

THE NEGATIVE IMPLICATIONS OF THE NON-AVAILABILITY OF THE ADMIRALTY INTERIM RELIEF OF ARREST OF SHIPS IN THE ADJUDICATION OVER MARITIME LABOUR CLAIMS IN NIGERIA*

Abstract

This article looks at the negative implications of the non-availability of the admiralty interim relief of arrest of ships in the adjudication over maritime labour claims in Nigeria. The significance of the article is that it lays bare the negative implications of the National Industrial Court to adjudicate over maritime labour claims. By Section 245C of the Constitution it is the National Industrial Court of Nigeria that has exclusive jurisdiction over all labour claims. The fact that the National Industrial Court of Nigeria has exclusive jurisdiction over maritime labour claims has been given judicial credence. This article would at the end of the day give answer to two fundamental questions: (i) whether the interim admiralty relief of arrest of ship is available to maritime labour claimant in Nigeria. If answer is in the negative; (ii) whether there are negative implications to this. It is the contention herein that the existing legal frame work for adjudication over maritime labour claims does not meet the ends of justice as such the National Industrial Court of Nigeria be robbed of jurisdiction to adjudicate over maritime labour claims and the jurisdiction given to the Federal High Court; in the alternative, the National Industrial Court of Nigeria should have the jurisdiction of arrest of ships in respect of maritime labour claims.

Keywords: Admiralty Interim Relief, Non-Availability, Arrest of Ships, Maritime Labour Claims, Implications, Nigeria

1. Introduction

This article looks at the negative implications of the non-availability of the admiralty interim relief of arrest of ships in the adjudication over maritime labour claims in Nigeria. The significance of the topic is that it lays bare the negative implications of the non-availability of the admiralty interim relief of arrest of ships in the adjudication over maritime labour claims in Nigeria. In this article we are confronted with two basic questions: (i) Whether the interim admiralty relief of arrest of ship is available to maritime labour claimant in Nigeria. If answer is in the negative; (2) Whether there are negative implications.

2. Interim Preservative Reliefs

A thing is said to be interim when it is not permanent. A thing is also preservative where it is aimed at saving something from being depleted or destroyed. An interim preservative relief is a temporary order of court that is made to preserve the res subject matter of a case pending the final determination of a matter. An illustration may suffice. A and B are in dispute over a property. B is taking steps to sell the property to a third party. A can approach the court for an order of court restraining B from selling the property pending the final determination of the case. In legal terms, interim preservative orders are interlocutory reliefs granted by a court for the preservation of the res, the subject matter of a case at an interlocutory stage pending the final determination of a case. Interim orders, interlocutory orders or judgement as they are sometimes called are different from a final judgment. A final judgement on the other hand is a judgement that disposes of the entire case and the judgment is permanent in nature. The jurisdiction of the court to make interlocutory orders is usually ignited by an interlocutory application by way of a motion.¹ In a superior court of record motions are expected to be in writing although sparingly the court can allow oral applications. In courts of summary jurisdiction oral applications are generally permissible by the court and the court may order for a written application where the nature of the application so demands. There are various forms of interlocutory preservative orders or application. They are Interim injunction, Interlocutory injunction, Mareva injunction, Anton pillar orders, Arresting of absconding party, and Admiralty preservative relief of arrest of ship.

3. Admiralty Preservative Relief of Arrest of Ship

The interim admiralty preservative relief of arrest of ship otherwise known as arrest of ship means ‘the detention of a ship by order of a court to secure a maritime claim but does not include the seizure of a ship in execution or satisfaction of a judgment or other enforceable instruments.’² The purpose of arrest of ship is to secure a maritime labour claim pending the final determination of a case. The court in the case of *The Vessel ‘MV Sirius-B’ v M.S.&S.C.I. Limited* on the purpose of arrest of ship held as follows:

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¹ High Court (Civil Procedure) Rules, 2010, Order 39 Rule 1.

² International Convention Relating to Arrest of Seagoing Ships, 1952, Article 1(2).

