



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Priyantha & 8 others v Owners of the Vessel “FV Maab Aqua 2” & another  
(Claim E004 of 2025) [2025] KEHC 8678 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8678 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CLAIM E004 OF 2025**

**J NGAAH, J  
JUNE 18, 2025**

**BETWEEN**

**E PRIYANTHA ..... 1<sup>ST</sup> CLAIMANT  
KATANA CHARO MKARE ..... 2<sup>ND</sup> CLAIMANT  
KARISA NGOMA NGUNA ..... 3<sup>RD</sup> CLAIMANT  
MOHAMMED BAKARI ABASS ..... 4<sup>TH</sup> CLAIMANT  
MBARAK AWADH MBARAK ..... 5<sup>TH</sup> CLAIMANT  
SM MALINDA ..... 6<sup>TH</sup> CLAIMANT  
FPJ THUSHARA FERNANDO ..... 7<sup>TH</sup> CLAIMANT  
EAC NISHAN KUMARA ..... 8<sup>TH</sup> CLAIMANT  
HKL SHAMEERA PERERA ..... 9<sup>TH</sup> CLAIMANT**

**AND**

**OWNERS OF THE VESSEL “FV MAAB AQUA 2” ..... 1<sup>ST</sup> DEFENDANT  
KENYA MARITIME AUTHORITY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a claim dated 2 April 2025, the claimants have claimed for:
  - “a. Judgment, jointly and severally against the defendants, in the sum of Kes.4,590,000 for unpaid wages in terms of the various contracts up to the date of instituting this claim in terms of the various contracts.



- b. Judgment, jointly and severally against the defendants, for the unpaid wages in terms of the various contracts from the date of instituting this claim to the date of the sale of the vessel F.V. MAAB AQUA 2 or until payment in full, whichever is the earlier.
  - c. Judgment, jointly and severally against the defendants, in the sum of US\$5,000 being disbursements by the 1st claimant.
  - d. Judgment, jointly and severally against the defendants, in the sum of Kes.74,879.67 being special damages incurred by the 5<sup>th</sup> claimant.
  - e. Judgment, jointly and severally against the defendants, in the sum of US \$17,250 being the repatriation costs for the claimants to their various countries.
  - f. Judgment, jointly and severally against the defendants, for general damages for the predicament faced by the claimants, including the arrest of the claimants in Madagascar
  - g. Costs of this claim.
  - h. Interest pursuant to section 35A of the Senior Courts Act, 1981 of England and/or under the inherent jurisdiction of this Honourable Court on A, B, C, D, E and F.
  - i. Arrest of the vessel F.V. MAAB AQUA 2 as security for A, B, C, D, E, F and G.
  - j. Judicial Sale of the vessel F.V. MAAB AQUA 2 in default of A, B, C, D, E, F and G.”
2. According to the summary of the claim, the claim by the 1<sup>st</sup> claimant is for unpaid wages with respect to the vessels F.V. MAAB AQUA 1 and the claim by the 1<sup>st</sup> to 9<sup>th</sup> claimants is for seafarer’s wages and arrears of the same with respect to the vessel F.V. MAAB AQUA 1 (which is owned by the owners of the F.V. MAAB AQUA 2). The claim by the 1<sup>st</sup> claimant being a master’s claim for disbursements on behalf of the vessel F.V. MAAB AQUA 1 (which is owned by the owners of the F.V. MAAB AQUA 2) and the claim by the claimants for their repatriation costs.
  3. The Owners of the vessel F.V. MAAB AQUA 2 are said to be in breach of contract in that they have failed, refused or neglected to pay the claimants their wages and arrears of the same and have further failed, or neglected to pay the 2<sup>nd</sup> claimant for disbursements on behalf of the vessel F.V. MAAB AQUA 1 (which is owned by the owners of the F.V. MAAB AQUA 2).
  4. The 1<sup>st</sup> claimant is a national of the Democratic Socialist Republic of Sri Lanka (Sri Lanka) and he is also the Master or Captain of the 1<sup>st</sup> vessel. The 2<sup>nd</sup> claimant has been at all material times employed as Master or Captain on the 1<sup>st</sup> vessel. The rest of the claimants are nationals of Kenya and Sri Lanka employed in various capacities on the 1<sup>st</sup> vessel.
  5. The 1<sup>st</sup> defendant were at all material times to this suit the owners of the vessel F.V. MAAB AQUA 1 registered at the port of Mombasa in the Republic of Kenya under certificate of registry number 101261 and IMO number -, length 14.25 metres and the claimants aver that the 1<sup>st</sup> defendant has at all material times been in control of the vessel F.V. MAAB AQUA 1 and were and are at all material times to this suit the owners of F.V. MAAB AQUA 2 registered at the port of Mombasa in the Republic of Kenya under certificate of registry number 101262 and IMO number -, length 14.25 metres. The



claimants aver that the 1st defendant has, at all material times, been in control of the vessel F.V. MAAB AQUA 2.

