

## SEAFARER SUBJECT GUIDE

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### MARITIME LIEN FOR SEAFARERS' WAGES IN NIGERIA

This Guide deals with the rights of seafarers of any nationality to unpaid or underpaid wages in respect of Nigerian flagged ships, and foreign ships which are in the ports of Nigeria. These rights can be enforced in the Federal High Court of Nigeria, where they are secured and preferred by maritime liens and enforced by the arrest and forced (judicial) sale of the ships.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to claim his wages, he is strongly advised to consult a lawyer qualified to practise in Nigeria.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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#### 1. What is the maritime lien for seafarers' wages? How is it enforced?

- 1.1 The maritime lien for seafarers' wages is a 'charge' created on a ship in favour of any seafarer owed wages by the shipowner, charterers, operators and/or agents of the ship for the services the seafarers have provided to that ship in their capacity as seafarers. It is the value of wages owed to a particular seafarer which attaches to that ship wherever it goes until its value is paid to that seafarer.
- 1.2 The maritime lien for wages is enforced by an action *in rem* against the ship on which the seafarer earned his wages and it is enforced by an arrest of the ship, or an action *in personam* where the ship is not available for arrest within the jurisdiction.

#### 2. Which courts have jurisdiction over seafarers' wage claims?

- 2.1 The Federal High Court of Nigeria is the court that has jurisdiction over seafarers' wage claims. It is the court that is conferred with jurisdiction in respect of all maritime claims as part of its 'admiralty jurisdiction'.
- 2.2 Generally, maritime claims under the AJA are divided into 'proprietary' and 'general' maritime claims.' Claims relating to seafarers' wages are in the list of general maritime claims.

## SEAFARER SUBJECT GUIDE

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### 3. Can the courts refuse to hear seafarers' claims for wages?

- 3.1 Generally, as long as a seafarer's claim is brought before the Nigerian Federal High Court, following the proper procedure of filing admiralty matters, the court is obliged to hear such a claim.

### 4. Who can claim seafarers' wages?

- 4.1 The word 'seafarer' is not defined in most of the relevant maritime related legislation in Nigeria, the exception being the Nigerian Maritime Safety and Administration Act 2007 ('the NIMASA Act'). Seafarer is defined in the NIMASA Act as follows:

'seafarers include every person except masters and pilots employed or engaged in any capacity on board any ship'.

- 4.2 The AJA provides that either a 'master' of a ship or a member of the crew can claim wages or an amount that an employer is obliged to pay to him, arising either from contract or by operation of any local or foreign law.

- 4.3 It is significant to note that the word 'seafarer' is not used in the Merchant Shipping Act 2007 ('the MSA'), the primary legislation that deals with seafarers in Nigeria; rather the word 'seamen' is employed. The definition of a seaman in the MSA is similar to that in the AJA and it is rendered in the MSA as follows:

'seaman means any person (except a master, pilot or a person temporarily employed on the ship while in port) employed or engaged in any capacity on board the ship.'

- 4.4 In view of the above definitions, it would be correct to say that an employee or person engaged on board a ship (including a cadet on a training contract), whether or not a Nigerian citizen and whether or not such a ship is Nigerian registered, may claim wages in the Nigerian courts.
- 4.5 A local or foreign seafarer present in Nigeria may bring an action in rem against any vessel calling at a Nigerian port or an action in personam against an employer/company operating in Nigeria.

### 5. Which ships are subject to the jurisdiction of the courts?

- 5.1 All ships are subject to the admiralty jurisdiction of the Federal High Court. The AJA defines a ship as follows:

'ship means a vessel of any kind used or constructed for use in navigation by water, however it is propelled or moved and includes –

## SEAFARER SUBJECT GUIDE

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- a) a barge, lighter or other floating vessel, including a drilling rig;
- b) a hovercraft;
- c) an offshore industry unit; and
- d) a vessel that has sunk or is stranded and the remains of such vessel, but does not include a vessel under construction that has not been launched.

5.2 The MSA also provides a similar type of definition in which some kinds of vessels are specifically mentioned in order to include them in the broad definition. Thus a 'ship' is defined in the MSA as follows:

'ship means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported crafts, submersibles of any other floating crafts which shall include but not limited to floating production storage and offloading (FPSO) platform as well as a floating storage and offloading (FSO) platform.'

5.3 It has been held, following the definition in the former (now repealed) Merchant Shipping Act, Cap. 224, Laws of the Federation 1990, that a ship excludes any vessel propelled by oars or paddles; and, as such, it would not be subject to the jurisdiction of the courts.