It is trite that the fundamental objective of arresting a vessel or ship is to obtain satisfaction of a judgment in an action in *rem*. Pre-judgment arrest in admiralty proceedings is either to prevent, pending the determination of the proceedings, the removal from the jurisdiction of a particular vessel which may be used in satisfaction of a possible judgment in the claimant's favour, or to compel, in lieu, the provision of security correspondent in value to the amount claimed or sometimes the value of the particular vessel.³

Arrest of ship is one of the features of admiralty matters and in particular admiralty action in *rem* wherein the action is brought against a ship as the *res* in an action in *rem* and the ship (*res*) is arrested as security for the claim. For there to be an arrest of ship, the action must be an admiralty action in *rem*.⁴ Under the International Convention Relating to Arrest of Seagoing Ships, 1952, maritime labour claims give rise to arrest of ship by an action in *rem*.⁵ There are basically two forms of admiralty actions- admiralty action in *rem* and admiralty action in *personam*. The Supreme Court in *Rhein Mass Und See v Rivway Lines Ltd*⁶ defined an action in *rem* as follows:

An action in *rem* is one in which the subject matter is itself sought to be affected, and in which the claimant is enabled to arrest the ship or other property, and to have it detained, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the property proceeded against, where that is less than the amount of the claim.⁷

In the same case the Supreme Court also defined action in *personam* as follows:

Etymologically an action in *personam* is an action brought against a person, an action to compel to do or not to do a particular thing or take or not to take a particular course of action or inaction. Actions for damages in tort or for breaches of contract are clearly directed against the person as opposed to actions which are brought for the purpose of declaring or challenging a status, like proceedings under the matrimonial laws of the country or of legitimacy or an admiralty action directed against a ship or the *res*⁷

A similar definition is given in the case of *Bronwen Energy Trading Ltd v Oan Overseas Agency Nigeria Ltd & Ors*⁸ In the case of *C.S. Inc v M/T 'Cindy Gaia'*⁹, the court defined action in *personam* as follows:

An action in *personam* is directed against the person at fault, and is dependent entirely upon the plaintiff being able to properly and effectively serve a summons on the defendant in connection with the legal complaint against the defendant, particularly when the parties are in different jurisdictions. *Rhein Mass Und See GMBH v Rivway Lines Ltd* (1998) 5 NWLR (Pt.549) 265.

From the above definitions of the Supreme Court an action in *rem* is against the thing or subject whilst the action in *personam* is against the person that carried the wrong. A person in law could be a natural person or a corporate entity. An admiralty action in *rem* in a maritime labour claim therefore means the filing of an admiralty action in *rem* for a maritime labour claim.

4. Maritime Labour Claim

Maritime Labour Claim Maritime labour claim does not have a statutory or judicial definition. Learned authors have not also averted their minds in offering a definition for maritime labour claims. They have only identified them.¹⁰ However, there is a statutory definition of maritime claim and maritime labour respectively. From the two respective definitions of maritime claim and maritime labour, one can conveniently arrive at the definition of maritime labour claim. The International Convention Relating to the Arrest of Sea-Going Ships, 1952 in Article 1 defines maritime claim to amongst others include claims arising out of:

- 1) Loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship;
- 2) Wages of masters, Officers, or crew;
- 3) Master's disbursements, including disbursements made by shippers, charterers or agent on behalf of ship or her owner;

³ (2017) 10 NWLR (Pt.1572) 135 at 166-167 para H-A.

⁴ Admiralty Jurisdiction Procedure Rules 2011 Order 3 Rule 3.

⁵ International Convention Relating to Arrest of Seagoing Ships, 1952, Article 1(1).

⁶ (1998) LPELR – 2948 (SC).

⁷ *Supra*.

⁸ (2014) LPELR 2411 (CA).

⁹ (2007) 4 NWLR (pt. 1024) 222 at 242 paras. F-G.

¹⁰A. Severance 'Navigating Maritime Personal Injury and Death Cases' (2018) *Federal Bar Association* accessed at <http://www.febbar.org/sections/admiralty-lawsection/admiraltas/w>. on the 9th of April, 2021.

The Nigerian Maritime Administration and Safety Act on its parts defined maritime labour as including dockworkers, seafarers and including every person except masters and employed or engaged in any capacity on board any ship except pilots and masters¹¹. It follows from the above that maritime labour includes everybody employed or engaged in a ship other than a pilot or a master. In other words, masters and pilots are not included in maritime labour. The exclusion of masters and pilots will not be of any relevance to the jurisdiction of the National Industrial Court of Nigeria to adjudicate over maritime labour claims. This is because once there is a master and servant relationship and there is a labour claim, the National Industrial Court assumes jurisdiction over such claims. Howbeit, from the definition in the Nigerian Maritime Administration and Safety Act two persons readily come to mind when it comes to maritime labour claims. They are seafarers and dock workers.