6. The claimants aver that they were detailed to work on the vessel and receive a monthly pay for the said work. They aver that the in breach and total disregard of the various contracts aforesaid, and also in breach of various provisions of the law, including the Maritime Labour Convention, 2006, especially regulation 2.2 of Title 2 of the said convention, the 1<sup>st</sup> defendant has failed, neglected and/or refused to pay the claimants the wages rightfully due to them and/or failed neglected and/or refused to fully pay the claimants the wages rightfully due to them, which breach is continuing and owing to the breach of contracts/agreements as aforesaid, the claimants have suffered great loss and damage.
7. They claim damages under section 105 (1) (a) of the *Merchant Shipping Act*, 2009 of Kenya, section 20 (2) (o) of the Senior Courts Act, 1981 of England, regulation 2.2 of Title 2 of the Maritime Labour Convention and all enabling laws.
8. As far as jurisdiction is concerned, the claimants have pleaded as follows:
  - “ 28. The claimants aver that for the matters raised in this claim relating to the vessel F.V. MAAB AQUA 1, the Honourable court has jurisdiction, under article 3 of the 1952 International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships (the Arrest Convention) as read with section 21 (4) of the Senior Courts Act, 1981, to arrest the vessel F.V. MAAB AQUA 2 and the claimants reiterate the content of paragraph 10 of this claim form.
  29. The claimants aver that for the matters raised in this claim relating to the vessel F.V. MAAB AQUA 1, the Honourable court has jurisdiction, under article 3 of the 1952 International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships (the Arrest Convention) as read with section 21 (4) of the Senior Courts Act, 1981, to arrest the vessel F.V. MAAB AQUA 2 and the claimants reiterate the content of paragraph 10 of this claim form.
  30. The claimants aver that their claims against the 2<sup>nd</sup> defendant are claims brought under section 20 (1) (b) and (c) of the Senior Courts Act, 1981 of the United Kingdom as read with the *Merchant Shipping Act*, Cap 389 of Kenya.
  31. The claimants further claim interest pursuant to the provisions of section 35A of the Senior Courts Act, 1981 of the United Kingdom and/or the inherent jurisdiction of this Honourable Court.
  32. The claimants aver that their claims are maritime liens in accordance with the provisions of section 105 (1) (a) of the *Merchant Shipping Act*, 2009 of Kenya, which is the law of this Honourable Court and the law of the Registry of the vessel and under the common law of England, which section 4 of the *Judicature Act*, Cap 8 imports.
  33. The claimants aver that the vessel F.V. MAAB AQUA 2 is currently within Kenya’s territorial waters within the meaning of article 5 of *the Constitution* of the Republic of Kenya, articles 2 and 3 of the United Nations Convention on the Law of the Sea, 1982 which is part of law of Kenya and section 3 of



the Maritime Zones Act, Cap 371 and as such this Honourable Court has the jurisdiction to entertain try and dispose of this matter.”

9. When I considered the claimant’s application dated 3 April 2025 ex parte, on even date, I ruled as follows:

“I have read and considered the claimants’ application dated 3 April 2025 filed under a certificate of urgency of even date. I am satisfied that the application is urgent and it is so certified. Subject to determination/confirmation of whether there is in force a caution against arrest of motor vessel “F.V. MAAB AQUA 2” registered in Kenya under certificate of registry 101262, a warrant is hereby issued to arrest the said motor vessel pending the hearing and determination of the applicant’s application. The applicant is directed to serve the application and the claim forthwith and in any event before the close of business on 4 April 2025. The application shall be mentioned for further directions 7 April 2025. It is so ordered.”

10. The 1<sup>st</sup> defendant, who is the applicant in this application, was aggrieved by this order and so by an application dated 23 April, 2025 it applied for the following orders:

- a. This application be certified urgent and be heard expeditiously on a priority basis.
- b. The Warrants of Arrest issued against the Motor Fishing Vessel “Maab Agua 2” be set aside and that vessel be released from arrest.
- c. This claim be struck out with costs for want of Jurisdiction.
- d. The costs of this application be paid by the Claimants.”

11. It is this application that is the subject of this ruling. The application is supported by the affidavit of Nuwan Chandana who has sworn that he is a director of the 1<sup>st</sup> defendant, Maab Aqua Limited, “the registered owners of the Motor Fishing Vessel “Maab Aqua 2” registered in Kenya”.

12. In the submissions filed in support of the application, Mr. Kinyua, the learned counsel for the applicant has urged that under English Law and the decision in Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] eKLR, the challenge to jurisdiction takes priority over all other proceedings in the matter as without jurisdiction the proceedings and decisions are null and void. According to the Application Notice, this Honourable Court has no jurisdiction and that the orders and warrants of arrest issued against the Motor Fishing Vessel Maab Aqua 2 are unconstitutional and null and void.

