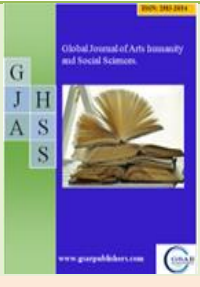
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A Study on the Existing Rules of Procedure for Adjudicating Maritime Disputes in Mainland Tanzania

By

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Abstract

The study examines of the existing rules of procedure used to adjudicate maritime disputes in mainland Tanzania and its section sets forth the rationale or justification which answer the question asks that; Why this topic was chosen? The topic was chosen with the main purpose of facilitating for improvement of maritime sector in Tanzania, whereby the researcher wishes to assist Admiralty Court in Tanzania to have rules of procedure for proper and effective resolution(s) in adjudication of maritime disputes which can avoid contradictions of fundamental legal principles governing maritime cases in Tanzania.

Keywords; Rules of Procedure, Maritime Disputes, Actin in Rem, Maritime Lien, Admiralty Law, Maritime Law, Blue Economy

INTRODUCTION

Indian Ocean partly is situated in Tanzania and along the Ocean in Tanzania mainland there are three major ports. Dar es Salaam port, Mtwara port and Tanga port. These ports provide services within in Tanzania and in the other countries like Uganda, Rwanda, Zambia, Malawi, Burundi, and Democratic Republic of Congo. Tanzania mainland is also endowed among others with beautiful lakes and rivers such as; Lake Victoria, Lake Tanganyika and lake Nyasa, Rufiji River, Kagera River, Ruvu River and Ruvuma River. Most of the people from Mainland Tanzania and outside Tanzania enjoys for food and livelihood from endowment resources of this water. This is because many of the people from Tanzania and abroad countries have invested in this sector. The uniqueness of this sector in mainland Tanzania has led to the country to prepare the Blue Economy Agenda.

Investing on the blue economy sometimes is a risky business. It involves huge penalties and compensations in case a party loses a case in dispute which may arise from various maritime activities and maritime issues including, crew wages, salvages, carriage of goods and passengers, marine pollution, marine tourism, shipping accidents among others.

The activities within the blue economy are intricately linked to maritime disputes in mainland Tanzania. For the maintenance sustainable and thriving blue economy in mainland Tanzania resolving maritime disputes is crucial. These disputes are effectively adjudicated internationally and domestically with Admiralty laws before admiralty Court, these admiralty laws to ensure maritime justice is well determined timely should have their admiralty rules of procedure.

The admiralty jurisdiction in mainland Tanzania is conferred to the High Court and the Resident Magistrate courts. This is according to section 3 of the Judicature and Application of Laws Act [CAP 358 R.E 2019]. The Civil Procedure Code [CAP 33 R.E 2019] through section 5 is the existing rules of procedure used for adjudicating maritime disputes in Tanzania mainland. However, the code does not have rules governing issues of action in rem which happen under maritime lien. The Civil Procedure Code of India, 1908 which is resembling with the Civil Procedure Code of Tanzania [CAP33 R.E 2019] it has section 122. This section allows the High Court of India to make rules to regulate the practice before Court. From section 122, the High Court of India made it to



have sea under their geographical jurisdiction like BOMBAY and MADRES have in their Civil Procedure Codes High Court Rules for admiralty cases covering issues of action in rem raised from maritime lien. However, the Civil Procedure Code [CAP 33 R.E 2019] of Tanzania does not have section 122.

From the above law and fact, it is this reason made mainland Tanzania to lack specific admiralty rules of procedure to adjudicate issues of action in rem where the ship can be sued and arrested regardless of the existence of the Civil Procedure Code [CAP 33 R.E 2019] as general civil procedural law for all matters of civil in nature unless there is special procedure to govern such case. However, section 4 of the Judicature and Application of Laws Act [CAP 358 R.E 2019] gives the room to the Chief Justice of Tanzania to make rules to regulate the practice to the High Court and Subordinate Court but still today there is no admiralty rules of procedure in mainland Tanzania.

