DISCUSSION BY MR. MIKE IGBOKWE, SAN ON THE PAPER "ADMIRALTY JURISDICTION PROCEDURE RULES, 2020: MATTERS ARISING" WRITTEN BY THE HONOURABLE JUSTICE OLAYINKA FAJI.

AT THE 17TH MARITIME SEMINAR FOR JUDGES ORGANISED BY NIGERIAN SHIPPERS' COUNCIL IN COLLABORATION WITH NATIONAL JUDICIAL INSTITUTE 9-11 JULY, 2024.

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INTRODUCTION

1. I thank the organizers of this international seminar for inviting me to attend it and join other panelists in discussing and making contributions on the paper titled "Admiralty Jurisdiction Procedure Rules, 2020: Matters Arising", just delivered by the Hon. Justice Olayinka Faji.

2. With a lot of modesty, I wish to commend the Nigerian Maritime Lawyers Association ("NMLA") for the role it played in birthing the Admiralty Jurisdiction Procedure Rules, 2023 (AJPR). Being of the view that the AJPR, 2011 was overdue for review and amendments, NMLA set up a committee of its members to review the AJPR 2011 and make recommendations on the areas needing amendments to conform with modern trends for expeditious justice delivery and cure mischiefs being suffered by the users under the 2011 AJPR. The report of the Committee was further reviewed by NMLA's Executive Committee and after due approval, the proposed AJPR and recommendations were sent to the Chief Judge ("CJ") of the Federal High Court ("FHC") for consideration and enactment. The rest is history.

3. Hon. Justice Faji structured the topic in such a way that his Lordship focused the attention of his readers or audience on his consideration of specific rules, the matters arising from them, his opinions on them and suggestions on how they can either be improved or amended for improvement. So, in the 59-paged paper, which started with the History of Admiralty Rules, his Lordship discussed the AJPR under:
   A. Admiralty Division, Registry and Designated Judges (pages 4-20).
   B. Arbitral Proceedings (pages 21-35).
   C. Arrest of Ships (pages 35-39).

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D. Caveats (pages 39-50).
E. Reparations for Needless Arrests (pages 50-52).
F. Suits filed in the Wrong Division. (Pages 52-53).
G. Processes to be filed in an action in rem (pages 53-55).
H. Service of Originating Process in Action in Rem (pages 55-56).
I. Security for Costs (pages 56-57).
J. Intervener (pages 57-58).
K. Definition of an Aircraft (pages 58-59).

4. While I commend his Lordship for the industry and useful insights on the well-researched paper, subject to the 15 minutes permitted me, I intend to discuss the paper by sharing my knowledge and ideas and making suggestions on the AJPR according to the same structure adopted by the lead speaker.

5. I agree with Hon. Justice Faji's statement in his Lordship's paper under the 'History of Admiralty Rules' as to how the practice and procedure in admiralty was governed by the Administration of Justice, Act 1956, UK and its other sources before Nigeria had its first Admiralty Jurisdiction Procedure Rules in 1993, followed by the Admiralty Jurisdiction Procedure Rule, 2011 and now the AJPR. In his comment on the paper titled 'Fundamentals of a Successful Arrest of a Ship and the Issues of Release and Security' delivered by the late Chief Idowu,SAN, in one of the previous Maritime Seminars for Judges, the late Belgore CJ wrote about the Admiralty Jurisdiction Act 1991, that it was, *'primarily to protect the interest of our country's maritime commerce within the bounds of international law and conventions. I did not loose (sic) the sight of the fact that we are more of an importing nation rather than an exporting one and the fact that we are as yet a merchant navy nation. It is our law for our nation and its commerce and business and the fact that is not identical to other countries own is not a blemish on it."* So, the framers of our AJPR always consider and take care of our local circumstances and challenges.

A. Admiralty Division, Registry and Designated Judges (pages 4-20).

6. In Tabik Investment Ltd & anor v. Gtb[2], the Supreme Court held that "the word 'shall' connotes mandatory discharge of a duty or obligation, and when the word is used in an enactment, that requirement must be

[2] (2011) LPELR-3131(SC)

met", it conjures mandatoriness, the conditions of which must be met and satisfied. However, in the case of Amadi v. NNPC[3], the Supreme Court held that "when the word 'shall' is used in an enactment, it is capable of bearing many meanings. It may be implying futurity or implying a mandate or direction or giving permission." So, following this case, in the case of Incorporated Trustees of Nigerian Baptist Convention & Ors v. Governor of Ogun State & Ors[4], the Court of Appeal held that the word 'shall' in an enactment it was considering, merely gave permission or direction and not a word of command.

7. In the circumstance, by using the word 'shall' in Order 2 rule 3 of AJPR, it is my view that if the maker of the rules is taken to have intended that it is mandatory, it will be compulsory for the CJ of the FHC to issue directions to establish the Admiralty Registry of the Admiralty Division of the Court, failing which any member of the public may file a suit to issue an order of mandamus to compel him to issue the directives for setting up the Admiralty Division. However, if the word 'shall' in Order 2 rule 3 of AJPR is read as the word 'may' and so permissive, the CJ cannot be so compelled to issue the directives and may take his time in establishing the Admiralty Division of the FHC or not even do so despite the provisions made in the Rules for him to do so. If he follows the latter, the implication may be wrongly seen as a performance deficit as the CJ could be looked at as failing to comply with the Rules his Lordship made and as failing to perform such a novel duty for posterity when the Rules of Court must prima facie be obeyed. To avoid such notions, I am of the view that the CJ should quickly create the Admiralty Division of the FHC so that the purpose behind it will be attained. It should not be allowed to be like the E-filing and appointment of E-filing Registrar which despite being provided for in Order 58 of CPR, are yet to take effect 4 years after.