The following are forms of maritime labour claims. The list may not be exhaustive but what is paramount for them to be a maritime labour is that the engagement of employment must be shipping related. The grievance or claim must be as a result of maritime labour engagement. From the definitions of maritime claim and maritime labour, we can say that maritime labour claims are claims arising from master and servant relationship in shipping, examples of which are claim for abandonment¹², claim of repatriation¹³, claim for wages¹⁴, claim for loss of life¹⁵, claim for personal injury¹⁶, claim for fair terms of employment¹⁷, claim for decent working and living condition, claim to health protection medical care welfare measures and other forms of social protection, and claim for safe and secure work place¹⁸

5. Court with the Jurisdiction to Adjudicate over Maritime Labour Claim in Nigeria

The National Industrial Court of Nigeria is the court that has exclusive jurisdiction entitled to adjudicate over all labour matters in Nigeria. The court was established by the National Industrial Court Act.¹⁹ The exclusive jurisdiction of the court to adjudicate over labour matters is provided for by the constitution in section 254C as follows:

1. Notwithstanding the provisions of sections 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 union, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;
 - b. relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or

¹¹ Nigerian Maritime Administration and Safety Act s64.

¹² Abandonment of a maritime claimant arises where a maritime labourer is left in a destination other than his agreed destination. The reason for abandonment most times is that the ship is arrested and the owners of ship cannot settle the issue of arrest. The maritime labour is left with no food, money, allowance, sometime no communication with his family.

¹³ The right to repatriation for a seafarer is provided for under the Repatriation of Seafarers Convention (revised) 198 by Article 1(1). The Convention applies to every seagoing ship whether publicly or privately owned which is registered in the territory of any member for which the Convention is in force and which is ordinarily engaged in commercial maritime navigation and to the owners and seafarers of such ships. By article 1(4) for the purpose of this Convention the term seafarer means any person who is employed in any capacity on board a seagoing ship to which this Convention applies.

¹⁴ Wage has been statutorily defined by Section 9 of the Labour Act as: 'remuneration or earnings (however designated or calculated) capable of being expressed in terms money and fixed by mutual agreement or by law which are payable by virtue of a contract by an employer to a worker for work done or to be done or services rendered or to be rendered.'

¹⁵ This claim is statutory recognized as a claim available to maritime labour claimant. The Admiralty Jurisdiction Act, 1991 in Section 2(3) specifically provides for 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. Howbeit, it is pertinent to state that the claim for loss of life of a worker is not peculiar to a maritime labour claimant. It is right available to other forms of employment.

¹⁶ This claim is statutory recognized as a claim available to maritime labour under the Admiralty Jurisdiction Act, 1991, Section 2(3). This is also provided for in the Nigerian Maritime Administration and Safety Act in Section 3(iii) and Section 41(2) of the Merchant Shipping Act. Howbeit, it is pertinent to state also that the claim for personal injury of a worker is not peculiar to a maritime labour claimant. It is right available to other forms of employment.

¹⁷ This right is provided for under the Maritime Labour Convention, 2006. It provides that every seafarer has the right to fair terms of employments. The right is not peculiar to maritime claimants but a right that inures on all labourers by international standards.

¹⁸ The rights in claims number 7, 8 and 9 are provided for under the Maritime Labour Convention, 2006.

¹⁹ National Industrial Court of Nigeria Act, 2006, S 1(1).

