



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
Admiralty Jurisdiction Claim 13 of 2005

Admiralty Claim in rem against the Owners of the Vessel “Victoria Eight”

Claimant: East African Power Management Limited

Defendant: The Owners of the Vessel “Victoria Eight”

Coram: Before J. Mwera

Mr. Khana for the Claimant

Court Clerk – Kazungu

R U L I N G

THE ADMIRALTY JURISDICTION OF THE HIGH COURT

The High Court exercises the above jurisdiction as per section 4 of the Judicature Act (Cap 8) Laws of Kenya, hereinafter, the Act, which reads:-

“4.(1) The High Court shall be a court of admiralty and shall exercise admiralty jurisdiction in all matters arising on the high seas, or in territorial waters, or upon any lake or other navigable inland waterway in Kenya.

(2) The admiralty jurisdiction of the High Court shall be exercisable –

(a) over and in respect of the same persons, things and matters and

(b) in the same manner and to the same extent, and

(c) in accordance with the same procedure as in the High Court of England, and shall be exercised in conformity with international laws and the comity of nations. (3) (4)

Subsection (3) and (4) allows the High Court to exercise powers applicable in other civil jurisdiction in admiralty matters, and that appeals from admiralty decisions lie in the Court of Appeal. Mr. Khanna Advocate wished to know this court’s view regarding particularly the course an arrest warrant should take.

The High Court in England entertains admiralty matters under the Supreme Court Act 1981, which by virtue of section 4 (above), this High Court exercises its admiralty jurisdiction. All manner of admiralty claims, procedures, service, affidavits, parties etc are set out in this Supreme Court Act. And also various offices/officers are provided for. Forms are also prescribed which this court is obliged to use mutatis

mutandis. The forms relate to setting out of claims, application to arrest a ship etc.

In the main, in the UK there is an admiralty Judge, a Registrar, a Marshal and his substitute. (See section 615 SCA 1981) pp 156, Practice Direction, (Case management, pp 171 White Book 2003). In Kenya, we have the Admiralty judge (any judge sitting at Mombasa) and the admiralty marshal and his deputy, also in Mombasa. The office of the Registrar in the UK can be taken to be equal to that of the Deputy Registrar in charge of the High Court civil registry.

In UK the claim form is described as ADM1. ADM4 is for an application for the arrest of a ship, while form ADM5 is the accompanying declaration form. And an arrest warrant to be served on the arrested property is as per Form ADM 9. Basically these are the principal forms. (see pages 172, 173, 174 Civil Procedure VOL.2 White Book 2003).

What this court gained from the SCA 1981, the Practice Directions, procedures and forms, and after hearing the opinion of Mr. U. Khanna Esq. of M/s Anjarwalla & Khanna Advocates, is this:

(1) A claim form is lodged (ADM1 for a claim in rem) followed by

(2) An application for arrest (ADM4) accompanied by a declaration form (ADM5). Note:

When the court receives the application for arrest which complies with the rules and practice direction it issues an arrest warrant.

SCA 1981 (pp 156 Whitebook 2003) – Arrest “Section 61.5(1) In a claim in rem –

(a) a claimant; and

(b) a judgment creditor may apply to have the property proceeded against, arrested.

(3) (7)

(8) Property may only be arrested by the Marshal or his Substitute.”

A comment on Procedure in an Admiralty Claim in Rem says this on Execution of Arrest Warrant:

“4.47. Only the Admiralty Marshal or his substitute may execute a warrant of arrest” Form ADM 9 Warrant of Arrest is addressed in terms including: “To the Admiralty Marshal from High Court of Justice We hereby command you to arrest the ship.”

However in my humble opinion after the claim is lodged in the registry, the deputy registrar/here (he does not have the power to deal with admiralty matters like in the UK (see pp 171 Whitebook 2003, 2.1(2)) should place the matter before the (admiralty) judge.

The judge considers whether he/she has jurisdiction to entertain the claim (section 20 SCA 1981). Then he considers the application to arrest and if all the requisite steps have been taken, and what to be complied with has been so complied he then issues and signs the warrant to arrest directed to the admiralty marshal of his deputy to execute. It cannot be the other way round namely that the warrant of arrest is directed to the marshal to order the arrest before the judge who has the power to exercise admiralty jurisdiction, has scrutinized the nature of the claim and ascertained whether an arrest should be ordered or not.

In sum the process as has been adopted and used in the past remains.

Dated 25/11/2005

J.W. MWERA

ADMIRALTY JUDGE