8. As innovative, meritorious and very useful as the creation of Admiralty Division of the FHC is, admiralty being highly technical and specialized, there is a need to increase the salaries of judges of this Court so as to attract the much-needed lawyers educated and experienced in admiralty law, to join the FHC and man the Admiralty Divisions. In addition to the cities suggested by Faji J for designation for Admiralty

[3] (2000) 10 NWLR PART 675 P.76
[4] (2016) LPELR-41134(CA)

Court, I am of the opinion that Lokoja, Asaba, Awka should also be added because these cities have substantial maritime activities in the area of inland waterways transportation of goods and passengers which can result to personal injuries and death, charterparties and ship ownership disputes that will require judicial resolution.

9. I fully support the full computerization of the Admiralty Registries with up-to-date applications and software. Indeed, the Evidence (Amendment) Act, 2023 has improved our law on the use of and admissibility of technology. It now recognises as documents, any information contained in an electronic record which is printed on a paper, stored, recorded or copies in optical or magnetic media or cloud computing or data base produced by a computer including mobile phones; authentication of electronic record by affixing digital signature on it, electronic records and cloud computing. The Act also allows the filing in court and recognises for any purpose in the Court, affidavits that are deposed to electronically before a commissioner for oaths or a notary public (in outside Nigeria). Any affidavit sworn to before any judge, officer or other person duly authorised to take affidavits in Nigeria whether in person or through audio-visual means, may be used in the courts in all cases where affidavits are admissible. Thus, the Act has facilitated the deposition to a witness statement in respect of a suit through audio-visual communication outside the courts (even abroad) and without appearing in court physically to depose to such affidavits and their admissible use in the litigation.

10. In this algorithm age, the FHC must deploy and leverage on technology in performing the tasks the Admiralty Registries are charged to perform so that all the users of its services can hook up to the facilities for excellent justice service delivery or be left behind. One of the good things that Covid-9 did was to force courts and lawyers and judicial stakeholders to either start using or use more, virtual facilities in filing processes, holding meetings, court hearings etc. So the money that users of court's services could have spent transporting themselves by air or road or sea to courts to depose to and file processes, they can now spend on buying air time or data to connect to the Internet and audio-visual conferencing facilities with their phones or laptops or computers and get the same things done online from their homes or offices locally or abroad, without attending the Admiralty Court Registry. It will yield all the advantages Faji J listed in his paper.

11. Even though a part of the duties of the Admiralty Marshal ("AM") stated in Order 2 rule 5(a) AJPR is that he serves initiating processes, I agree that it should not be limited to originating processes but should include the service by the AM of other processes and orders in admiralty matters which counsel or parties cannot properly serve by giving a written undertaking to serve them. AJPR is not exhaustive and has always been complemented and supplemented by the Federal High Court (Civil Procedure) Rules, 2009 ("CPR") wherever it has any lacuna or inadequacy. Order 56 rule 2(1) CPR that provides that where no specific procedure is given in any of the enactments in Appendix 1 to the CPR (which includes AJPR), the rules and procedure in CPR shall apply with necessary modification to comply with the subject matter the enactments in Appendix 1 to the CPR dealt with. AJPR is one of the enactments in Appendix 1 to the CPR.

12. Also, Faji J opined that the enormous duties of the AM justify the creation of the Admiralty Registry which must be of modern-day standards and that there should be regular training and retraining of the staff involved in admiralty proceedings for an efficient system. I agree because admiralty law frequently changes and so its practitioners and service providers need to be current in admiralty law and practice to be able to efficiently dispense justice in admiralty matters. Besides, knowledge is endless, and we will and should continue to learn and re-learn, train and retrain until we leave this world. A significant Biblical advice is that 'If anyone thinks he knows anything, he knows nothing yet as he ought to know'. (1 Corinthians 8:2).

13. I add that under the National Industrial Court of Nigeria (Civil Procedure) Rules, 2016 the Court's Chief Registrar or Registrar has no similar enormous duties as the Admiralty Marshal including the duties of arresting, taking custody, moving, managing or controlling or preserving or selling an arrested vessel or other property as stated in Order 9 of AJPR. Also, it is only in admiralty law and not the Labour Act[5] of Section 254C(1) of the 1999 Constitution, that based on his right to a traditional maritime lien on the ship for unpaid wages, a Master or a member of a ship's crew, can file an action in rem against

[5] Section 91 of the Labour Act defines a worker as excluding a seafarer or crew member of a ship.

the ship after its ownership has changed by sale, and obtain a pre-judgment security for the satisfaction of any judgment in his favour. These are some of the reasons why it has been argued that the makers of Section 254C(1) of the 1999 Constitution as interpreted by the Court of Appeal in The Vessel MT Sam Purpose (Ex Tapti & Anor v. Bains & Ors [6]("Sam Purpose case"), did not take cognizance of the absence of admiralty jurisdiction, an AM, arrests of ship and other property, custody, control and management of arrested ship in the National Industrial Court of Nigeria ("NICN") when it held that it is the NICN and not the FHC that has jurisdiction over a claim for unpaid crew wages. I will speak more on this below.

14. Upon reading the Sam Purpose case, I concluded that the Court of Appeal set aside the judgment of the FHC in the Sam Purpose case because it held that:

(a) Section 254C (1) (a) and (k) of the 1999 Constitution (as amended) gave the National Industrial Court exclusive jurisdiction over employee wages and other labour related matters. It is also clear from the said provisions that an action founded on claims for unpaid crew wages falls outside the Federal High Court's jurisdictional competence. Section 2(3) (r) of the Admiralty Jurisdiction Act gives the Federal High Court jurisdiction over "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 a foreign country. In this regard, this Section which differed from Section 254C (1) of the Constitution, which conferred the same jurisdiction on the National Industrial Court, is void to the extent of its inconsistency.