13. Counsel relied on *Didovsky Igor & 11 Others Vs. International Bulk Carrier SPA & 2 Others* (1015) eKR where the dispute commenced as an Admiralty Claim for wages and other employment benefits by the crew of the Motor Vessel Blida against the Owners of that Vessel. In the High Court, the dispute is said to have been an Admiralty action in rem but that it was transferred to the Employment and Labour Relations Court as an ordinary civil suit in personam by employees against employers.

14. The High Court at Mombasa had recognized that it had no jurisdiction to hear and determine a dispute relating to employment and labour relations and, therefore, transferred the dispute to the Employment and Labour Relations Court, Mombasa. More so, both parties in this dispute agree that it is a claim for alleged unpaid wages which brings the claim squarely within the jurisdiction of the Employment and Labour Relations Court. Accordingly, this Honourable Court has no jurisdiction to entertain the dispute.



15. According to the learned counsel for the applicant, article 165(5)(b) of *the Constitution* deprived the High Court of jurisdiction in matters falling within the jurisdiction of the Employment and Labour Relations Court. It is urged that if my attention had been drawn to that article and article 162(2)(a) together with section 7 of the 6<sup>th</sup> Schedule to *the Constitution*, I would have struck out the claim and that I would not have ordered the arrest of the 1<sup>st</sup> Defendant's Vessel. And since this Honourable Court has no jurisdiction, all proceedings and warrants of arrest against the Vessel are null and void.
16. It is urged that the Claimants do not appear to have received advice on Section 7 of the 6<sup>th</sup> Schedule of *the Constitution* promulgated under Article 262 of Chapter 18 on transitional and consequential provisions which provides that

"all law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution".
17. Articles 162(2)(a) and 165(5)(b) of *the Constitution* are said to have altered, amended and adapted section 4 of the *Judicature Act*, cap 8, Laws of Kenya, by deleting the words "High Court" and substituting them with the words "Employment & Labour Relations Court" as regards all claims for wages by the Master, Officers and crew of ships. The High Court, however, retains jurisdiction in respect of other admiralty matters but not on crew wages.
18. In submissions in response, counsel for the claimants has urged that in England, under section 20 (2) (o) of the Senior Courts Act 1981, "...any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages" forms part of the jurisdiction of the High Court of Justice in England and, accordingly, by dint of section 4 of the *Judicature Act*, cap. 8, forms part of the admiralty jurisdiction of this Honourable court.
19. As an aspect of admiralty law, the learned counsel of the claimants has submitted on the nature of maritime liens and, in this regard cited the treatise, *Modern Maritime Law and Risk Management*, 2<sup>nd</sup> Edition, by Aleka-Mandarrakka Sheppard, at page 22, where maritime liens have been described as follows: -

"A maritime lien is a privileged charge on maritime property and arises by operation of the law. It does not depend on possession of the property or on agreement. It accrues from the moment of the event which gives rise to a cause of action, and travels with the property. A maritime lien is invisible because it is not subject to any scheme of registration. It survives into the hands of a bona fide purchaser for value without notice and is enforceable by an in rem action".
20. At page 22 of the treatise, the authors cited with approval the decision of Sir John Jervis in *The Bold Buccleugh* [1851] 7 Moo PC 267, where it was stated, thus:-

"...a maritime lien is well defined...to mean a claim or privilege upon a thing to be carried into effect by legal process...that process to be a proceeding in rem...This claim or privilege travels with the thing into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches. And, when carried into effect by legal process by a proceeding in rem, relates back to the period when it first attached.
21. According to the learned counsel for the claimants, both the claimants and the 1<sup>st</sup> defendant are in agreement that "the claimant's claim...is for master's wages, seafarers' wages, arrears of wages and repatriation costs". Under English law, these claims, give rise to maritime liens, which attach to a



particular vessel, freight etc., i.e., a thing (res) and are enforced by a claim in rem. Thus, a claim in rem is a claim against a res and travels with the res as opposed to a claim against a person.

