules which tends to validate the admiralty jurisdictional powers of the Federal High Court without any exceptions. Although, this work agrees with the decisions and the views of the court to the extent that generally the intentions of section 254C (1) (k) is to oust the jurisdiction of other courts when the matter borders on the non-payment of the remuneration due to a worker or employee, however, this work differs to the extent that it could not have been the intention of the lawmakers to oust the jurisdiction of the Federal High Court to entertain suits related to unpaid crew wages. Thus, if the Court of Appeal had adopted a purposive rule of interpretation in the *MT Sam Purpose's* case instead of the supposed literal interpretation adopted by the court, the appellate court may have arrived at a different conclusion in the said case. This submission by this work is informed by the *sui generis* nature of maritime claims which in most cases involves foreigners. The arguments in favour of this position taken by this work will be housed in the succeeding paragraph.

4. Brief Facts and analysis of the MT Sam purpose (Ex MT. TAPTI)'s Case

The respondents who were the plaintiffs at the Federal High Court, in an action in rem, sought several reliefs against the defendants/appellants bordering inter alia on unpaid crew wages, cost of admiralty marshal expenses, cost of arrest and detention of vessel. The respondents accompanied the originating process with an *ex parte*

⁴⁰(2019) LPELR-47057 (CA).

⁴¹ (2019) LPELR-46941 (CA).

application seeking among others the arrest and detention of the vessel, MT Sam Purpose, pending the provision of a satisfactory bank guarantee to secure the respondents' claim. The application for the arrest of the vessel was granted by the court. The appellants subsequently entered conditional appearance, challenging the jurisdiction of the court while relying on section 254C (1) (a) and (k) of the constitution⁴² and applied to discharge the order of arrest of vessel and strike out the suit for want of jurisdiction. The Trial court refused the appellant's application, leading to an interlocutory appeal to the Court of Appeal. The Court of Appeal upheld the Respondents' interlocutory appeal, set aside the order of arrest and struck out the suit for want of jurisdiction. In upholding the respondents' interlocutory application, the Court of Appeal held that Section 254C (1) of the Constitution confers exclusive jurisdiction on the National Industrial Court over maritime labour related matters, inclusive of unpaid crew wages. According to the Court, Section 2(3)(r) and 3 of the Admiralty Jurisdiction Act, which conferred similar jurisdiction on the Federal High Court, was void to the extent of its inconsistency with the Constitution whilst relying Section 1(3) of the Constitution. As earlier stated, the foregoing judgment of the Nigerian Court of Appeal which appears flawless is in the humble opinion of this work marred with interpretative errors. This stance taken by this work is premised on the fact that the decision of the Court of Appeal to adopt a literal interpretation of section 254C (1) (a) and (k) without putting into consideration the sui generic nature of maritime claims led to an erroneous conclusion. Thus, it is the view of this work that since the National Industrial Court is not clothed with the requisite legal machineries needed to effect the arrest of a vessel, which is customary in an action in maritime claims, it cannot be said that it is the intendment of the law makers to oust the jurisdiction of the Federal High Court in matters pertaining to unpaid crew wages by the introduction of section 254C (1) (a) and k of the 1999 Constitution. Generally, claims for the wages of crew members and masters are a time honoured maritime liens which permanently attach to a vessel irrespective of a change in possession or ownership. Under the Federal High Court's admiralty jurisdiction, they are enforceable by an action *in rem* against the vessel itself, quite apart from its owners.

*Erim*⁴³ in his article was of the view that the possible outcome of a decision such as the one under review is that it may no longer be possible for an unpaid crew to institute an action in rem for the recovery of the remuneration due to them. According to *Erim*, the only option then is to bring an action against the employer (who could be the owner or charterer of the vessel), which must now be specifically named in the writ and served accordingly. Thus, having no direct right against the vessel, the claimant may be unable to obtain an *ex parte* order of arrest against the vessel to secure its claim. Rather, the successful party will face the uphill task of enforcing a favourable judgment against an employer that, in many cases, will be resident in a foreign country with no fixtures or assets within the court's jurisdiction. Thus, the claimant will likely encounter grave procedural difficulties not only in the process of initiating its claim, but also enforcing it in the event of a successful judgment. This work totally subscribes to this line argument and on the strength of this argument it is submitted that not only that the said judgment will hunt the maritime jurisprudence for a long time, the said decision has also taken away the long standing beneficial and attractive means of securing unpaid wages via an action in rem which its main object is to compel the appearance of the owner of the ship to defend his property thereby imploding him to answer to the judgement to the extent of his interest in the property.