(b) Even though Section 251 of the Constitution provides for the admiralty jurisdiction of the Federal High Court, the express use of the word "notwithstanding" in Section 254(C) clearly made the said Section 251 subject to the latter. It follows therefore that as used in Section 254C (1) of the 1999 Constitution, no provision of the Constitution itself or any statute or legislation shall be allowed to prevail over the provisions, and neither shall it be capable of undermining the said Section 254C (1). The provisions of Section

[6] (2021)LPELR-56460(CA)

254 C (1) (a) and (k) of the 1999 Constitution (as amended) … is undoubtedly to oust the jurisdiction of any other Court to adjudicate on matters listed therein."

(c) It remains settled and well established that the lower Court fell into a serious error when it overlooked the overriding effect of the provisions of Section 254 C (1) as it relates to a claim for the payment of due and accrued wages of any workers, but more specifically workers who are employed in the maritime sector as members of crew of a sea going vessel. The lower Court also misconceived the law when it read the provisions of Section 251 (1) (g) of the Constitution, as amended along with Section 2 (3) (r) of the AJA only without focusing on the other provisions of the Constitution providing for similar jurisdiction for the National Industrial Court of Nigeria (NICN).

(d) "Since the NICN was established as a Court of special jurisdiction for labour related matters, it appears to me that the robust and more engaging arguments and submissions of learned counsel to the Appellants that the Federal High Court lacks jurisdiction to hear any case relating to the claim of wages of crew men on board a ship is more in line with the principles of interpretation of the Constitution and Statutes as well as existing established case law."

(e) "The learned trial Judge clearly read and misapplied the provisions of Section 254C(1)(b) in isolation, the learned trial Judge ought to have considered the entirety of Section 254C of the Constitution vis-a-vis, the Respondents' claim; the learned trial Judge misapprehended both the nature of the Respondents' claim and the application of the constitutional provisions that determine his jurisdiction cannot be faulted."

(f) "Since NICN is a Court of special jurisdiction for labour-related matters, FHC being held as not having jurisdiction to hear a case relating to claim for unpaid crew wages is more in line with the principles of interpretation of the Constitution and statutes and existing established case law."

15. Now let us see whether I will agree with this decision of their Lordships.

Section 251(1)(g) of the Constitution states that:

'*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…"

Section 2(3) (r) of the Admiralty Jurisdiction Act, 1991 (which describes the admiralty jurisdiction of the Federal High Court ("FHC") on upaid crew wages, states that a reference in this Act to a general maritime claim is a reference to- …..
"(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;"

Section 254C(1) of the Constitution states *that:-*

'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 unions, 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*;
(k) *relating to or connected with disputes arising from payment or nonpayment of salaries, wages*, pensions, gratuities, *allowances, benefits and any other entitlement of any employee, worker*, political or public office holder, judicial officer or any civil or public servant *in any part of the Federation and matters incidental thereto*.

16. Accordingly, two common threads running through the opening words of sections 251(1) and 254C(1) of the 1999 Constitution, is that the framers of the Constitution used in Section 251(1) of the 1999

Constitution the expression, *'Notwithstanding anything to the contrary contained in this* Constitution", whilst in the opening words of section 254C(1) of the 1999 Constitution, they used the expression, *'Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution*' and both FHC and NICN possess and exercise jurisdiction to the exclusion of any other Court in the civil causes or matters stated in those sections 251(1) and 254C(1) of the 1999 Constitution.

17. In NDIC v. Okem Enterprises Limited & Anor[7], the Supreme Court held that when the term "notwithstanding" is used in a section of a statute, it is meant to exclude an impinging or impeding effect of any other provision of the statute or other subordinate legislation so that the said section may fulfill itself. The Court further held that it followed that, as used in Section 251(1) of the 1999 Constitution, no provision of that Constitution shall be capable of undermining the said Section." **So, in my view, since what is contained in section 254C(1)(a) and (k) of the 1999 Constitution on unpaid worker's wages is contrary to section 251(1)(g) of the Constitution, the use of the word 'notwithstanding' in section 251(1) (g) of the Constitution, is meant to exclude the impinging or impeding effect of section 254C(1)(a) and (k) of the Constitution so that Section 251(1)(g) of the Constitution may fulfil itself. Also, because the same word 'notwithstanding' was used in Section 254C (1), it is meant to exclude the impinging or impeding effect of section 251(1)(g) of the Constitution. The effect of this interesting position is that since the framers of the Constitution have included in both sections 251(1)(g) and 254C (1) of the Constitution the word 'notwithstanding' that has excluded each other from impinging or impeding their fulfilling themselves, each of these sections is meant to operate without being impinged or impeded by the other**. Accordingly, the FHC ought to have been allowed to continue to exercise its admiralty jurisdiction on unpaid crew wages based on Section 251(1)(g) of the 1999 Constitution and Section 2(3)(r) of the AJA. This position is fortified by the rule of interpretation that the framers of Section 254C of the 1999 Constitution that is later than Section 251 of the 1999 Constitution, knew of, or are deemed to be

[7] (2004) LPELR-1999(SC)(Pp. 55 paras. D) See also Obi v. Inec & Ors (2007) LPELR-24347(SC) (Pp. 41 paras. B).

aware of, the contents of the earlier Section 251 when they made Section 254C of the same Constitution.

18. I noticed that the Court of Appeal in the Sam Purpose case did not consider and apply the effect of the word 'notwithstanding' in Section 251(1) of the Constitution even though in interpreting the word 'Notwithstanding' in Section 254C (1) of the 1999 Constitution, the Court referred to and relied on the case of NDIC v. Okem Enterprises Limited & Anor that had interpreted the word 'notwithstanding' in Section 251(1) of the Constitution. In my view, the Court of Appeal, should also have interpreted and applied the word 'notwithstanding' in section 251(1) of the 1999 Constitution in resolving the dispute especially after becoming aware that the word was interpreted in relation to section 251(1) of the Constitution that it was faced with construing in the case. However, I agree with Court of Appeal that the lower Court should have in reading the provisions of Section 251 (1) (g) of the Constitution, as amended along with Section 2 (3) (r) of the AJA, also focused on the other provisions of the Constitution such as Section 254C providing for the jurisdiction of the NICN.