Therefore, having clear and special rules of procedure in place to address maritime disputes including issues of action in rem raised from maritime lien, Mainland Tanzania can ensure the smooth operation and growth of maritime sector while safeguarding its marine resources and coastal areas.

LITERATURE REVIEW

MOHAMMED,¹ the author provided Part Two of the Convention² which states that maritime matters of Admiralty Jurisdiction such as, power to arrest a ship, Jurisdiction in rem, and Jurisdiction in personam and described how to incorporate.

However, the author did not examine whether is there any existing admiralty rules of procedure used to adjudicate maritime disputes resulted from maritime lien specifically matters of action in rem in mainland Tanzania?

ABDALLA,³ under this part the Author contended that, there is great development in maritime industries in the traditional maritime countries but in Tanzania there is big difference between those countries, the author discussed further on what brings such great difference despite of having large areas covered with the sea in Tanzania, that is the presence of ineffective and outdated maritime legislation in its legal regime which can foster the determination of maritime disputes. However, this dissertation dealt with examination of the present rules of procedure basing on what existing rules used for adjudicating maritime disputes in mainland Tanzania.

¹ MOHAMMED, Rashid Juma (2020), *An Act to Provide for the Effective Incorporation and Implementation of the International Convention on Arrest of Ships 1999 and Other Matters*, United of Republic of Tanzania

² *The International Convention on Arrest of Ships 1999 And Other Matters*

³ ABDALLA, Shaaban (2009), *Maritime Law and Legislation in Administration of Maritime Affairs*, Faculty of Law, Lund University

However, the author went further on discussing looking on Action Administrative Law Admiralty,⁴ where the author said to law is administered in admiralty as follows: -

“It is not competent to admiralty Court and it has no jurisdiction to administer any other law than its own. Generally, the Admiralty Court is governed by the civil law, the law maritime, and law merchant”

Therefore, the opinion of the author in this article is insisting for admiralty court to be administered with maritime law, the author reflect the need of having admiralty rules of procedure for adjudicating well maritime disputes but the author left behind study of the existing rules of procedure used to adjudicate maritime disputes in mainland Tanzania.

HILTON,⁵ however in his article the author did not touch on how to advance on the use of the existing rules of procedure used to adjudicate maritime disputes settlement in mainland Tanzania.

The author only pointed out that the Maritime Industry in South Africa as the major shipping routes in the world, also the author added on showing how the maritime sector faces threats of piracy and legal challenges in respect of the arrest associated ships for arbitration or contemplated, pending or proceeding due to lacking proper maritime legal regime and later the author showed how the law was reformed to accommodate the legal challenges before court, regardless of the country having large commercial ports enjoying major capital investments, and with a seat on the Council of the International Maritime Organization.

Therefore, the author insisted on making law reforms to accommodate these legal challenges as mentioned above. However, the author did not talk anything about maritime legal challenge facing admiralty court of mainland Tanzania.

Bendera,⁶ the author provided the rules used to adjudicate maritime matters such as arrest of ship in mainland Tanzania is The Civil Procedure Code [CAP 33 R.E 2022] especially Order XXXVI Rules 6 and 7. However, it is erroneously used by the admiralty Courts of Tanzania since this law does not have section which allow the High Court to make rules like that of Civil Procedure Code of India, 1908 which has section 122. From this section Indian High Court made admiralty rules of procedure used in the arrest of the ship.

The author added by saying that, “Merchant ships do sail in the seas and enter various ports while performing various maritime transport activities. When a foreign ship is in a Tanzanian port and a claim arises against the ship owner then two things are apparent; first is that an action against a legal entity represented by a person,

⁴ Hulsbury, the Digest (1992), *Action Administrative Law Admiralty*,

⁵ STANILAND, Hilton (2010), *Admiralty Law, Sabinet cart, African Journals*, vol.2010, no.1

⁶ BENDERA, Ibrahim Mbiu, *Some Highlights on Procedure in Admiralty Cases in Tanzania*

that is the ship owner becomes difficult since he is located outside the jurisdiction of the court.”