22. It is for this reason that when enacting the *Judicature Act*, Parliament recognized this distinction and placed the normal jurisdiction of the courts in section 3 of the *Judicature Act* and admiralty jurisdiction in section 4 of the *Judicature Act*. With this background in mind, the claimants have urged that theirs is a claim in rem and, therefore, a claim against the res. It is not a claim against a person.
23. It is urged that this distinction was acknowledged in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (supra)* where the Court of Appeal held, inter alia, "the object of an action in rem is therefore to procure the arrest of a res, almost always a ship". It follows that an admiralty claim in rem, cannot be conflated with a dispute between employer and employee since a dispute between an employer and employee is, an action in personam.
24. As far as exercise admiralty jurisdiction is concerned, it has been urged on behalf of the claimants that Parliament determines the jurisdiction and functions of a court in two ways. The first way is the express conferment of jurisdiction and an example of that is the exclusive conferment of admiralty jurisdiction on the High Court of Kenya by section 4 of the *Judicature Act*. Another example is the normal civil jurisdiction in employment matters granted to the Employment and Labour Relations Court by section 12 of the Employment and *Labour Relations Act*, cap.8E.
25. According to the learned counsel for the claimants, there is nothing in section 12 of the Employment and *Labour Relations Act* that suggests that the Employment and Labour Relations Court has jurisdiction over in rem matters or admiralty matters. The jurisdiction of that court is distinct in that it is restricted to matters in personam while, the High Court's in rem jurisdiction is with regard to a claim against a res. Further, it is urged that if Parliament had intended the Employment and Labour Relations Court to exercise admiralty jurisdiction, nothing would have been easier than for Parliament to say so in section 12 of the Employment and *Labour Relations Act* and make the necessary amendments to section 4 of the *Judicature Act*.
26. The second method, by which Parliament determines the jurisdiction and functions of a court, is indirect, that is, when it grants jurisdiction to one court or tribunal. Such grant means that another court or tribunal will not have jurisdiction. For instance, when Parliament enacted the Work Injuries Benefits Act, under Part IV of the said Act, Parliament gave jurisdiction to the Director of Occupational Safety and Health Services (DOSHS) in cases relating to work injuries. By conferring jurisdiction on DOSHS, which is an inferior or subordinate body, the magistrate's court, equally an inferior or subordinate body, was deprived of the jurisdiction it had in these matters and even the Employment and Labour Relations Court was deprived of original jurisdiction. Now, in work injury matters, the Employment and Labour Relations Court can only exercise appellate jurisdiction because Parliament expressly stated so.
27. Taking cue from this example, it is urged that by granting, in section 4 of the *Judicature Act*, exclusive jurisdiction to the High Court (a superior court) to deal with admiralty matters, Parliament necessarily implied that no court other than the High Court of Kenya would have jurisdiction to deal with admiralty matters.
28. On the decision of the Employment and Labour Relations Court in *Didovsky Igor and 11 others vs. International Bulk Carrier Spa and others (supra)* it is submitted that the decision is not binding on this Honourable Court. In any event, it is urged, contrary to the 1<sup>st</sup> defendant's suggestion, the admiralty claim in rem was not transferred to the Employment and Labour Relations Court as an ordinary civil suit in personam by employees against employers. What was transferred to the Employment and Labour Relations Court on the 31 October, 2013 was High Court Civil Case no. 1 of 2013, that is,



Didovsky Igor and others vs. Sekkur Holdings Inc. and others, which was the ordinary civil suit in personam by employees against employers. This has been confirmed in High Court's ruling, in the case reported in (2013) KEHC 1643 (KLR).

29. In his argument against the Employment and Labour Relations Court assuming admiralty jurisdiction, the learned counsel for the claimants has submitted that if, as is usually the case, there are multiple claims on a vessel, for instance, a claim for wages, a claim by the port authority for port fees, a claim by a supplier for the supply of necessaries etc. and the Employment and Labour Relations Court also has power to arrest ships, wouldn't there be a competition of the courts with regard to arresting a vessel with respect to these multiple claims? For instance, the Employment and Labour Relations Court would arrest for the wages, the supplier of necessaries would approach the High Court to arrest for the necessaries.
30. Again, a question will arise as to which of the two courts would determine the priorities since the determination of priorities is an important procedural and substantive step of a claim in rem, where the court must make a decision as to which claims take priority over the other.
31. I have considered the applicant's and the respondents' submissions the crux of which is whether this Honourable Court is seized of jurisdiction to determine the dispute before it considering that the claimants are claiming for their wages, amongst other prayers.
32. To begin with, the term "admiralty" is said to have its origins from the time when the admiral in England "...exercised significant powers over the sovereign's naval fleet, as well as over those matters that occurred at sea over which common law courts had no jurisdiction. (see E. Gold, A. Chircop and H. Kindred, *Maritime Law*, Irwin Law Inc. 2003 p1). According to these authors, at its inception, the common law was ill-equipped to handle matters of the sea, that is, maritime matters (at page 749) and, therefore, admiralty courts were established to deal with such matters. It follows that admiralty jurisdiction may be defined as the power or authority invested in an admiralty court to hear and determine admiralty matters.
33. In his book, *Admiralty and Maritime Law in Tanzania*, Ibrahim Mbiu Bendera, says (at p.2) that admiralty jurisdiction in Tanzania is not inherent; it is conferred by statute which expressly lists matters that can be determined under this jurisdiction and the procedure for initiating, conducting and determining them.
34. In Kenya, admiralty jurisdiction has been conferred to this Honourable Court by section 4 of the *Judicature Act*, cap. 8 which states as follows:
  - (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 waters 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 in England, and shall be exercised in conformity with international laws and the comity of nations.
  - (3) In the exercise of its admiralty jurisdiction, the High Court may exercise all the powers which it possesses for the purpose of its other civil jurisdiction.