19. Moreover, in the case of Inec v. Musa (2003)[8], the Supreme Court held that '**the provisions in a Constitution are of equal strength and constitutionality. No provision is inferior to the other and a fortiori no provision is superior to the other."** Per TOBI J.S.C. I am of the view that the consequence of this Inec v Musa judgment is that section 251(1)(g) of the Constitution is of equal strength and constitutionality and is not inferior to or superior to, section 254C(1) (a) and (k) of the Constitution and the latter is not inferior or superior but equal to the former. **Therefore, with the greatest respect to the Court of Appeal, Section 254(C)(1) of the Constitution does not have an overriding effect on Section 251(1)(g) of the Constitution as it relates to a claim for unpaid wages of members of a crew as the Court of Appeal had held. Neither the case of Inec v Musa nor the case of FGN v Oshiomole was referred to the Court of Appeal to assist it in coming to its decision. I believe its judgment would have been different if the Court of Appeal's attention had been drawn to the Inec v Musa**

[8] (2003) LPELR-24927(SC) p. 102 paras. D). See also Oshiomole v FGN (2001)LPELR-7570(CA)

case of the Supreme Court which is a judgment binding on the Court of Appeal under the doctrine of judicial precedent.

20. Another point is that the Supreme Court has held in AGF v Anuebunwa[9] that where there are two provisions, one special and the other general, covering the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. The reason behind this rule is that the legislature in making the special provisions is considering the particular case and expressing its will in regard to that case. In other words, the special case provided for in it is expected and taken out of the general provision and its ambit: the general provision does not apply. The rule of construction also applies when the special and the general provision are enacted in the same piece of legislation. [Gov., Kaduna State v. Kagoma (1982) 6 SC 87; Kraus Thompson Organization Ltd. v.N.I.P.S.S. (2004) 9 NWLR (Pt. 879) 631; Schroeder v. Major (1989) 2 NWLR (Pt. 101) 1; Orubu v. N.E.C. (1988) 5 NWLR (Pt.94) 323 referred to.] (Pp. 273-274, paras. H-E). **In my view, Section 251(1)(g) of the Constitution (read along with section 2(3)(r) of the AJA), is a special provision, and Section 254C(1) of the Constitution is a general provision, covering the same subject matter of unpaid ship's crew wages and employment, and having fallen within the words of the special provision, must be governed thereby under Section 251(1)(g) of the Constitution (read along with section 2(3)(r) of the AJA), and not by the terms of the general provision in Section 254C(1) of the Constitution. The reason behind this rule is that the legislature in making the special provision in Section 251(1) (g) of the Constitution is considering the particular case and expressing its will in** regard to that case of unpaid crew wages and is expected and taken out of the general provision and its ambit: the general provision in section 254C(1) of the Constitution does not apply.

21. Moreover, worldwide and traditionally, crew members or a master of a ship have always had, and exercised, rights of action in personam against the shipowner, or in rem against the ship, for unpaid wages and in the latter they can in an action in rem against the ship obtain a warrant to arrest the ship to obtain a pre-judgment security for

[9] (2022)14NWLR(Pt.1850)211(SC)

the satisfaction of their claims after getting a favourable judgment.[10] Crew wages give rise to maritime liens. Being a charge on maritime res arising by operation of law and binding the property, maritime lien can be enforced by an action in rem in such person's hands or the hands of a bona fide purchaser for value without notice, and so it is not affected by a subsequent sale of the res to a third party or a change of ownership. From the time it attaches, a maritime lien sticks to the ship like a leech and continues binding on the ship until it is discharged either by being satisfied, or from laches or delay of the owner or operation of law[11] , or by total destruction or capture or judicial sale or they become statute-barred by the effluxion of time. They are a revered and restricted class of admiralty rights which are enforceable only in rem following the traditional practice of the sea merchants and not in ordinary labour claims or in personam. These principles are developed for the convenience of resolving disputes which arise on the high seas and in relation to maritime related transactions and injuries suffered therefrom. Nations of the world are necessarily involved since no one nation has control over the high seas and in Nigeria, maritime liens are contained in Section 5(3)(C) of AJA and Section 66 of the Merchant Shipping Act, 2007. Only maritime claims in rem enjoy the liens. Several nations set up special Courts to administer maritime related cases otherwise known as admiralty jurisdiction. In Nigeria, the Federal High Court is conferred with this special admiralty jurisdiction under the Admiralty Jurisdiction Act of 1991.[12] The NICN is not constitutionally or statutorily empowered to hear and determine actions in rem against a ship or other property or by its Rules grant a warrant of arrest of ships or other property. Based on the Sam Purpose decision and contrary to what obtains in all maritime nations where unpaid crew wages give rise to maritime lien, crew members will not be able to apply for and obtain the arrest of a vessel and get a pre-judgment security in an action in rem before the NICN, that the Court of Appeal has now held to have jurisdiction over unpaid crew wages or in the FHC that the Court has held to lack jurisdiction to entertain and determine claims for unpaid crew wages. Consequently, Nigeria is now different from other maritime nations in this area as in rem action and arrest of the res for security are now dead in Nigeria in respect of crew's action for unpaid

[10] See IBE ABAI & CO (NIG) LTD & ANOR V. OCEANIC TRADERS NAVIGATION LTD (1907- 1979) 1 NSC 418; MT DELMAR & ANOR v. MT "ANE (EX MT LESTE") & ORS (2016) LPELR-40067(CA) (Pp. 17-18 paras. D)

[11] See "The Two Ellens" (1872) LR 4PC 161.

[12] Iroegbu v. MV Calabar Carrier & ors (2007) LPELR-5143(CA) (Pp. 17-18

wages. It will chase crews in Nigeria to other countries to enforce their claims for unpaid wages which will unfairly increase their costs of litigation or cause them to abandon their justified claims for unpaid wages.