The author recommended Tanzania to adopt British and Wales the legal position which has admiralty rules of procedure or to take other countries legal position like the Indian position, Canada, United State of America whereby admiralty jurisdiction are remained with the High Court.

Therefore, the author has never researched on the study of the existing rules of procedure used for adjudicating maritime disputes in mainland Tanzania. The author he only highlighted on procedure in Admiralty cases in Tanzania.

One of the Empirical studies is of HIACINTER,⁷ who stated that when admiralty matters come before Admiralty court of Tanzania such as Piracy the court lack admiralty rules of procedures. Thus, UNCLOS as a Constitution for the Oceans’ covering almost all aspects of the oceans does not provide rules of procedure for prosecution of captured pirates as well such issues are left to the discretion of each individual state’s legal systems, although of course, adhering to UNCLOS provisions as a guideline. Apparently, rules regulating practice and procedure of admiralty matters do not exist in Tanzania.⁸

She added by saying that, however, section 4 of the Judicature and Application of Laws Act [CAP. 358 R.E 2019] provides powers to the Chief Justice⁹ to make rules for regulating the practice before court. In this regard, piracy proceedings in Tanzania are not done under specific admiralty rules because the rules are not yet made but are all piracy matters are entertained under the rules found in the Criminal procedure Act¹⁰ [CAP 20 R.E 2019].

In this empirical study the researcher specifically researched on assessment of Tanzania’s legal regime for combating the threat of piracy. She portrayed the lack of admiralty rules in admiralty court of Tanzania for prosecuting pirates whereby they used Criminal Procedure Act¹¹ in admiralty matters such as what the author was focusing on matters of piracy. However, the researcher did not touch on the existing rules of procedure used to adjudicate maritime disputes in mainland Tanzania specifically on maritime civil cases such: suing and arrest of a ship pending civil maritime case to be determined.

Mackay,¹² presented the origins of admiralty law, provided different definitions concerning admiralty laws such as admiralty jurisdiction and admiralty law, also the author provided the practice of the High Court of Tanzania on matters of admiralty

disputes while using admiralty rules of procedure. The author again, discussed about how law is administered in admiralty that if maritime disputes is adjudicated the law to be used is admiralty law including admiralty rules. And the author discussed that the foreign aspects of admiralty Jurisdiction that admiralty law is now international phenomena most of the country uses admiralty law in admiralty matters. However, all these laws were emanated from England. Although different parts of admiralty rules of procedure before admiralty court were discussed by the Author, but the author did not go further to the study of the existing rules of procedure used for adjudicating maritime disputes in mainland Tanzania.

Wambua,¹³ stated that in the Article, “the Republic of Kenya entered into bilateral agreements (MOUs) between the leading maritime nations. Through this agreement Kenya prosecuted all suspects of pirates at the High Seas. Kenya changed the use of its Penal Code¹⁴ to prosecute Pirates as per the case of Mohamud Mohamed Dashi and others¹⁵. In 2009 September Kenya passed a new law (the Merchant Shipping Act) which extended the jurisdiction of Kenyan Courts to try piracy committed by non-nationals.”

However, the author did not touch on the study of the existing of the rules of procedure used to adjudicate maritime disputes in mainland Tanzania.

RESEARCH METHODOLOGY

Doctrinal Legal Research; the research based on Traditional Doctrinal Legal Research that the researcher applied qualitative method, under this method the researcher outlined the systematic approach and methods used to investigate and analyze the existing rules of procedures used for adjudicating maritime disputes in mainland Tanzania. The Doctrinal legal research method helped the researcher to examine different statutory provisions by employing the use of Rules of statutory interpretation.

The study area, was conducted at Dar es Salaam in the High Court of the United Republic of Tanzania Commercial Division at Dar es Salaam region.

The methods of data Collection; the primary data was collected by the researcher through Observation, Questionnaire and Interview and secondary data was collected through documentary review, articles and journals.