- Law relating to Labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;
- c. relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;
 - d. relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the court has jurisdiction to hear and determine;
 - e. relating to or connected with any dispute arising from nation minimum wage for the Federation or any part thereof and matters connected therewith or arising therefrom;
 - f. relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;
 - g. relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;
 - h. relating to, connected with or pertaining to the application or interpretation of international labour standards;
 - i. connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;
 - j. relating to the determination of any question as to the interpretation and application of any –
 - i. collective agreement;
 - ii. award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;
 - iii. award or judgment of the Court;
 - iv. term of settlement of any trade dispute;
 - v. trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
 - vi. trade union constitution, the constitution of an association of employers or any association relating to employment, labour industrial relations or work place;
 - vii. dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;
 - k. relating to or connected with disputes arising from payment of nonpayment of salaries, wages, pensions, gratuities, allowance, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any or public servant in any part of the Federation and matters incidental thereto;
 - l. relating to –
 - i. appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;
 - ii. appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and
 - iii. such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
 - m. relating to or connected with the registration of collective agreements.
2. Notwithstanding anything to the contrary in this Constitution, the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.
 3. The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution any Act or Law:
 Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any

- matter that the National Industrial Court has jurisdiction to entertain or any other matters as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.
4. The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.
 5. The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any other Act of the National Assembly or by any other law.
 6. Notwithstanding anything to the contrary in this Constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal as of right.’

Besides the Constitution the National Industrial Court Act also provides for the exclusive jurisdiction of the National Industrial Court of Nigeria over maritime labour claims.²⁰ Both the Constitution and the National Industrial Court Act did not specifically mention maritime labour but by the provisions of the constitution every labour claim is within the exclusive jurisdiction of the National Industrial Court. The fact that the National Industrial Court has jurisdiction over labour matters has been given judicial credence in the unreported case of *Eningen Skuld v. MT Clover Pride FHC/L/CS/1807/2017*. The practice and procedures of the National Industrial Court is regulated by its Rules. The National Industrial Court Rules, 2017 is the present Rules of Court of the National Industrial Court of Nigeria. The National Industrial Court by its rules of court can grant the following interim preservative orders: Interim injunction, Interlocutory injunction, Mareva injunction, Anton pillar orders, and Arresting of absconding party

6. The Problem and Its Implications

To appreciate the problem, it is expedient to make an illustration. Kofi a Ghanaian works in a United States of America vessel. The vessel berths Onne Port of Rivers State. Kofi the Ghanaian is abandoned in Onne Port. The vessel is bound to leave Onne Port for Benin Republic to offload consignment. Kofi is aggrieved of his abandonment. In admiralty law Kofi can file a suit and ask for the arrest of the vessel. His monetary claims will be deposited and the ship released. By this arrangement the ship sails for its business. Kofi claim is secured. At the end of the litigation, if Kofi’s claim succeeds, he takes his money. If the case fails, the money deposited is released with cost of litigation. The question is that: is this remedy available for a maritime labour claimant in Nigeria? The answer is no. The problem is that the National Industrial Court of Nigeria which has jurisdiction over maritime labour claim has no admiralty jurisdiction to order for the arrest of a ship in the security of a maritime labour claim. The jurisdiction to arrest a ship is within the admiralty jurisdiction of court in an action in *rem*. The court has such jurisdiction is the Federal High Court. The Federal High Court is the court with admiralty jurisdiction in Nigeria. The admiralty jurisdiction of Federal High Court of Nigeria is statutory provided for in the Constitution, the Federal High Court Act, 2004 and the Admiralty Jurisdiction Act, 1991. Section 251(1)(g) of the Constitution specifically provides as follows:

- (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 matters-
 - (g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents 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;

Similar provisions are found in section 7(1)(g) of the Federal High Court Act which provides as follows:²¹

- (1) The court shall to the exclusive of any other court have jurisdiction to try civil causes and matters-
 - (g) any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as

²⁰ National Industrial Court Act, 2006 s 7.

²¹ The matters covered by this section are the matters in the exclusive list of the Constitution.

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;

On its part the Admiralty Jurisdiction Act, 1991 provides as follows:

