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UNCERTAINTY IN NIGERIA'S MARITIME LEGAL FRAMEWORK: A STATUTORY AND POLICY REVIEW

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Abstract

Nigeria is investing heavily in its ports at a moment when the legal framework governing security over ships remains internally inconsistent. This article argues that the ambiguity between the Admiralty Jurisdiction Act 1991 and the Merchant Shipping Act 2007 is not a drafting untidiness of interest only to academics, but a quantifiable commercial risk that raises the cost of maritime credit and deters investment. The article devotes particular attention to the ship mortgage, showing that a mortgagee in Nigeria can identify neither the full set of claims outranking its security nor the residual value of the fund after forced sale, with the result that enforcement risk is priced into lending terms or expressed as refusal to lend. The article adopted a doctrinal and comparative methodology for this work. The article, among others, recommended a unified statutory schedule of liens and priorities, jurisdictional

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clarification, mandatory arrest timelines and domestication of both Conventions.

Keywords: legal certainty; maritime liens; ship mortgages; admiralty jurisdiction; ship finance; Nigeria

1. INTRODUCTION

Nigeria is investing in its maritime infrastructure on a scale that presupposes legal predictability. Cargo throughput reported for 2025 shows significant growth, and in March 2026 a United Kingdom export finance agreement valued at approximately £746 million was announced for the refurbishment of the Lagos Port Complex and the Tin Can Island Port Complex.[1] Investment of that order is not made against physical assets alone. It is made against a legal environment in which lenders, insurers, charterers and service providers expect to be able to identify, in advance, what security they hold, what claims will outrank it, and what they will recover if enforcement becomes necessary.

On that measure, the Nigerian framework is deficient. Two federal statutes govern security over ships. The Admiralty Jurisdiction Act 1991 defines admiralty jurisdiction, preserves the action in rem and identifies the maritime liens capable of grounding arrest.[2] The Merchant Shipping Act 2007 supplies a later and broader code on the registration of mortgages, the categories of maritime liens, their priority, their extinction and the distribution of the proceeds of forced

[1] Nigerian Ports Authority throughput data reported in News Agency of Nigeria coverage (4 March 2026); Reuters, 'UK and Nigeria Agree Billion-Dollar Export Finance Deal to Refurbish Ports' (19 March 2026).

[2] Admiralty Jurisdiction Act, Cap A5, Laws of the Federation of Nigeria 2004, ss 1, 2, 5, 19 and 20.

sale.[3] The two do not speak with one voice. The Admiralty Jurisdiction Procedure Rules 2023 have attempted to reconcile them at the level of practice, but a rule of court cannot amend an Act of the National Assembly.[4]

The argument advanced here is that this ambiguity is not a doctrinal untidiness of interest only to academics. It is a commercial risk with a price. A security interest is worth what a rational creditor believes it will yield on enforcement, discounted by the probability that the belief is wrong. Where the set of claims enjoying super-priority cannot be stated with confidence, where the ranking of a registered mortgage depends on which of two statutes a court chooses to emphasise, and where the machinery of its own preservation consumes the residual value of the fund, the discount is substantial. Lenders bear it as a risk premium, shipowners as constrained access to credit, and Nigeria as forgone investment and diminished juridical attractiveness.

Part 2 explains why certainty is a component of security rather than an ornament of it, and Part 3 sets out the dual statutory framework. Parts 4 and 5 examine the two central ambiguities, namely the non-identical catalogues of maritime liens and the competing priority regimes. Part 6 applies the analysis to the ship mortgage, the instrument through which most maritime investment is secured. Part 7 addresses jurisdictional ambiguity in wage claims, and Part 8 traces the transmission of legal uncertainty into commercial risk. Part 9 measures Nigeria against the 1993 and 1999 Conventions, and Part 10 proposes reform.

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[3] Merchant Shipping Act 2007, ss 57 and 67-76.

[4] Admiralty Jurisdiction Procedure Rules 2023, O 17 rr 1-2; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 4.

2.0 CERTAINTY AS A COMPONENT OF SECURITY

The maritime lien is classically described as a proprietary right. In *The Bold Buccleugh* the Privy Council treated the ship not merely as evidence of the debt but as the juridical object against which the claim is made good, so that the lien attaches from the moment the claim arises, travels with the vessel into the hands of a purchaser without notice, and is enforced against the res itself.[5] Thomas describes it as a non-possessory charge operating independently of personal liability and enduring until judicial sale; Tetley locates its strength in the same place, namely its capacity to bypass the ordinary vulnerabilities of maritime credit by fastening upon the vessel.[6]

Jackson supplies the corrective. For him the lien has value only because admiralty procedure makes it real through arrest, custody, sale and distribution, so that enforcement law is inseparable from the commercial assessment of secured risk.[7] Two propositions follow, and both are central to this article. The first is that a security interest cannot be valued by reading the catalogue of privileged claims in the statute book; it can be valued only by asking whether the system converts the ship into a reliable fund and whether ranking against that fund is predictable *before* litigation begins. The second is that predictability is not merely desirable but constitutive. Tetley and Jackson both stress that the effectiveness of maritime security depends on legal predictability as much as on legal priority, because a creditor who cannot map the hierarchy of ship-related claims must either price the risk conservatively or seek protections beyond the ship itself.[8]

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[5] *The Bold Buccleugh* (1851) 7 Moo PC 267, 284.

[6] D Rhidian Thomas, *Maritime Liens* (Stevens & Sons 1980) 3-9, 13-22; William Tetley, *Maritime Liens and Claims* (2nd edn, Blais 1998) 59-74.