22. Furthermore, the Court of Appeal stated that the interpretation to be given to Section 254C (1) of the 1999 Constitution was the literal approach as the draftsman did not mince words and it was clear and unambiguous, despite that neither sections 251(1)(g) nor 254C of the Constitution specifically referred to unpaid wages of crew to warrant the Court's resort to the literal rule of interpretation. Section 254C (1) (a) to (m) of the 1999 Constitution gave exclusive jurisdiction to the NICN on all labour relations or related matters and mentioned 'wages' on the face of it, but it does not refer to or mention wages of crew members. There not being any mention of ship's crew wages in Section 251(1)(g) or Section 254C(1) of the 1999 Constitution, literal interpretation, which is applied to only clear and unambiguous provisions, should not have been resorted to by the Court of Appeal in interpreting the 2 sections. The application of literal interpretation to Section 254(C)(1) of the 1999 Constitution that recognized that the word 'notwithstanding' is in it, should have on the application of literal interpretation to Section 251(1) of the Constitution, also recognized and applied the word 'notwithstanding' that is also in that section, but that was not what the Court of Appeal did. With the greatest respect to the Court of Appeal, it was not right when it resorted to a literal interpretation of section 254C(1) (a) and (k) but it did not use it on section 251(1)(g) of the 1999 Constitution. Section 254C of the Constitution did not confer admiralty jurisdiction (which includes Section 2(3)(r) of AJA) on the NICN. So, in order to avoid the absurdity of using the literal rule of interpretation in the circumstance, the Court of Appeal should have applied the mischief or purposive rule of interpretation of statutes.

23. The reason for section 254C of the Constitution is mainly to upgrade the status of the NICN as a superior court of record created by the Constitution and not to take away from the FHC, its admiralty jurisdiction particularly as the Constitution or the NICN Act has not conferred admiralty jurisdiction on the NICN or any other court in Nigeria. There is no maritime legislation in Nigeria that mentions NICN because it has nothing to do with admiralty claims and disputes.

24. Also, I am of the opinion that because Section 254C(1)(b) referred to the Labour Act, the Labour Act including its section 91, have been incorporated by reference into the Constitution, have the force of law as the Constitution itself; override the provisions of any other law to the contrary[13], and should have been interpreted liberally or broadly like any other Constitutional provision unless there is an absurdity to be avoided. In section 91 of the Labour Act, the word "wages" means remuneration or earnings (however designated or calculated) capable of being expressed in terms of 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 for services rendered or to be rendered. In the said Section 91 of Labour Act, the word "worker" **means** any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, **but does not include** - **(f) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply…**."

Accordingly, as the Labour Act does not apply to any person employed in a vessel (such as member of the crew or Master of a vessel), Section 254C(1)(b) of the 1999 Constitution that has incorporated the Labour Act into the jurisdiction of the NICN cannot apply to, or be taken to have given jurisdiction to NICN over, crew's unpaid wages.

25. Another point I want to make is that when one considers the principle of liberal and broad "jurisprudence of constitutional interpretation" stated in Skye Bank Plc v Iwu[14], *it is anathematic to construe a section in such a manner as to render other sections redundant or superfluous and improper to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction, equally, in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends*. In A.G. Bendel State v A.G Federation & Ors[15], the Supreme Court held that a

[13] Abia State University, Uturu v Anyaibe (1996) 3 NWLR (pt. 439) 646 at 661.
[14] (2017) LPELR- 42595(SC) at pages 26-30
[15] (1981) LPELR- 605(SC), at pages 123 124

construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context and that a *constitutional provision should not be construed to defeat its evident purpose.*

26. I am of the opinion that *by the broad or liberal principle of the interpretation* to best carry out the objects and purpose of the Constitution, Section 254C(1) of the Constitution ought not to be *construed in such a manner as to render other section 251(1)(g) of the Constitution redundant with respect to any claim or dispute under the admiralty jurisdiction of the FHC* and section 254C(1) of the Constitution should not be interpreted *so as to defeat the obvious ends that section 251(1)(g) of the Constitution was designed to serve or its evident purpose.* The cases of Inec v Musa and Oshiomole v. FGC on the equality of all constitutional provisions were not cited to, or considered by, the Court of Appeal in the Sam Purpose case. In my view the NICN's special and exclusive jurisdiction for labour-related matters, should not interfere with the FHC's exclusive admiralty jurisdiction in respect of claims for unpaid crew wages based on equality of the provisions of the Constitution and liberal interpretation of its provisions.

27. It is apposite to say that in a topic I titled **"The controversy in the Jurisdiction of the Federal High Court and National Industrial Court over Maritime Labour, Wages and Incidental Matters**" in my book[16], I had after reviewing the controversial sections and case law, suggested and concluded as follows:-

"In the circumstance, Section 254C(1) of the 1999 Constitution did not break new jurisprudential or constitutional grounds or take away or nullify the admiralty jurisdiction of the Federal High Court over maritime labour's wages and employment and incidental claims. Whilst an amendment of either section 251 or section 254C(1) of the 1999 Constitution by the National Assembly to remove the grey areas in these sections is desirable, without such an amendment (which amendment could undoubtedly take ages during which crews would be unfairly deprived of the advantages of admiralty claims in the Federal

[16] "The Dynamism of Law and Practice and Practice in Nigeria" Chapter 12, Pages 154-170.

High Court in ventilating their claims), my suggested solution is that the Courts can in appropriate cases still properly interpret the provisions of sections 251(1)(g) and 254C(1)(a) and (k) of the 1999 Constitution based on the position espoused by the Supreme Court in the Ladoja, Musa and Oshiomole cases I have referred to earlier and maintain the admiralty jurisdiction of the Federal High Court in respect of maritime labour, wages and incidental matters."

Due to the opinions I have expressed above, I am of the view that the FHC has jurisdiction to hear and determine the claim in the Sam Purpose case and with the greatest respect to the Justices of the Court of Appeal, I disagree with their reasoning and decision.