- (4) An appeal shall lie from any judgment, order or decision of the High Court in the exercise of its admiralty jurisdiction within the same time and in the same manner as an appeal from a decree of the High Court under Part VII of the *Civil Procedure Act*.
35. The Court of Appeal discussed the application of this provision in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* (supra). In that case, the court noted, in the exercise of its admiralty jurisdiction, this Honourable Court has to apply the law of England and that, in order to discover what that law is, one has to look at the *Supreme Court Act*, 1981, (now called the Senior Courts Act, 1981) and more specifically Sections 20 and 21 of the said Act. These provisions state as follows:
- 20.
- (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say-
- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
  - (b) jurisdiction in relation to any of the proceedings mentioned in subsection (3);
  - (c) any other Admiralty jurisdiction which it had immediately before the commencement of this Act; and
  - (d) any jurisdiction connected with ships or aircraft which is vested in the High Court apart from this section and is for the time being by rules of court made or coming into force after the commencement of this Act assigned to the Queen’s Bench Division and directed by the rules to be exercised by the Admiralty Court.)
- (2) The questions and claims referred to in subsection (1)(a) are—
- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein;
  - (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship;
  - (c) any claim in respect of a mortgage of or charge on a ship or any share therein;
  - (d) any claim for damage received by a ship;
  - (e) any claim for damage done by a ship;
  - (f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or in consequence of the wrongful act, neglect or default of—
    - (i) the owners, charterers or persons in possession or control of a ship; or
    - (ii) the master or crew of a ship, or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship, or in the embarkation, carriage or disembarkation of persons on, in or from the ship;



- (g) any claim for loss of or damage to goods carried in a ship;
  - (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
  - (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section 51 of the *Civil Aviation Act* 1949, of the law relating to salvage to aircraft and their apparel and cargo);
  - (k) any claim in the nature of towage in respect of a ship or an aircraft:
    - (1) any claim in the nature of pilotage in respect of a ship or an aircraft;
  - (m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance;
  - (n) any claim in respect of the construction, repair or equipment of a ship or in respect of dock charges or dues;
  - (O) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
  - (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
  - (q) any claim arising out of an act which is or is claimed to be a general average act;
  - (r) any claim arising out of bottomry;
  - (s) any 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, or for droits of Admiralty.
- (3) The proceedings referred to in subsection (1)(b) are—
- (a) any application to the High Court under the Merchant Shipping Acts 1894 to 1979 other than an application under section 55 of the *Merchant Shipping Act* 1894 for the appointment of a person to act as a substitute for a person incapable of acting;
  - (b) any action to enforce a claim for damage, loss of life or personal injury arising out of—
    - (i) a collision between ships; or
    - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or
    - (iii) non-compliance, on the part of one or more of two or more ships, with the collision regulations;
  - (c) any action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1979 for the limitation of the amount of their liability in connection with a ship or other property.



- (4) The jurisdiction of the High Court under subsection (2)(b) includes power to settle any account outstanding and unsettled between the parties in relation to the ship, and to direct that the ship, or any share thereof, shall be sold, and to make such other order as the court thinks fit.
- (5) Subsection (2)(e) extends to—
  - (a) any claim in respect of a liability incurred under the Merchant Shipping (Oil Pollution) Act 1971; and
  - (b) any claim in respect of a liability falling on the International Oil Pollution Compensation Fund under Part I of the *Merchant Shipping Act* 1974.
- (6) The reference in subsection (2)(j) to claims in the nature of salvage includes a reference to such claims for services rendered in saving life from a ship or an aircraft or in preserving cargo, apparel or wreck as, under sections 544 to 546 of the *Merchant Shipping Act* 1894, or any Order in Council made under section 51 of the *Civil Aviation Act* 1949, are authorised to be made in connection with a ship or an aircraft.
- (7) The preceding provisions of this section apply—
  - (a) in relation to all ships or aircraft, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be;
  - (b) in relation to all claims, wherever arising (including, in the case of cargo or wreck salvage, claims in respect of cargo or wreck found on land); and
  - (c) so far as they relate to mortgages and charges, to all mortgages or charges, whether registered or not and whether legal or equitable, including mortgages and charges created under foreign law:

Provided that nothing in this subsection shall be construed as extending the cases in which money or property is recoverable under any of the provisions of the Merchant Shipping Acts 1894 to 1979.