The significance of arrest in an action to recover unpaid crew wages cannot be over emphasized since the main objective of the arrest is to make the defendant to put up a bail or provide in advance of the judgement, a fund for securing compliance with the judgement if and when it is obtained against him.⁴⁴ Thus, a ship is arrested so as to obtain a pre-judgment security for a claim so that a judgment given in favour of an arrest may be secured by means of some guarantee acceptable to both the court and the arrestor in place of the vessel.⁴⁵ This process of the arrest which cannot be actualized in the National Industrial Court because of the absence of enabling statutory provisions is initiated by a motion *ex parte* supported by an affidavit and an affidavit of urgency which is brought pursuant to Order 7 of Admiralty Jurisdiction Procedure Rules, 2011 and Section 7 of AJA. The affidavit in support of the motion *ex parte* is usually sworn to by either the applicant, his agent or a solicitor disclosing a strong prima facie case. By virtue of the affidavit of urgency, the application for the ship's arrest can be heard and granted the same day it was filed.⁴⁶ The essence of accentuating the process of arrest and its impact is to imprint the position taken by this work to the effect that literal interpretation of section 254C (1) (a)

⁴²Constitution of the Federal republic of Nigeria 1999 (As Amended).

⁴³E. Erim., Claims for unpaid crew wages unenforceable in Federal High Court. <https://www.lexology.com/commentary/shipping-transport/nigeria/akabogu-associates/claims-for-unpaid-crew-wages-unenforceable-in-federal-high-court> Accessed on 24th July, 2021, at 3:11 PM.

⁴⁴M. Igbokwe., *Arrest of Ships & Release - A Synoptic Guide on Procedure & Laws*. Being a paper presented at the Eleventh Workshop series of Alpha Juris Continuing Legal Education Department held between 5th and 6th June, 2003 at the Presidential Hotel, Port-Harcourt, Rivers State. P 9.

⁴⁵ See *MV Nozomi & Anor v. Seabridge Bunkering PTE Limited*, (2016) LPELR-41449 (CA).

⁴⁶ Igbokwe (n.44) P10.

and (k) adopted by the Court of Appeal without the recourse to the *sui generis* nature of maritime claims has led to a legal quagmire. It is further submitted that if a more purposive style of interpretation was adopted by the appellate court, a different and better conclusion may have been arrived at. The purposive style of interpretation is an approach to statutory and constitutional interpretation under which common law courts interpret an enactment in the light of the purpose for which it was enacted. It is essential that in interpreting the words of a statute, the court must consider the object of the statute. The court must guide itself with the essence of a provision in giving meaning to words of that provision. Once an interpretation meets the purpose of the provision of an enactment, then it is fine, and it is irrelevant that other possible interpretations of the provision exist.⁴⁷ Thus, it would be irrational and illogical to state that the intention of the law makers was to clothe the National Industrial Court with the jurisdiction to entertain suits for the recovery of unpaid crew wages without equipping the court with the necessary tools needed to carry out this function.

Although, it may be argued that the National Industrial Court could in the absence of express statutory provisions activate its inherent jurisdiction to secure the arrest of the ship, however the result will never be the same because the intricacies involved in the process of the arrest of a ship have been clearly resolved via the express provision of the AJA and AJPR. Also, the thought of circumventing the arrest of the ship by employing injunctive orders against the ship may also not yield the desired result on the basis that act of arrest is synchronized with the action in rem with an ultimate objective to make the vessel or a sister vessel a defendant in the suit and to secure the presence of the owner of the ship and in a situation where such owner fails to appear, the Federal High Court is empowered to order for the sale of the ship in a situation where the judgment is in favour of the plaintiff.

Another aspect of the judgment which requires a fair critique by this work was the decision of the appellate court to adopt a literal interpretation to the exclusion of other styles of interpretation that in the view of this work if were adopted, would have yielded a better result. In this regard, it is submitted that there was no justification for the Nigerian Court of Appeal to premise its judgment on the literal interpretation of the opening phrase of section 254C which had an impinging effect on section 251, 257 and 252 without making recourse to the opening paragraph of section 251 which also has an impinging and invasive effect on the entire provisions of the constitution. Although, it is conceded that this parallel, obvious and inherent defect in the opening paragraphs of S 254C and 251 that clothes two different courts with exclusive jurisdiction on the same matter is a product of the inelegance and unsophistication of the draftsman, however the decision of the Court of Appeal to jettison a holistic approach and instead opted for a literal approach in resolving the legal entanglement created by the opening paragraphs of S 254C and S 251 respectively, pushed the court into the snag created by the draftsman. According to *Olawoyin*, both the Federal High Court and National Industrial Court are courts of special jurisdiction, and it was a legislative error to subject one court of special jurisdiction to another.⁴⁸ What the legislature is expected to do is to clearly delineate the jurisdictional boundaries of both courts bearing in mind that they are courts of coordinate jurisdiction.