⁷ RWECHUNGURA, *Hiacinter Burchard (2023), Assessment of Tanzania’s Legal Regime for Combating the Threat of Piracy, The Open University of Tanzania. PP 151-154*

⁸ Ibid

⁹ In the United State of Tanzania.

¹⁰ [CAP 20 R.E 2019]

¹¹ [CAP 20 R.E 2019]

¹² MACKAY, Lord of Clashfern (2001), *Halsbury’s Laws of England, 4th Edition Reissue, Butter Worths London. Pp 301-481*

¹³ WAMBUA Paul Musili, (2012) *The jurisdiction challenges to the prosecution of piracy cases in Kenya, WMU Journal of Maritime Affairs*

¹⁴ [CAP 63] *Laws of Kenya.*

¹⁵ [2010] eKLR, ruled that “Kenya had no jurisdiction to try suspected pirates under that law.



Data Analysis; the technique used by the researcher to analysis data was explanatory procedures through predictive analysis. This technique was used by the researcher on explaining relationship between legal variables that is dependent and independent variable.

Under this method of data collection, the researcher also employed qualitative analysis technique from this technique helped the researcher to understand underlying meanings such that those from the case law, statutes, and legal documents.

The research design; the study employed of the rules of procedure for adjudicating maritime disputes in mainland Tanzania, this method involves outlining the overall plan and structure for the research study. This included details on how data has been collected, analyzed, and interpreted to investigate the effectiveness and application of the existing rules of procedure used for adjudicating maritime disputes in mainland Tanzania. In this dissertation as qualitative method was used, so researcher did not use diagrams and complicated tables, only simple table and figures are only used by the researcher in the whole work of this research.

Historical approach,¹⁶ the method was used by the researcher to know the development of the rules of procedure over time internationally and domestically. The method focused on exploring the historical context, past legal frameworks and presents that have shaped the current existing rules of procedure used to adjudicate maritime disputes in the mainland Tanzania.

The Comparative method; was employed in analyzing and comparing the existing rules of procedure used to adjudicate maritime disputes in mainland Tanzania with those of other jurisdictions or countries like; England and Wales, The United State of America, Canada, India, Kenya and south Africa their rules used to adjudicate maritime disputes was compared to these the existing admiralty rules used to adjudicate maritime disputes in Tanzania mainland.

Countries like; England and Wales, the United State of America, Canada, and India was compared to these admiralty rules of procedure in Tanzania

Sampling; is the process of selecting number of individual or objective from a population such that the selected group contain element representative of the characteristics found in the entire group.¹⁷ Simple random sampling was employed by the researcher.

Sample size

Data were collected from legal counsels, judicial officers, public servants, and private personnel including experts. The table to show sample size is as follows blow;

Table 3.1 Expected sample size

Sample unit	Expected sample size
Legal Counsel	5

¹⁶ Ibid

¹⁷ Orodho J, and Kombo (2002), *Research Methodology*.

Judicial Officer	5
Public Servants	5
Private Personnel including Experts	5
Total	20

Source: Researchers' Construction

Forms of Legal Reasoning; this study was used various forms of legal reasoning including deductive reasoning together with inductive reasoning, this method was employed in appropriate environment, data was analyzed and the source were these materials extracted the data was collected, analyzed and presented in relation with its context. Libraries, relevant websites like those of the governments, international and multilateral Institutions was used as the sources of where explained facts of the study were mainly obtained.

Ethical considerations; in this legal research addressed by prioritizing to ensure the principle of integrity where human rights and the rule of confidentiality was observed for all sensitive information which was obtained. Again, the method ensured the reliability of data, trustworthy sources, moreover, ethical guidelines followed by obtaining informed consent from participants and safeguarding their anonymity, their rights of privacy which was involved in the study was observed.¹⁸

FINDING, RESULTS AND DISCUSION

The existing rules of procedure used to adjudicate maritime disputes like action in rem in mainland Tanzania

The admiralty jurisdiction is provided under section 3 of the Judicature and Application of Laws Act [CAP 358 R.E 2019] whereby the section provides all these powers to the High Court of Tanzania. However, the section refers other admiralty jurisdiction as provided under the Merchant Shipping Act No. 21, 2003 since this law define the court including the Resident Magistrate Court.