B. Arbitral Proceedings (pages 21-35).

28. My understanding of Order 3 rule 5 of AJPR is that it concerns applications for two matters that could be brought by an Originating Motion namely: -

(a) the recognition or enforcement of an arbitration agreement or arbitral award made in relation to any maritime claim in any domestic arbitration proceedings and,

(b) the recognition or enforcement of an arbitration agreement or arbitral award made in relation to any maritime claim in any foreign arbitration proceeding.

The former is simple because it deals with 'recognition' or enforcement of arbitration agreement or award made in relation to any maritime claim in a domestic arbitration proceeding. I think the latter refers to the application for the registration in the FHC for the purpose of enforcement as FHC's judgment, of a foreign arbitral award made in a maritime claim. A (foreign) arbitral award is equivalent to a (foreign) court's judgment which under the Foreign Judgements (Reciprocal Enforcement) Act, can be registered as a judgment of a Nigerian court and be enforced in Nigeria. However, I do not agree that Order 3 rule 5 AJPR is misplaced because the Arbitration and Mediation Act, 2023 ("AMA") has made provisions for the recognition and enforcement of local and foreign arbitral awards since whereas AMA can be regarded as the general provision, Order 3 rule 5 AJPR can be regarded as a special provision specifically and directly meant for maritime arbitration agreement and awards. Also, Order 3 rule 5 AJPR can apply side by side, with and be complemented and supplemented by, AMA. In addition, I think that as of 2022 when the draft of the AJPR was concluded, AMA had not been

enacted and so the framers of the former were not aware of the provisions made in and by AMA. Likewise, I am of the view that Order 7 rule 8 of AJPR does not relate to Order 3 rule 5 of AJPR but relates to Order 3 rule 7 of AJPR dealing with the service of a writ of summons in an action *in personam* out of the jurisdiction of the FHC.

29. On a proper examination and interpretation of Order 7 rule 8 of AJPR, it now allows without the filing of an action in rem before the FHC for a substantive admiralty claim, an application to be made for a warrant of arrest of a ship or other property within Nigerian waters, in respect of a claim commenced in a foreign court or arbitration proceedings commenced within or outside Nigeria, if certain conditions including the annexure of the original or certified true copies of the court or arbitration processes and notarized undertaking of an indemnity, have been met. A major problem here is that the substantive claim or suit commenced in a court abroad or by arbitration within or outside Nigeria is not stated to be, and does not have to be, an admiralty action or claim in rem, which in admiralty law, is the only type of action that can be the basis of a ship or other property arrest for the procurement of a pre-judgment security. So, a ship or other property in Nigeria can now be arrested to obtain security to satisfy a non-admiralty (in rem) claim in Nigeria or a non-admiralty (in rem) arbitration in Nigeria or abroad, without filing a substantive admiralty in rem action in Nigeria simultaneously with the application.

30. By Order 7 rule 1(1) of AJPR, it is only in respect of a proceeding commenced as an action in rem that by a motion ex parte, a party may apply for a warrant of arrest of a ship or other property. In MT Delmar v MT Ane (Ex MT Leste)[17], it was held that an action in rem is a pre-requisite to the making of any arrest order by a court in an admiralty suit.[18]The Court also held that because arrest is to obtain a pre-judgment security, the issue of arrest or security in lieu of arrest of a vessel would not arise if there is no subsisting action in rem against the vessel or when the person seeking the security is not a party to such an action or has no claim in such action.[19]

[17] (2016)13NWLR(Pt1530) 482.

[18] . [M/V "DaQing Shan" v. P.A.C. Ltd. (1991) 8 NWLR (Pt. 209)354 referred to.] (P. 504, paras. E-F).

[19] [Ibe Abai Coy (Nig.) Ltd. v. Oceanic Traders Navigation Ltd. (1907-1979) 1 NSC 418 referred to.](P. 504, paras. F-G).

31. Consequently, I think Order 7 rule 8 AJPR as couched, unduly gives a person who has filed a substantive non-admiralty in rem claim in a foreign court or a substantive non-admiralty in rem claim in an arbitration proceeding within or outside Nigeria, an advantage (which has up till now been the exclusive preserve of a person who has filed an admiralty action in rem in the FHC of Nigeria) over a person who has filed a non-admiralty in rem case in Nigeria that will not have such a right to apply for the arrest of a maritime res. A claim commenced in a court outside Nigeria or commenced by way of arbitration proceedings within or outside Nigeria is not one of the substantive admiralty claims in AJA. Even in the case of filing in Court, a caveat against the release from arrest of a ship or property in lieu of obtaining a further arrest of that ship or property for an admiralty action in rem, it has been held that a substantive claim is necessary before any relief can be granted the caveator by the Court because there has to be a claim before an application to arrest a vessel can be made, let alone where the claim is not even an admiralty in rem claim in nature. See MT Delmar v MT Ane (Ex MT Leste)[20]. Consequently, I agree with Faji J that the application under Order 7 rule 8 AJPR is different from an application for the satisfaction or enforcement of a judgment given by a court including a foreign court against a ship or other property in an admiralty proceeding in rem as provided for in Section 2(2)(C) of the AJA and a claim for the enforcement of or a claim arising out of an arbitral award (including a foreign award made in respect of a proprietary maritime claim or a claim referred to in any paragraph preceding Section 2(3)(t) of the AJA.

32. The framers of Order 7 rule 8 meant well by wanting to obtain security in Nigeria to support arbitration in and outside Nigeria and non-arbitration proceeding abroad especially when the ship or other property to be arrested to obtain the pre-judgment security is in Nigeria, but not having been elegantly drafted, it should be reviewed. The rule should specifically state that the Motion to arrest the vessel or other property will be ex parte just like in Order 7 rule 1(1) of AJPR. Likewise, Order 7 rule 8 AJPR being an adjectival or procedural law, without the substantive admiralty law (AJA) being amended to accommodate its substance, the principles enunciated by the Supreme Court in Messrs

[20] (2016)13NWLR(Pt1530) 482

NV Scheep & Anor v The MV "S Araz & Anor[21] will be an uphill task for an applicant under the rule to overcome. Only an Act of the National Assembly amending the AJA and not a rule of Court can change the judgment of the Supreme Court on the matter.