Extent of the admiralty jurisdiction of the Federal High Court

- (1) The admiralty jurisdiction of the Federal High Court (in this Act referred to as ‘the Court’) includes the following, that is-
 - (a) jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act.
 - (b) any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Act;
 - (c) any jurisdiction connected with any ship or aircraft which is vested in any other court in Nigeria immediately before the commencement of this Act;
 - (d) any action or application relating to any cause or matter by any ship owner or aircraft operator or any other person under the Merchant Shipping Act or any other enactment relating to a ship or an aircraft for the limitation of the amount of his liability in connection with the shipping or operation of aircraft or other property;
 - (e) any claim for liability incurred for oil pollution damage;
 - (f) any matter arising from shipping and navigation on any inland waters declared as national waterways;
 - (g) any manner arising within a Federal port or national airport and its precincts, including claims for loss or damage to goods occurring between the off-loading of goods across space from a ship or an aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee;
 - (h) any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer;
 - (i) any cause or matter arising from the constitution and powers of all ports authorities, airport authority and the National Maritime Authority;
 - (j) any criminal cause and matter arising out of or concerned with any of the matters in respect of which jurisdiction is conferred by paragraphs (a) to (i) of this subsection.
- (2) The admiralty jurisdiction of the Court in respect of carriage and delivery of goods extends from the time the goods are placed on board a ship for the purpose of shipping to the time the goods are delivered to the consignee or whoever is to receive them, whether the goods were transported on land during the process or not.
- (3) Any agreement or purported agreement, monetary or otherwise connected with or relating to carriage of goods by sea, whether the contract of carriage is executed or not, shall be within the admiralty jurisdiction of the Court.

Maritime claims

- (1) A reference in this Act to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim.
- (2) A reference in this Act to a proprietary maritime claim is a reference to-
 - (a) a claim relating to-
 - (i) the possession of a ship;
 - (ii) a title to or ownership of a ship or of a share in a ship;
 - (iii) a mortgage of a ship or of a share in a ship; or
 - (iv) a mortgage of a ship's freight;
 - (b) a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship;

- (c) a claim for the satisfaction or enforcement of a judgment given by the Court or any court (including a court of a foreign country) against a ship or other property in an admiralty proceeding *in rem*;
- (d) a claim for interest in respect of a claim referred to in paragraphs (a), (b) or (c) of this subsection.
- (3) A reference in this Act to a general maritime claim is a reference to-
 - (a) a claim for damage done by a ship, whether by collision or otherwise;
 - (b) a claim for damage received by a ship;
 - (c) 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;
- (d) subject to subsection (4) of this section, a claim, including a claim for loss of life or personal injury, arising out of an act or omission of-
 - (i) the owner or charterer of a ship;
 - (ii) a person in possession or control of a ship;
 - (iii) a person for whose wrongful act or omission the owner, charterer or person in possession or control of the ship is liable;
- (e) a claim for loss of or damage to goods carried by a ship;
- (f) a claim 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;
- (g) a claim relating to salvage (including life salvage of cargo or wreck found on land);
- (h) a claim in respect of general average;
- (i) a claim in respect of pilotage of a ship;
- (j) a claim in respect of towage of a ship or an aircraft when it is waterborne;
- (k) 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;
- (l) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it was launched);
- (m) a claim in respect of the alteration, repair or equipping of a ship or dock charges or dues;
- (n) 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;
- (o) a claim arising out of bottomry;
- (p) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship;
- (q) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship, or goods or cargoes carried by a ship;
- (r) 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 the obligation arose out of the contract of employment or by operation of law, including by operation of the law of a foreign country;
- (s) a claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure;
- (t) a claim for the enforcement of or a claim arising out of an arbitral award (including a foreign award within the meaning of the Arbitration and Conciliation Act made in respect of a proprietary maritime claim or a claim referred to in any of the preceding paragraphs'.²²

In other words, we found our self in a situation where the National Industrial Court that has the jurisdiction to hear a maritime labour claim but it cannot grant adequate preservative order in security of a maritime labour claim by way of arrest of ship. The implication is that a maritime labour claimant may go home dry without his claims adequately addressed. It will be recalled that we had earlier identified interim preservative reliefs to include interim injunction, interlocutory injunction, mareva injunction, aton pilar order and the arresting of absconding party. These reliefs can be granted by the National Industrial Court as provided for in the National

²² Admiralty Jurisdiction Act, 1991 ss.1&2.

Industrial Court (Civil Procedures) Rules, 2017. However, they cannot sufficiently address the situation of a maritime labour claimant. An analysis of each of the interim reliefs might surface.