## 6. What is included in the maritime lien for seafarers' wages?

6.1 There is no Nigerian legislation that defines what may be included in the 'maritime lien for wages'. Although section 2(3)(r) of the Admiralty Jurisdiction Act 2004 ('the AJA') is specifically a statutory provision upon which a master and/or a crewman may make a maritime claim (as opposed to a provision in respect of the common law maritime lien), it specifies the scope of the maritime lien for wages. Section 2(3)(r) states as follows:

'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 law of a foreign country'

6.2 From this definition it can be inferred that claims of seafarers for actual wages (and possibly claims for other contractual/statutory entitlements such as leave allowances) as well as statutory entitlements not covered in the contract between the seafarer and the shipowner and/or master shall be recoverable and secured by maritime liens.

## SEAFARER SUBJECT GUIDE

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- 6.3 It was decided in the Federal High Court that section 2(3)(r) of the AJA was wide enough to cover claims for food, money and repatriation expenses for crewmen.
- 6.4 The MSA additionally stipulates that a seaman or cadet on a Nigerian ship whose contract is terminated at a port outside Nigeria in any circumstance other than as provided in his contract with the shipowner/master of the ship or by his consent is entitled, at the expense of the owner, to be returned to a proper return port. Where a master/shipowner fails in this regard and the seaman or cadet covers his own expenses for his return to a proper return port, they shall be recoverable as wages to him. In view of these provisions of the MSA, the expenses of the seaman in respect of his return to a proper return port which ought to have been borne by the ship could validly be included in the maritime lien for wages.
- 7. Can seafarers' wages be claimed if there is no written contract of employment?**
- 7.1 Under the MSA, it is an offence for a seaman to be employed by the shipowner or master of a ship (except a ship of less than 80 tons trading within limits specified by the Minister for Transportation of Nigeria) without an agreement/contract.
- 7.2 The AJA suggests that there is no mandatory provision to the effect that before a 'crewman' can succeed on a claim for wages he must present to the court a written employment contract. The section states that the failure to have a contract in place to evidence the employment of a seaman would be considered to be a failed obligation on the part of the employer and not on the part of the seaman.
- 7.3 It is therefore to be inferred that the absence of a written contract would not prevent the claim of a seafarer for his unpaid wages.
- 8. Must seafarers' services have been rendered on board the ship?**
- 8.1 To qualify for a claim for seafarers' wages, the service of the seafarer must have been rendered on board a ship. The various definitions pertaining to seamen and crewmen considered above all suggest that the services for which they are employed and the wages which are due must have been rendered and earned 'on board the ship'.

## SEAFARER SUBJECT GUIDE

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### 9. What is the ranking of seafarers' claims for wages in the event that sale proceeds are distributed?

9.1 The AJA, and the Court Rules made pursuant to it, and the Admiralty Jurisdiction Procedure Rules 2011 (AJPR) do not specify a table of ranking for claims including maritime liens. But the MSA does. The MSA grants the highest ranking of maritime liens to:

'(a) wages and other sums due to the master, officers, and other members of the ship's complement in respect of their employment on the ship.'

9.2 In that section, a claim for wages is ranked above a disbursement of the master on account of the ship. Claims for loss of life or personal injury either on land or the sea in connection with operation of the ship; claims for salvage wreck removal and contribution in general average; and claims for port, canal and other waterways dues and pilotage are ranked accordingly.

9.3 However, the MSA states that claims for salvage, wreck removal and contribution in general average would rank higher than claims for wages and all the other maritime liens listed in section 66.

### 10. Can wages be claimed if the employer is not the shipowner or acts illegally?

10.1 Wages may be claimed whether or not the employer is the owner of the ship. The relevant sections of the MSA (which makes provision for the mode of recovering wages by seamen and cadets on the one hand and masters on the other hand), do not seem to limit the party against whom a claim for wages may be made to the owner. This is due to the use of the expression '... any person on whom the claim is made'.

10.2 In addition, it is recognised that a claim for wages qualifies as a maritime lien should it remain owing. The fact that the vessel has passed to another shipowner, charterer or operator would not affect the right of a seaman or master to claim against it.

### 11. Can the seafarer's maritime lien for wages be abandoned or waived by agreement?

11.1 A maritime lien cannot be waived by the agreement of parties under Nigerian law. With particular regard to a right of lien over a ship which a seaman has, the MSA provides that a seaman employed on a Nigerian ship shall not by any agreement, *inter alia*, forfeit his lien on the ship.

## SEAFARER SUBJECT GUIDE

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11.2 A maritime lien cannot be abandoned if the claimant fails to make his claim within a specified period.

### **12. When is the seafarer's maritime lien for wages forfeited or not recognised or extinguished?**

12.1 A maritime lien may be forfeited or the court may refuse to recognise the maritime lien when the ship has been the subject of a forced sale by a competent court and the realised value of the sale passed on to the successful claimant(s) and other parties who had registered their interests in the sale proceeds in court.

12.2 The MSA would appear to be the only legislation in Nigeria which makes a stipulation in respect of how a maritime lien may be extinguished. The relevant provision in the Act is to the effect that the maritime liens stated in the MSA shall be extinguished after one year from the time when the claims secured by the lien arose, unless prior to the expiry of the period the ship was arrested and the arrest led to proceedings for a forced sale.