



REPUBLIC OF KENYA



**KENYA LAW**

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**Kyu v Owners of the Vessel “M.V. AHADI 001” (Admiralty Claim  
E001 of 2023) [2023] KEHC 18669 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18669 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
ADMIRALTY CLAIM E001 OF 2023**

**DKN MAGARE, J**

**JUNE 19, 2023**

**ADMIRALTY CLAIM IN REM AGAINST VESSELS  
“M.V. AHADI 001” AND “M.V. AHADI 002”**

**BETWEEN**

**KIM JONG KYU ..... CLAIMANT**

**AND**

**OWNERS OF THE VESSEL “M.V. AHADI 001” ..... DEFENDANT**

**RULING**

1. This matter came for the Application notice dated 5/6/2023. The same sought the following orders: -
  - a. That this Application Notice be certified urgent and be heard exparte in the first instance Andon the basis of priority.
  - b. This Application Notice be also served upon Okello Kinyanjui & Company LLP, the Claimant’s former Advocates and they be ordered to respond.
  - c. The warrants of arrest issued against the Motor Fishing Vessel “Ahadi 001” be set aside as a matter of right and that vessel be released from arrest forthwith.
  - d. The claimant together with his then advocate Okello Kinyanjui & Company LLP be ordered to pay the costs of the upkeep of the vessel from the date of arrest until the warrant is lifted.
  - e. The court be pleased to order the Directorate of Criminal Investigations to investigate the offence of perjury and subornation of perjury in the affidavit in support of the Application drawn by Okello Kinyanjui & Co. LLP Advocates and worn by Kim Jong KYU on18/4/2023 and filed herein on 5/5/2023.
  - f. This claim be struck out with costs.



- g. The costs of this Application be paid by the claimant.
2. The matter came for hearing today. The applicant conceded that there is a dispute on the ownership of the fishing gear claimed.
3. It then transpired that the claimant's claim is a claim in personum. The jurisdiction of the court is subsumed in section 20 of the *Senior Court's Act*, 1981. The same provides as doth: -

“Paragraph (2), (3), (4) and (5) give instances in which an action in rem may be brought. The next matter which I should here mention is that Order 75, (The Order), *The Supreme Court Practice*, 1988 of England has provided for admiralty proceedings. Paragraph 75/1/3 of the Order is to the effect that an admiralty action in rem is in effect an action against a res, usually a ship but may in some cases be cargo or freight or aircraft. An action in personam is like a normal action filed against a person. In personam, the procedure is the usual one of invoking the High Court jurisdiction: See *the Shipbrokers Manual Vol. One*, page 90, paragraph 3. Paragraph 4 on page 92 – 94 gives a distinction between an action in rem and in personam. The object of an action in rem is therefore to procure the arrest of a res, almost always a ship.

In the light of that evidence, I conclude that the motor vessel “Lillian S” was utilized as a base for storing the fuel oil before it was sold to other vessels. There was therefore no reasonably direct connection between the storage of the fuel oil and the operation or maintenance of the vessel “Lillian S”. I do not find in this case any evidence adduced by the plaintiff to show that the supply of the goods was for operation or maintenance of the vessel “Lillian S” or indeed a particular ship. I therefore take the view that section 20 (2) (m) of the 1981 Act was not satisfied and so the claim does not fall under section 21 (4), the High Court did not have admiralty jurisdiction and so Caltex Oil (Kenya) Ltd is not entitled to invoke the local jurisdiction in rem against the vessel and to arrest her.”

4. In the *locus classicus* case of *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] eKLR, Justice Nyarangi, JA, as then he was, stated as doth: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority: “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not



possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

5. Justice Masime JA as then he was, in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [*supra*] stated as doth: -

“Section 4 of the Judicature Act(cap 8 of the Laws of Kenya) applies the Law and procedure exercised by the High Court in England in its admiralty jurisdiction to Kenya. That law and procedure is contained in the *Supreme Court Act* 1981 and the Rules of the Supreme Court (see 1988 *Supreme Court Practice*) Order 75. Section 20 (1) of the Act gives the High Court jurisdiction over admiralty matters set out therein in four groups (a) to (d). Each of these groups is expounded on in the succeeding subsections. A claimant must get his claim into one of the categories set out in the section. The respondent’s claim in the present appeal purported to be founded upon sections 20 (1) (a) as particularized in section 20 (2) (m). That is it claimed that the High Court had jurisdiction to hear and determine its claim as it was, in the language of section 20 (2) (m). “A ... claim in respect of goods or materials supplied to a ship for her operation or maintenance.” If the claim so lay then the respondent was required to pursue it in accordance with the provisions set out in Section 21 (1) of the Act and Order 75 of the rules of the Supreme Court.”

In the light of that evidence, I conclude that the motor vessel “Lillian S” was utilized as a base for storing the fuel oil before it was sold to other vessels. There was therefore no reasonably direct connection between the storage of the fuel oil and the operation or maintenance of the vessel “Lillian S”. I do not find in this case any evidence adduced by the plaintiff to show that the supply of the goods was for operation or maintenance of the vessel “Lillian S” or indeed a particular ship. I therefore take the view that Section 20 (2) (m) of the 1981 Act was not satisfied and so the claim does not fall under section 21 (4), the High Court did not have admiralty jurisdiction and so Caltex Oil (Kenya) Ltd is not entitled to invoke the local jurisdiction in rem against the vessel and to arrest her.”

6. The fishing gear herein was respectively not for use on motor vessel Ahadi 001 or 002. It is a claim in personum for which as earlier stated, this court has no jurisdiction.
7. In the case of *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, the supreme court held as doth: -

“*In the Matter of the Interim Independent Electoral Commission (Applicant)*, Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the Constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

8. In the circumstances, I have come to an inevitable conclusion that this court has no jurisdiction to entertain this matter.
9. A claim was also filed against MV Ahadi 002, contrary to section 20 (2) e to r allegedly for a claim in rem for the same fishing gear. The said vessel was not involved in the issue at hand. A party cannot issue warrants or seeks orders in rem against two ships for events and matters relating to one ship



10. The claim herein is thus a claim in personum. The consequence is that indeed there is no jurisdiction to hear this matter.
11. There is an issue of the veracity of the statements by the advocates, former or otherwise. The matter herein is purely admiralty, claiming for matters, limited under section 20 of the *Supreme Court of England Act*. The procedure for punishment of perjury is within the civil jurisdiction. The applicant does not need an order to report such claims. I am unable thus to descend into the arena and issue the orders against the said advocates.
12. Further having found I have no jurisdiction, my remit revolves around downing tools and nothing more.

### **Determination**

13. The Application Notice dated 5/6/2023 be and is hereby allowed in that: -
  - a. The entire claim be and is hereby struck out.
  - b. The warrants of arrest issued against the Motor Fishing Vessel "Ahadi 001" are hereby set aside as a matter of right and that vessel be released from arrest forthwith.
  - c. Warrant be and are hereby lifted.
  - d. The second prayer is declined.
  - e. Costs to the respondent.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 19<sup>TH</sup> DAY OF JUNE, 2023.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

**In the presence of:**

Anagwe for the Claimant

Muya for the Respondent

Court Assistant - Brian