Inadequacy of interim relief of Interlocutory Injunction

An interlocutory injunction is an injunction made by a court that prevents someone from doing something until there is a full trial to solve the disagreement.²³ The National Industrial Court has the powers to grant an order of interlocutory injunction vide a motion on notice as provided for under the National Industrial Court (Civil Procedures) Rules 2017. The power of the National Industrial Court to grant interlocutory injunction is provided under the National Industrial Court (Civil Procedures) Rules 2017 as follows: ‘Any application for the grant of an injunction may be made by a party to an action before, at or after the trial of the action, whether or not a claim for injunction was included in the party’s action.’²⁴ The factors which the court considers in an application for an order of interlocutory injunction are stated in *Kotonye v. C. B.N.*²⁵ as follows:

- (i) Whether the Applicant has a right to protect.
- (ii) Whether there are serious issues to be tried.
- (iii) Whether the balance of convenience is in favour of the Applicant.
- (iv) Whether the Applicant can be adequately compensated by damages.
- (v) Whether the Applicant’s act was reprehensible, for example, that he is guilty of delay.

Balance of convenience has to do with whether greater inconveniences and/or loss will be occasion if the application is granted or refused; it is also the risk of granting or refusing the application.²⁶ This injunction will not meet the ends of justice for a maritime labour claimant. As seen in our illustration, there is the possibility that the company that owns the vessel is not registered in Nigeria to be a juristic person. The law is well settled that an action can only be filed against a juristic person. If the company that owns the vessel is not a juristic person it cannot be sued. It is therefore evident that an approach where an action can be brought against the vessel and security for the claim deposited will be a better practice and meets the end of justice. Interlocutory injunction is for preservation of a *res* pending the final determination of a case. The *res* envisaged to be preserved are perishable things or things that can lead to irreparable loss. In labour matters there can hardly be anything that will be perishable because the issues involved are mainly issues of wages, allowances, working conditions etc. In a labour matter issues of preservation of *res* may not arise as the claims may mostly likely be monetary compensation, reinstatement etc. The court may not grant an order of stoppage of act of termination of appointment a maritime labour claimant because he can be compensated in damages. An order of injunction is not granted if damages can be sufficient to compensate the claimant. Secondly a foreigner it cannot properly be sued without the leave of court, for the writ to be issued outside jurisdiction. The procedure for serving such a defendant outside Nigeria will also be cumbersome. After the whole proceedings enforcing a judgment on the defendant will also pose a problem. It may involve registration of the judgment where there is no property of the defendant within jurisdiction. With these legal hurdles, a maritime labour claimant may not have his unpaid wages; he might not have the compensation for injury caused on him in course of his employment. He might lose his cost of repatriation. At the end justice may be defeated. The maritime labour claimant may go home without a remedy.

Inadequacy of interim Injunction

Interim injunction is an injunction that is granted pending the determination of a motion on notice for an order of interlocutory injunction. It is granted *ex-parte* in urgent situations where service of the motion may not be practicable before the act sought to be restrained is carried out.²⁷ An application for interim injunction is made *ex-parte*. Under the National Industrial Court of Nigeria (Civil Procedure) Rules 2017 for an application to be brought *ex-parte*, it must be filed alongside a motion on notice.²⁸ The life span of a motion *ex-parte* under the National Industrial Court is fourteen days. The problems posed by the above provisions are that firstly this interim procedure inherits all deficiencies of motion for interlocutory injunction because it must be filed alongside a motion for interlocutory injunction. Secondly, it has a short life span of fourteen days. This means that it is subject of expiration but in the case of an order of arrest of ship, it does not have a life span. Though by Order 17 Rule (14) (10) of the National Industrial Court, 2017 an Order made *ex-parte* can be extended by the court in the interest of justice there is still a provision that the application for extension should not be made not more than seven (7) days before its expiration. The limitations of interlocutory injunction also apply here as earlier stated and need not be repeated.

²³ <https://www.idoceonline.com> accessed on the 1st September 2021 4:20pm.

²⁴ National Industrial Court (Civil Procedures) Rules, 2017 Order 22 Rule 1(1).

²⁵ (1989) 3 NWLR (Pt. 98) 119.

²⁶ *Obeya Memorial Hospital v. A. G. Federal* (1987) 3 NWLR (Pt. 60) 325.

²⁷ National Industrial Court of Nigeria (Civil Procedures) Rules, 2017 Order 22(1)(1).

²⁸ National Industrial Court Rules, 2017 Order 17 Rule 14(1)&(2).