From this reference gives a room to the Resident Magistrate Court powers to entertain maritime cases.

The Civil Procedure Code under section 5 [CAP 33 R.E 2019] is given a room to be the existing rules of procedure used for adjudicating maritime disputes in Tanzania mainland. However, the code does not have rules governing issues of action in rem which happen under maritime lien. This law is resembling with the Civil Procedure Code of India, 1908. However, that of India it has section 122 that allows the High Court of India to make rules to regulate the practice before Court and as said before in introduction it is this section made India High Court to have sea under their

¹⁸ Dar es Salaam Maritime Institute (2020), *Dissertation and Thesis Writing Guidelines for Postgraduate Programmes*, <http://www.dmi.ac.tz>

geographical jurisdiction like BOMBAY and MADRES and in their Civil Procedure Codes to have High Court Rules for admiralty cases covering issues of action in rem raised from maritime lien.

High Court Decisions on maritime cases concerning with matters of action in rem

Admiralty jurisdiction in subordinate court of mainland Tanzania was examined in the case of Tanzania Harbours Authority V. African Liner Agencies Co (2004) TLR 127 where it was held that the Ilala District Court had no jurisdiction to hear an admiralty suit. However, section 3 confers to admiralty jurisdiction to the High Court and subordinate court.

Nonexistence of admiralty rules of procedure for adjudicating maritime disputes such as matters of action in rem was examined in the case of Mt GALAXY & The SAMTA Group Vs Tanga Petroleum Co. Ltd. Miscellaneous Civil no.33 of 2007. From this case the court realized the problem of Tanzania that is facing with the absence of Admiralty rules of procedure before Admiralty Court has the result is the use of Civil Procedure Code¹⁹ to adjudicate maritime disputes. The Admiralty Court Act, 1861 reading together with the Admiralty Courts Act, 1890 as adopted in Tanzanian laws by Tanganyika Order in Council and Judicature and Application of Laws. The Court accepted the above cited British admiralty statutes and noted that there were no Rules of Procedure for admiralty cases in Tanzania. Therefore, Hon: Teemba J, in this case stated as: "Unfortunately, there are no court Rules in as far as the Admiralty proceedings are concerned."

Controversial decision, in the case of Chemical Initiatives (PTY) Ltd vs The Owner the case of Marine Vessel MV SALINA Commercial case no. 19 of 2008 the facts of the case was; Claim was based on the consignment of the charter party at Dar es Salaam port, whereby the application to arrest the ship pending determination of the case was made but it was argued by respondent that the applicant cited wrong provision on matter of action in rem (admiralty matter). Then the court held that: "application for ship's necessities (specific admiralty matters) is not tenable under security for costs." the Judge did not uphold the use of admiralty rules of procedure before admiralty court of Tanzania as prayed by the defendant.

CONCLUSION

Availability of adequate admiralty rules of procedure in Mainland Tanzania including action in rem is among of fundamental matter in enhancing effective adjudication of maritime disputes, which leads to the growth of one of the Sixth government agenda that is Blue Economy and individual economy at large.

Therefore, there is a need to make admiralty rules of procedure to regulate the maritime disputes' procedure before admiralty Court which will allow the legal maritime process of Suing and arresting the ship if the ship defaults under maritime lien. This is to fulfil the

requirement of the civil law of compensating the one who have been damaged by the another.

RECOMMENDATIONS

Tanzania Mainland to adopt the Position of England and Wales

That, Mainland Tanzania has to adopt appropriate sections of the British Senior Court Act of 1981 covering Admiralty Jurisdiction in the Judicature and Application Act [CAP 358 R.E 2019].