5. Conclusion and Recommendations

This work has appraised the jurisdictional powers of the National Industrial Court and the Federal High Court to entertain matters related to unpaid crew wages in line with the conflicting decisions of the Federal High Court and the National Industrial Court on one fold and the recent decision of the Nigerian Court of Appeal on another fold. The position taken by this work is to the effect that the judicial conclusion reached by the Court of Appeal cannot in the humble view of this work be perceived as one that reflects the intention of the draftsmen. This position is anchored on the fact that it could not have been the intendment of the lawmaker to oust the jurisdiction of the Federal High Court which has the requisite legal apparatus needed in a maritime action in rem and place same within the jurisdictional ambit of the National Industrial Court without providing a similar statutory mechanism in either the National Industrial Court Act, 2007 or the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017. Thus due to the sue generic nature of maritime claims and the absence of legal mechanism in form of statutory provisions, the National Industrial Court is incapacitated to entertain suits for unpaid crew wages which is usually an action instituted in rem.

It is recommended that a constitutional amendment would be a long-lasting and enduring solution to this legal imbroglio and in this regard it is proposed that the upshot of the constitutional amendment should cloth the

⁴⁷See *PDP v. Mohamed & Ors* (2015) LPELR-40859 (CA). *Uwaokop v. UBA PLC* (2013) LPELR-22622 (CA). *Zakirai v. Muhammad & Ors* (2015) LPELR-40387 (CA). *Marwa & Ors v Nyako & Ors* (2012) LPELR-7837 (SC). *Ohanenye & Ors v. Ohanenye & Sons Ltd & Anor* (2016) LPELR-40458 (CA).

⁴⁸*Olawoyin* (n.9),178.

National Industrial Court with the jurisdiction to entertain unpaid crew wages. Thus, the provision of section 251 (1) (g) should after the amendment should read thus

(1) Notwithstanding anything to the contrary 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 Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matter-

(g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea. *Provided that the National Industrial Court shall have the exclusive jurisdiction to entertain any dispute involving a seafarer or crewmembers and the owner or charterer of a vessel in respect of unpaid wages, salaries or remuneration of the seafarer or crewmembers;* [Emphasis supplied]

Thus, the proviso carves out any action involving unpaid crew wages from the wide admiralty jurisdiction exercised by the Federal High Court and places same on the National Industrial Court.⁴⁹ In addition to the proposed amendment, it is also recommended that similar provisions allowing for an action in rem and its attendant right to arrest the vessel contained in the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules, 2011 should be replicated and incorporated in the National Industrial Court Act, 2007 and the National Industrial Court Act (Civil Procedure) Rules, 2017 respectively. The proposed replication of these enabling provisions for an action in rem is due to the fact that apart from cases of unpaid wages which would be entertained by the National Industrial Court, the federal high court is still entitled to entertain suits for salvage or damages done by a ship which can also be instituted by an action in rem. It is pertinent to mention that the proposed amendment does not resolve other jurisdictional rift between the courts because section 254C (1) (a) and (b) also has similar problems.⁵⁰ Bearing in mind that the Court of Appeal is the final arbiter in respect of civil claims emanating from the National Industrial Court,⁵¹ it is submitted that clothing the National Industrial Court with the jurisdiction to try matters of unpaid crew wages will alleviate the hardship experienced by a claimant if the same action is instituted in the Federal High Court wherein in most cases the outcome of the matter at the court of first instance is challenged all the way to the Supreme Court. Although it is recommended that a constitutional amendment could solve the legal imbroglio presented by section 251 and 254C, it is further recommended that pending the lengthy and cumbersome process of amendment of the constitution, a palliative approach via judicial intervention can be resorted to. To this regard, it is suggested that the Nigerian Apex Court in a bid to resolve the jurisdictional conflict is expected to adopt a judicial conclusion which will:

- i. Take into consideration the sui generic nature of maritime claims.⁵²
- ii. Reflect the intention of the lawmakers.
- iii. Preserve the maritime jurisprudence pending the amendment of the constitution and other relevant statutes.

⁴⁹See *OMTC Ltd & Anor v. City Express Bank & Anor* (2018) LPELR-45440 (CA). *UBA v. Ola-Oluwa Aina Wire Industries (Nig) Ltd & Anor* (2016) LPELR-40155 (CA).

⁵⁰See the unreported case of *Akuroma Dawarikibu Stephen v. Seateam Offshore Limited*, Suit No. NICN/PHC/124/2017 decided on 24 February 2020 (*Per Hamman J.*).

⁵¹See section 243 (2) (3) (4) of the 1999 Constitution. See also *Skye Bank v. Iwu* (2017) LPELR-42595 (SC); (2017) 16 NWLR (Pt.1590) 24.

⁵²See T.A.M., *Damiari Unpaid Wages of Crew Members: Case Review of the Vessel Mt Sam Purpose (Ex Mt. Tapti) & Anor v. Amarjeet*, (2021) vol. 12(2): *The Gravitas Review of Business and Property Law*.