C. Arrest of Ships (pages 35-39).

33. By the combined reading of Order 7 rule 1 (2), (5) and (6) of AJPR, an application for a warrant of arrest of a ship or other property may be filed physically at the Admiralty Registry or by e-filing at the Admiralty E-filing Unit,[22] and shall be heard physically or virtually on any day including Sundays and public holidays, and determined within 24 hours of its being filed (where practicable). These are novel and admirable as they will facilitate the expeditious filing, hearing and determination of an application for an arrest of a ship or other property. I agree with Faji J that the provisions for virtual hearing for arrest is practicable. However, since the application being heard and determined within 24 hours of its being filed is only where practicable, it implies that a Judge of the FHC who fails or is unable to hear and determine the application for a warrant of arrest within 24 hours of its being filed, can claim it was because it was not practicable to do so and be excused in the delay occasioned by his failure or inability. I think the expression 'where practicable' should not have been stated or retained in the rule so as to maintain strict compliance with the stated 24-hour time frame for the hearing and determination of applications for arrest of ships or other property.

34. Also, for the intended speedy filing, hearing and determination of the application to arrest a ship or other property to be achieved, the Admiralty Registry, Admiralty E-filing Unit (and Admiralty Divisions possibly) must be put in place, functional and efficient, which is not yet the case. A clarion call is hereby being made to the National Judicial Council to quickly complete the long-awaited e-filing project and on the CJ of the FHC to quickly establish the Admiralty Registry, Admiralty E-filing Unit and Admiralty Divisions so as quicken admiralty justice

[21] (2000) LPELR-1866(SC). The Supreme Court inter alia held that the claim was not for the enforcement of or a claim arising out of an arbitral award, but it is for the sole purpose of obtaining security for the satisfaction of whatever award that might ultimately be made in the plaintiffs' favour n the UK arbitration proceedings. It also stated that the Plaintiffs could not invoke the admiralty jurisdiction of the FHC by an action in rem for that purpose as our law has not given the FHC such jurisdiction.

[22] See Order 58 CPR for e-filing, e-filing Registry and e-filing Registrar.

delivery and cause Nigeria to join the comity of maritime nations that have deployed such mechanism in quickening admiralty justice delivery. This is because admiralty matters by universal practice and procedure must be given expeditious trial and utmost dispatch.[23]

35. I wish to draw particular attention to Order 7 rule 1 (9) of AJPR which states that a warrant of arrest shall not be issued until the applicant for it has filed an affidavit sworn to by him or his agent containing the particulars required by Order 7 rule 1(11). I wish to state that using the word 'shall' in this rule connoting mandatory and not discretionary duty, its framers intend that a Judge of the FHC hearing an application for a warrant of arrest must ensure that all the requirements in that rule are met before making the order. So, the Judge should carefully take time to check from the processes before him whether all these requirements have been met by an applicant for ship or other property arrest, before making the order. If all of them are not met, the application must be refused. Thus, there will be a drastic reduction in, if not a total elimination of, the number of wrongfully-made orders of arrests of ships or other property.

36. The issuance of a report on the outcome of any search of the register of caveats as in Form 8A is most welcome and will meet one of the requirements for arrest stated in Order 7 rule 7 AJPR which is for the purpose of knowing if there is a caveat against arrest in existence in respect of a ship or property.

D. **Caveats (pages 39-50**).

37. The requirement in Order 9 rule 3(3) AJPR for the Admiralty Marshal to prepare and file in the Court or with the Judge, a monthly report containing the location, security status and condition of an arrested ship or other property under his custody and immediately deliver it to the parties to the suit or as the court may order, is novel. It will make the Admiralty Marshal more accountable to the parties and FHC on any arrested ship or other property under his custody. It is a good step in the right direction that will ensure proper monitoring of and quick awareness by the parties and the FHC, of any misfortune including jumping bail, sinking risk, that may have happened or may

[23] See, Tiwani Limited v. Citi Trust Merchant Bank Limited (1997) 8NWLR [Pt.515] 140 at 155 CA

likely happen to, the res under arrest and in his custody, so that immediate corrective measures can be taken.

38. I do not agree with Faji J's opinion that since a vessel can only be sold by an order of Court, the Admiralty Marshal cannot seek a directive of the Court that an arrested vessel be sold under Order 9 rule 6(2) AJPR allowing him to seek the directives of the court where the arrestor fails to continue to meet the Admiralty Marshal's expenses in relation to the continued arrest of the vessel. This is because a court's order and a court's directive are interchangeable. A court's order is a written direction or command delivered by the Court and it may be a final or an interlocutory order or commands.[24] I think that rather than base the court's directives on non-payment of Admiralty Marshal's expenses in relation to 'the continued arrest of the vessel', a specified duration of non-payment of Admiralty Marshal's expenses after the ship's arrest should have been stated because the period that will amount to 'a continued arrest' may be difficult to define and determine. Besides, an arrestor may as well fail to pay Admiralty Marshal's expenses so that the vessel can be quickly sold to satisfy any judgment in his favour. Of course, it is only a vessel whose owner has not provided a prejudgment security (may be due to lack of funds or his decision to contest the arrest which drags on), that can continue to be under arrest. Consequently, it is arguable that for a vessel to be sold under Order 9 rule 6(2) AJPR, the owners must have not furnished prejudgment security for her release and the arrestor must have failed to meet the Admiralty Marshal's expenses but if the owner has quickly provided such security and got the ship released from arrest, the situation of continued unpaid Admiralty Marshal's expenses will not arise.