36. As far as the mode of exercising jurisdiction is concerned, it is covered in section 21 of the Act which provides as follows:

21.

- (1) Subject to section 22, an action in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court.
- (2) In the case of any such claim as is mentioned in section 20(2)(a), (c) or (s) or any such question as is mentioned in section 20(2)(b), an action in rem may be brought in the High Court against the ship or property in connection with which the claim or question arises.
- (3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the High Court against that ship, aircraft or property.
- (4) In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—
  - (a) the claim arises in connection with a ship; and



- (b) the person who would be liable on the claim in an action in personam (“the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against—
  - (i) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or
  - (ii) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.
- (5) In the case of a claim in the nature of towage or pilotage in respect of an aircraft, an action in rem may be brought in the High Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.
- (6) Where, in the exercise of its Admiralty jurisdiction, the High Court orders any ship, aircraft or other property to be sold, the court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.
- (7) In determining for the purposes of subsections (4) and (5) whether a person would be liable on a claim in an action in personam it shall be assumed that he has his habitual residence or a place of business within England or Wales.
- (8) Where, as regards any such claim as is mentioned in section 20(2)(e) to (r), a ship has been served with a writ or arrested in an action in rem brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship.

37. Against the background of these provisions, the Court of Appeal concluded that:

“admiralty actions therefore may be either in rem or in personam. An admiralty action in rem is in effect an action against a res. A res is usually a ship but may in some cases be cargo or freight or an aircraft. In such an action the plaintiff may cause the res to be arrested if it is within jurisdiction.”

38. In the wake of these provisions, and the Court of Appeal’s pronouncements in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd*, it is beyond debate that this Honourable Court is vested with jurisdiction over matters admiralty.

39. As far as the claimants are concerned, their claim is against res, *The Owners of the Vessel “F.V. Maab Aqua 2* and, amongst other prayers, they seek wages, disbursements, repatriation costs and, damages, both special and general. All these claims are admiralty matters covered under section 20 (2) (o) and (p) of the Senior Courts Act, 1981. The entire section 20 has been reproduced above but I reproduce here the pertinent parts thereof for emphasis sake. They are as follows:

20.

- (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say-



- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2);
- (2) The questions and claims referred to in subsection (1)(a) are—
  - (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.
  - (o) any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
  - (p) any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;

40. To the extent that the claimants are seeking wages for their labour, the 1<sup>st</sup> defendant is of the firm view that this Honourable Court has no jurisdiction to entertain the claim and that the matter should have been left to the Employment and Labour Relations Court because section 12 (1) of the *Employment and Labour Relations Court Act* reserves such matters for the Employment and Labour Relations Court. This section reads as follows:

12. Jurisdiction of the Court

- (1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of *the Constitution* and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including —
  - (a) disputes relating to or arising out of employment between an employer and an employee;
  - (b) disputes between an employer and a trade union;
  - (c) disputes between an employers' organisation and a trade unions organisation;
  - (d) disputes between trade unions;
  - (e) disputes between employer organizations;
  - (f) disputes between an employers' organisation and a trade union;
  - (g) disputes between a trade union and a member thereof;
  - (h) disputes between an employer's organisation or a federation and a member thereof;
  - (i) disputes concerning the registration and election of trade union officials; and
  - (j) disputes relating to the registration and enforcement of collective agreements.

41. As noted, the 1<sup>st</sup> defendant has cited *Didovsky Igor & 11 Others Vs. International Bulk Carrier SPA & 2 Others* (supra) where this Honourable Court is said to have downed its tools in a matter which the learned counsel for the 1<sup>st</sup> defendant urged commenced as an Admiralty Claim for wages and other employment benefits by the crew of the Motor Vessel *Blida* against the Owners of that Vessel. While the dispute was initiated in this Honourable Court as an admiralty action in rem, it was transferred



to the Employment & Labour Relations Court as an ordinary civil suit in personam, by employees against employers.