And, the Civil Procedure Code [CAP 2019] must the amendment to include an Order to cover procedure for Admiralty matters as prescribed in the England and Wales' Civil Procedure Rules 1998; and as prescribed in part III of Bombay High Court Rules and Order XLII of Madras High Court Rules which provide procedure for admiralty court.

Amendment of Section 4 of the JALA [CAP. 358 R.E 2019]

The admiralty jurisdiction in mainland Tanzania should remain to be in the High Court of Tanzania. Judicature and Application of Laws Act²⁰ confers some of admiralty jurisdiction to the Resident Magistrate Court through Merchant Shipping Act, 2003 This section has to be amended so as to make sure that all admiralty jurisdiction is remaining only to the High Court. Internationally, admiralty jurisdiction is on the High Courts only

Under admiralty jurisdiction Capt. Bendera²¹ examined the case of Harbours Authority V. African Liner Agencies Co. Ltd [2004] TLR 127 and has this to say²² where he started with the held. "The High Court held that the Ilala District Court had no jurisdiction to entertain an admiralty case. However, the Merchant Shipping Act, 2003 defines the court to mean the High Court of Tanzania or the Resident Magistrates' Court hence matters arising from this Act can now be taken to either Court depending on jurisdiction. Capt. added by providing his opinion further that "In my humble opinion we should leave jurisdiction of admiralty and maritime law the High Court."

Therefore, Admiralty jurisdiction it is important to remain to the High Court of Tanzania only. The amendment can make mainland Tanzania to be similar like other maritime countries such as: England, India, Canada and USA, whereby all admiralty jurisdiction are only remains in the High Court.

Establishment of Special Divion of the High Court to deal with Admiralty Cases in Dar es Salaam

Tanzania as the maritime state need to facilitate well determination of maritime disputes. This can promote the agenda of Blue Economy easily. The most required is the presence of Separate High Court Division with its special rules of procedure dealing with maritime disputes. This promotes and increase the growth of the sector hence effective determination of maritime justices which can result to the raise of national and individual economy.

²⁰ Section 3 [CAP358 R.E 2019]

²¹ *Supra* (note no 25)

²² BENDERA. Ibrahim Mbiu, *Some Highlights on Procedure in Admiralty Cases in Tanzania*, p.13

¹⁹ [CAP 33 R.E 2019]



Establishment of Admiralty Division of the High Court

Due to the difficulties of securing maritime decided cases in the High Court Registry of Tanzania as all decided cases are mixed with those of decided maritime cases which is difficult to get them easily.

Therefore, there should be specially admiralty cases Registry which will help easy retrieval of maritime decided cases when needed.

Formality of Adjudicating of Maritime Disputes in Mainland Tanzania and Tanzania Zanzibar

The United Republic of Tanzania is sovereignty state whereby other foreign states pay respect through. And as maritime sector is naturally international matters. So, since Zanzibar has rules governing suing and arresting of the Ship.

Zanzibar as part of the United Republic of Tanzania should have the similar manner of entertaining maritime matter of suing and arresting of Ship or Vessel. Like in Mainland Tanzania.

Therefore, in mainland Tanzania there is the need to reform maritime laws so as to concurs with those of Zanzibar. This can avoid controversial of maritime decisions when exists longer, internationally, can bring bad perception of dealing maritime disputes in Tanzania.

The need for Tanzania to domesticate International Convention on Arrest of Ship, 1999

Under article. 97 of the Constitution of the United Republic of Tanzania reading together with art. 64(5) provides the powers to the parliament to domesticate international Convention. Therefore, among other International Conventions domesticated by the Parliament of the United Republic of Tanzania and became part of the Laws of Tanzania.

Therefore, there is the need to domesticate International Convention on arrest of the Ship, 1999.

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2. The Civil Procedure Code [CAP 33 R.E 2019].
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4. The Constitution of the United Republic of Tanzania [CAP 2], 1977
5. The International Convention on Arrest of Ships, 1999
6. The Judicature and Application of Laws Act [CAP 358 R.E 2019].
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