39. The information I obtained from the website of the United Nations on its Commission on International Trade Law (UNCITRAL)[25] on the United Nations Convention on the International Effects of Judicial Sales of Ships, also known as the "Beijing Convention on the Judicial Sale of Ships", shows the Convention has the following merits namely:-

(a) It establishes a harmonized regime for giving international effect to judicial sales, while preserving domestic law governing the

[24] Black's Law Dictionary 10th Edition page 1270.
[25] Uncitral.un.org/en/judicialsalesofships

procedure of judicial sales and the circumstances in which judicial sales confer clean title.

(b) By ensuring legal certainty as to the title that the purchaser acquires in the ship as it navigates internationally, the Convention is designed to maximize the price that the ship can attract in the market and the proceeds available for distribution among creditors, and to promote international trade.

(c) The basic rule of the Convention is that a judicial sale conducted in one State Party which has the effect of conferring clean title on the purchaser has the same effect in every other State Party (article 6) but this basic rule is subject only to a public policy exception (article 10).

(d) It created additional rules which establish how a judicial sale is given effect after completion namely (i) the ship registry deregisters the ship or transfers registration at the request of the purchaser (article 7) (ii) a prohibition on arresting the ship for a claim arising from a pre-existing right or interest (i.e. a right or interest extinguished by the sale) (article 8). (iii) the conferral of exclusive jurisdiction on the courts of the State of judicial sale to hear a challenge to the judicial sale (article 9).

(e) It supports the operation of the regime and to safeguard the rights of parties with an interest in the ship, the Convention provides for the issuance of two instruments: a notice of judicial sale (article 4) and a certificate of judicial sale (article 5).

(f) It also establishes an online repository of those instruments which is freely accessible to any interested person or entity (article 11).

(g) The Convention regime is “closed”, in the sense that it applies only among States Parties (article 3), but “not exclusive”, in the sense that it does not displace other bases for giving effect to judicial sales, for instance under more favourable domestic law regimes (article 14).

In summary, the Convention is said to provide the following amongst other advantages namely:-

- Legal certainty: Ensures clarity on the title acquired by the purchaser as the ship travels internationally.
- Maximized market value: Aims to increase the price the ship can command in the market.
- Increased proceeds: Seeks to boost the proceeds available for distribution among creditors.

- Promotion of international trade: Encourages global trade by establishing a harmonized regime for judicial sales.
- Clear rules: Establishes rules for the completion and effect of judicial sales.
- Protection of interests: Safeguards the rights of parties with an interest in the ship.
- Exclusive jurisdiction: Provides clear jurisdiction for challenges to judicial sales.
- Accessibility: Maintains an online repository of relevant instruments for easy access.

40. Despite its numerous merits, Nigeria is not yet a party to the Convention. So, as stipulated in Section 12 of the 1999 Constitution, Nigeria will have to become a party to the Convention first before its National Assembly can domesticate it as a part of its municipal laws to make it enforceable in Nigeria. This is because Nigeria operates the transformation (and not incorporation) process of implementing treaties to which it is a party. By transformation system, a treaty becomes domestic law by a legislative act that re-enacts the treaty's provisions as a national law that supersedes the original treaty. In the case of AGF & Ors v. Adeyemo[26], it was held that where a treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990, it becomes binding and our Courts must give effect to it like all other laws falling within the judicial powers of the Courts.[27]

41. I recommend that due to its merits, the Federal Ministry of Justice, and the Federal Ministry of Marine and Blue Economy should work speedily to facilitate Nigeria becoming a party to this treaty and the National Assembly thereafter domesticating it to make it enforceable.

My chair, ladies and gentlemen, this is where I will stop because of time. I thank you for listening.

[26] (2022) LPELR-58648(CA) (Pp. 70-73 paras. D)
[27] See also Abacha & Ors v. Fawehinmi (2000) 6 NWLR (Pt. 660) 247.

E. Reparations for Needless Arrests (pages 50-52).

bronwen energy trading ltd. v. oan overseas agency (nig) ltd & ors (2022)LPELR-57306(SC) (Pp. 22-25 paras. F) The question immediately arising is whether the Court of appeal did rightly come to the conclusion that the arrest was wrongful when it found in the lead judgment delivered by Honourable Justice Yargata Byenchit Nimpar, JCA, thus: "Let me first state categorically that the Judgment sum awarded against the appellant as outstanding fees for services rendered is duly supported by evidence and it stands" What seems glaring from the facts is that the 1st respondent was in possession of the vessel at the relevant time, the 1st respondent was also the owner of the cargo of Premium Motor Spirit (PMS) on board the vessel which cargo was also arrested by Order of Courts. Therefore, there were no facts upon which the Court of Appeal could infer unreasonableness and without good cause for the arrest of both the vessel and the cargo on board the vessel. In Compania Navegacion & Financiera Bosnia S.A. (Owners of the ship M.V. Bosnia) v. Mercantile Bank of Nigeria Limited. The BOSNIA No.2 (1980-1986) Nigeria Shipping Cases (NSC) Vol.2, it was held by the Court of Appeal that it is settled law that for any case of unjustified arrest of a ship to give rise to a successful action in damages there must be proof of either bad faith or gross negligence. That Court went on to state that mala fides or bad faith, implies a malicious intent, improper motive and as in the common law action of malicious prosecution, the bad faith has generally to be proved as a separate requirement from the absence of justification for the arrest. Another way of stating it simply is that the head of claim is not a given, just by the mere assertion of an arrest without more. It must be properly established that the arrest was unreasonable, without just cause or in bad faith and that has not happened here."

Per PETER-ODILI ,JSC (Pp. 22-25, paras. F-A)

F. Suits filed in the Wrong Division. (Pages 52-53).

G. Processes to be filed in an action in rem (pages 53-55).

H. Service of Originating Process in Action in Rem (pages 55-56).

I. Security for Costs (pages 56-57).

J. Intervener (pages 57-58).

K. Definition of an Aircraft (pages 58-59).