42. According to the 1<sup>st</sup> defendant, I should follow suit and go even further and strike out the suit rather than transfer it to the Employment and Labour Relations Court, more so, considering that the disputants are in agreement the claim is for alleged unpaid wages, and for that reason, falls under the jurisdiction of the Employment and Labour Relations Court.
43. Besides the *Didovsky Igor & 11 Others Vs. International Bulk Carrier SPA & 2 Others* case, it is urged that according to article 165(5)(b) of *the Constitution*, this Honourable Court is deprived of jurisdiction to entertain matters within the jurisdiction of the Employment and Labour Relations Court.
44. Article 165(5) (b) of *the Constitution* reads as follows:
- The High Court shall not have jurisdiction in respect of matters—
- (a) ...
- (b) falling within the jurisdiction of the courts contemplated in Article 162(2).
45. Article 162 (2) to which reference has been made in article 162(5)(b) reads as follows:
- Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
- a. employment and labour relations; and
- b. the environment and the use and occupation of, and title to, land.
46. As far as the *Didovsky Igor & 11 Others Vs. International Bulk Carrier SPA & 2 Others* (1015) eKR, it would appear that the court, on its own motion, transferred the suit before it to the Employment and Labour Relations Court. Unlike in the instant case, the question whether the court was properly seized of jurisdiction to entertain the dispute before it was never argued and a determination made.
47. Without arguments and a reasoned determination, that case is of little precedent value to this case. The mere fact of transfer of a case, by a judge of coordinate jurisdiction, from one court to another, is not, of itself, sufficient to compel me, to follow the example, so to speak and transfer this matter to the Employment and Labour Relations Court or strike it out as the applicant wants. Needless to say, even if a reasoned determination had been made, it would only go as far as being persuasive so that I would be entitled to depart from it if I have reasons to.
48. I am minded that when *Didovsky Igor & 11 others v International Bulk Carrier Spa & 2 others* (supra) finally landed in the Employment and Labour Relations Court, Rika, J. asserted the jurisdiction of that court over the dispute and noted, inter alia, that:
- “61. The continued reliance on the procedure of the High Court of England in dealing with our admiralty matters, appears to this Court out-dated. There have been calls for amendment of Section 4 of the *Judicature Act*, and for development of homegrown admiralty legal regime.”
49. Perhaps, because of what my learned brother understood to be the inadequacies associated with section 4 of the *Judicature Act*, hence the call for its amendment, he held that where there is a composite admiralty claim part of which is a claim for wages, the then Industrial Court, now the Employment



and labour Relations Court, would assume jurisdiction and there would be no need for a truncated approach; one claim being lodged in the High Court while another being filed in the Employment and Labour Relations Court.

50. In the learned judge's words:

65. "...the claimants should have filed their admiralty claims for recovery of wages and repatriation expenses as well as the present claim for damages, under one single Cause, at the Industrial Court. The subject matter of the claims that were litigated at the High Court in its admiralty jurisdiction- employment wages- is a core subject of the jurisdiction of the Industrial Court. Recovery of wages should not have been severed from the present claim and pursued in a different Court."

51. It is important to bear in mind that jurisdiction on matters admiralty is conferred not by the procedure of the High Court of England but by section 4 of the *Judicature Act*. It is the manner of exercise of the admiralty jurisdiction that should be as in the High Court in England, and in conformity with international laws and the comity of nations. (See section 4 (2) of the *Judicature Act*).

52. Subject to my reservations about the danger of truncated approach to admiralty claims, and which I have illustrated later in this ruling, it is up to the legislature, if in its view it is necessary, to amend and align section 4 of the *Judicature Act* together with the section 12 of the Employment and Labour Relations Act and confer certain aspects of admiralty jurisdiction to the Employment and Labour Relations Court. However, in the current scheme of things, neither of these two provisions of the law confer the jurisdiction to the Employment and Labour Relations Court.

53. While I agree with my learned brother that there is no basis for a truncated approach in an admiralty action in a composite claim, I respectfully disagree that the Employment and Labour Relations Court should assume jurisdiction in an otherwise admiralty action only because a demand for wages is part of the composite claim.

54. Turning to article 162(2) (b) of *the Constitution*, it ought to be read with article 162(3) in order to appreciate its import. Article 162(3) reads as follows:

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

55. The Employment and Labour Relations Court is, of course, one of the two courts contemplated under clause (2) of article 162. As earlier noted, Parliament has determined the jurisdiction of that court in section 12 of the *Employment and Labour Relations Court Act*.

56. It is obvious from that section that Employment and Labour Relations Court does not have jurisdiction over admiralty matters. The only court that has admiralty jurisdiction is, of course, this Honourable Court. It has been noted that under section 4 of the *Judicature Act*, admiralty matters, amongst other matters for which this Honourable Court is seized of jurisdiction, include claim for wages. Section 4 of the Judicature should be viewed from the perspective of article 165 (3) (e) of *the Constitution* that the jurisdiction of this Honourable Court is not just that circumscribed by *the Constitution* but that the court has "any other jurisdiction, original or appellate, conferred on it by legislation."

57. In my humble opinion, "wages", in the context of section 20 of the Senior Courts Act, 1981 is more than an employment and labour relations matter, for which only the Employment and Labour Relations Court is established to interrogate in the event of a dispute. As long as the claim for wages involves a ship or vessel or is maritime oriented, the claim acquires the status of an admiralty matter



and which, only this Honourable Court is vested with the requisite jurisdiction to oversee whenever a dispute arises.