Inadequacy of interim relief of Anton Piler

Anton Piler is a court order that provides the right to search premises and seize evidence without prior warning.²⁹ Anton Piler cannot be sufficient because it merely enters the premises of a defendant to carry evidence. Before Anton Piler can be used, the claimant must know the defendant. The defendant must also be juristic person for him to sue or be used under the Nigerian law. The limitations in interlocutory injunctions also apply here.

Inadequacy of interim relief of Mareva Injunction

Mareva Injunction is an order of court that freezes the assets of a defendant to avoid it being taken abroad in evasion of an anticipated judgment. Mareva contained by the above provisions the claimant must show that the assets belong to the defendant; he must also show that the defendant intends to take it outside jurisdiction to evade the fulfillment of judgment. The proof of the above conditions might not be a simple hurdle for the claimant to prove the above facts. For instance, he might need documentary proof of the ownership of the assets; he might need to prove that the defendant has no other asset within the jurisdiction to satisfy the judgment within jurisdiction. The limitations raised in interlocutory injunction are also applicable here.

Inadequacy of interim relief of arresting of absconding party

Another interim relief available at the National Industrial Court is the arresting of an absconding party. This is provided for under the National Industrial Court (Civil Procedure) Rules, 2017. It provides as follows:

- ‘1 where is any suit a party (Respondent/Defendant) is about to leave the jurisdiction of the Court, or has disposed of or removed from the jurisdiction, the party’s property, or any party thereof, or is about to do so, the other party may, either at the instruction of the suit, or at any time thereafter until final judgement, make an application to the court that security be given for the appearance of the absconding party to answer and satisfy any judgement that may be passed against the party in the suit.
2. Where after investigation, the court is of the opinion that there is probable cause for believing that the party is about to leave the jurisdiction of the Court, or has disposed of or removed from jurisdiction, the party property, or any part thereof, or is about to do so, it shall be lawful for the court to issue a warrant to bring the party before the Court to show cause why that party should not give good and sufficient bail for the party’s appearance.
3. Where an absconding party (Respondent/Defendant) falls to show any such cause, the court shall order the party to give bail for the party’s appearance at any time when called upon while the suit is pending and until execution or satisfaction of any judgement that may be passed against the party in the suit, or to give bail for the satisfaction of such judgement. The surety(ies) shall undertake in default of such appearance or satisfaction to pay any sum of money that may be adjudged against the party in the suit, with costs.
4. Where a party (Respondent/ Defendant) offers, in lieu of bail for the party’s appearance, to deposit a sum of money, or other valuable property, sufficient to answer the claim against the party with costs of the suit, the court may accept the deposit.
5. Where a party (Respondent/ Defendant) fails to furnish security or offer sufficient deposit, the party may be committed to custody until the decision in the suit, or if judgement be given against the party, until the execution of the decree, if the court so orders, but the court may at any time, upon reasonable cause shown and upon such terms as to security or otherwise as may seem just, release the party (Respondent/ Defendant).’³⁰

By the above provision where a maritime labour claim defendant is about to abscond from jurisdiction, an application can be brought for his arrest. Firstly, an application of this nature can only be made *ex-parte* as it falls under urgent situations. It follows therefore that the problems inherent with motion *ex-pate* and interlocutory injunction will be suffered by the process. Secondly, it is preferable for a ship to be arrested and monies paid than to be looking for a defendant.

7. Conclusion and Recommendations

From the onset we were confronted with the following questions: (i) Whether the interim of admiralty relief of arrest of ship is availability to maritime labour claimant in Nigeria, and (ii) Whether there are negative

²⁹ <https://www.en.m.wikipedia.org> Accessed on the 1st September 2021 4:10pm.

³⁰ National Industrial Court (Civil Procedure) Rules, 2017 Order 19 Rules 1, 2, 3, 4 and 5.

implications to this. The answer thereof as evident in this article is that the interim admiralty relief of arrest of ship is not available to a maritime labour claimant. It is also shown that the non-availability of this relief has negative implications on the adjudication over maritime labour claims. It is therefore recommended that the legal framework for adjudication over maritime labour in Nigeria be changed. The change recommended is that the National Industrial Court should be given the power to arrest a ship in a case of adjudication over maritime labour claim. In the alternative the Federal High Court should be clothed with the jurisdiction to adjudicate over maritime labour claims. It is believed that if this recommendation is taken justice will be better done in cases of maritime labour claims.