58. This is why “any claim by a master or member of the crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages) or any claim by a master, shipper, charterer or agent in respect of disbursements made on account of a ship” is not prescribed as an employment and labour relations matter under section 12 of the Employment and [Labour Relations Act](#); it is an admiralty matter under section 20 (2) (o) and (p) of the Senior Courts Act, 1981.
59. If I am correct in this then it cannot be argued, as the applicant has urged, that in assuming jurisdiction of this matter and issuing orders to arrest the applicant’s ship, this Honourable Court usurped the jurisdiction of the Employment and Labour Relations Court and most, importantly, failed to give due regard to article 162(5) of [the Constitution](#).
60. If one was to consider the question of the claimant’s claim for wages from the narrow perspective that it is an employment and labour relations matter, there would be a genuine and legitimate ground to doubt this Honourable Court’s assumption of jurisdiction over the claim. But if the question is considered strictly on the understanding that, beyond what would ordinarily be an employment and labour relations matter, the claim is an admiralty action under section 20 (2) (o) and (p) of the Senior Court Act, 1981, then the issue of usurpation of jurisdiction would not arise. Neither can it be urged that this Honourable Court is deprived of jurisdiction to entertain this claim by dint of article 165(5) (b) of [the Constitution](#).
61. For the same reason and, in the same breath, I am not persuaded by the applicant’s submission that for purposes of clothing the Employment and Labour Relations Court with the requisite jurisdiction to entertain this claim, “articles 162(2)(a) and 165(5)(b) of [the Constitution](#) altered, amended and adapted Section 4 of the [Judicature Act](#), Cap 8, Laws of Kenya, by deleting the words “High Court” and substituting them with the words “Employment & Labour Relations Court” as regards all claims for wages by the Master, Officers and crew of ships”. And that “the High Court however retains jurisdiction in respect of other admiralty matters but not on crew wages”.
62. The flaw I find in this argument is that it presupposes conferment of jurisdiction by implication. Conferment of jurisdiction cannot be implied; to be precise, it cannot be implied that section 4 of the [Judicature Act](#) has been “altered, amended or adapted” to confer admiralty jurisdiction or any part thereof to the Employment and Labour Relations court. I understand this to be what the learned counsel for the applicant means when he urges that “the High Court however retains jurisdiction in respect of other admiralty matters,”. The plain meaning of this statement is that the Employment and Labour Relations Court has now been given admiralty jurisdiction in certain matters while the High Court retains jurisdiction in “other admiralty matters.”
63. This, of course, is fallacious because jurisdiction is conferred by [the Constitution](#) or statute or by both. And if any authority is required for this position one need not look any further than the Supreme Court decision in *Macharia and another v Kenya Commercial Bank Limited and 2 others* 2012KESC8 (KLR) where the court held:

“A Court’s jurisdiction flows from either [the Constitution](#) or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by [the constitution](#) or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
64. The other flaw in the applicant’s submission is the presumption that since the admiralty jurisdiction is now shared between the Employment and Labour Relations Court and this Honourable Court, a



claimant who would otherwise properly lodge a composite claim in the admiralty court is now enjoined to proceed in a truncated manner, filing one suit in this Honourable Court and filing another claim, against the same defendant, for wages, in an Employment and Labour Relations Court.

65. If the applicant's argument that the Employment and Labour Relations Court now has jurisdiction to deal with those aspects of admiralty matters relating to employment and labour relations and that "the High Court...retains jurisdiction in respect of other admiralty matters" is taken to its logical conclusion, it means that there will be two parallel suits filed in two different courts by the same claimant, against the same defendant. In these circumstances, the danger of conflicting decisions or orders from two different courts in respect of the same matter, to the extent that the claims in the two courts may be intertwined, cannot be ruled out. When this happens, courts will obviously bring the administration of justice into disrepute.
66. By imploring all and sundry to construe the existing laws upon the promulgation of *the Constitution* "with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution" the framers of *the constitution* cannot be said to have intended that section 4 of the *Judicature Act* should be interpreted in a manner that creates a fertile ground for untidy and chaotic litigation. In short, no interpretation should be given to any of the provisions of *the Constitution* or of any statute, for that matter, that would lead to absurdity.
67. I conclude with the caveat that my decision should not be mistaken for a unwarranted pursuit for what one may call "an expansionist agenda" for the High Court, because such agenda does not exist, or for "grabbing" of matters that would otherwise be properly adjudicated upon by courts of the status equal to that of the High Court. This Court already has its plate full. My decision is informed by what I understand the law to be.
68. Crucially, and needless to say, my decision is not binding on the Employment and Labour Relations Court which is entitled to reach a contrary opinion in the event a matter, similar to the one before me, is filed in that Court.
69. For the reasons I have given, I dismiss the applicant's application. Costs will abide the outcome of the claim.

**DATED, SIGNED AND POSTED ON THE CTS ON 18 JUNE 2025**

**NGAAH JAIRUS**

**JUDGE**