[7] D C Jackson, *Enforcement of Maritime Claims* (4th edn, LLP 2005) 1-6, 335-338.

[8] Tetley (n 6) 1027-1051; Jackson (n 7) 1-6.

That is why uncertainty has a price rather than merely a cost in dignity. Where the content of super-priority claims is contestable, the exact risk envelope of any junior security becomes impossible to model. The rational response is not litigation but adjustment: a higher margin, a lower advance ratio, a shorter tenor, additional collateral, or withdrawal from the market. Legal uncertainty is thus converted into commercial terms long before any dispute arises, and it is paid by parties who never enter a courtroom.[9]

3.0 THE DUAL STATUTORY FRAMEWORK

Admiralty jurisdiction in Nigeria is exclusively federal. Section 251(1)(g) of the Constitution confers on the Federal High Court exclusive jurisdiction in civil causes and matters relating to admiralty, including shipping, federal ports and carriage by sea.[10] The Admiralty Jurisdiction Act builds on that grant by defining proprietary and general maritime claims, preserving the action in rem and providing that the jurisdiction so conferred is exclusive.[11] A claim in respect of a mortgage of a ship falls within the proprietary maritime claims over which that jurisdiction is exercised, and section 5(3) separately defines a maritime lien, for the purpose of commencing an action in rem, as a lien for salvage, damage done by a ship, wages of the master or a member of the crew, and master's disbursements.[12]

The Merchant Shipping Act 2007 introduced a later and materially different regime. Section 67 creates maritime liens for wages and other sums due to the ship's complement, master's disbursements, claims for

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[9] Y Tekle, *Maritime Liens and Mortgages* (PhD dissertation, World Maritime University 1988) 45-47.

[10] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 251(1)(g).

[11] Admiralty Jurisdiction Act (n 2) ss 1, 2, 5, 19 and 20.

[12] ibid ss 2 and 5(3).

loss of life or personal injury directly connected with the operation of the ship, salvage, wreck removal and general average contribution, and claims for port, canal and other waterway dues and pilotage dues.[13] Section 68 subordinates registered mortgages and preferential rights to those liens; section 69 ranks them in the order in which they appear in section 67, subject to the special treatment of salvage; section 57 establishes priority among registered mortgages according to the date of registration; and sections 71, 73, 75 and 76 govern attachment notwithstanding change of ownership, lapse, extinction upon forced sale and the distribution of the proceeds.[14]

The Admiralty Jurisdiction Procedure Rules 2023, made by the Chief Judge of the Federal High Court, supply the procedural layer. They permit electronic filing and the urgent hearing of arrest applications, reduce from six months to sixty days the period after which a sale application may be entertained where security is not provided, and, in Order 17, prescribe an order of priorities beginning with statutory or court charges and the Admiralty Marshal's expenses, followed by salvage, wreck removal and general average, wages, master's disbursements, personal injury, port and pilotage dues, possessory liens, mortgages and thereafter other claims in rem and in personam.[15]

4.0 THE FIRST AMBIGUITY: TWO CATALOGUES OF MARITIME LIENS

The inconsistency begins with definition. Damage done by a ship is expressly listed in section 5(3) of the Admiralty Jurisdiction Act but is absent from section 67 of the Merchant Shipping Act. Conversely,

[13] Merchant Shipping Act 2007, s 67.
[14] ibid ss 57, 68, 69, 71, 73, 75 and 76.
[15] Admiralty Jurisdiction Procedure Rules 2023, O 9 r 6(3); O 16 r 1; O 17 rr 1-2; Bloomfield LP, 'Analysis of the Novel Provisions of the AJPR 2023' (December 2023) 1-4, 10-12.

personal injury claims and port-related dues are expressly protected by section 67 but do not appear in section 5(3).[16] Fajemirokun is right to characterise this as a parallel regime of maritime liens, since the two enactments do not complement one another in sequence but create overlapping and non-identical categories of privileged claims.[17] The later statute expands the concept of the maritime lien while the earlier statute continues to define the category which grounds the in rem procedure by which the lien is enforced.

The consequence is an unresolved interface. If damage done by a ship ground an action in rem as a maritime lien under the Admiralty Jurisdiction Act yet finds no place in the section 67 hierarchy, where does it rank at distribution? If port dues and personal injury claims are maritime liens under section 67 but absent from section 5(3), are they enforceable as true maritime liens or merely as general maritime claims upon which a priority advantage is later conferred?[18] Neither question has a settled answer, and neither is hypothetical: each determines who is paid and who is left with an empty judgment.

The doctrine of implied repeal offers no escape. Nigerian courts lean against implied repeal and prefer to harmonise statutes where both can stand together, accepting repeal by implication only where the later enactment is so plainly repugnant to the earlier that effect cannot be given to both.[19] A harmonising reading would allocate to the Admiralty Jurisdiction Act the procedural gateway to in rem

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[16] Admiralty Jurisdiction Act (n 2) s 5(3); Merchant Shipping Act 2007, s 67.
[17] Bola Fajemirokun, 'Admiralty Actions for the Enforcement of Maritime Liens in Nigeria' (2025) *Australian Journal of Maritime & Ocean Affairs* (published online 1 April 2025) doi:10.1080/18366503.2025.2485500.
[18] Merchant Shipping Act 2007, ss 67-69; Admiralty Jurisdiction Act (n 2) s 5(3).
[19] *Rotimi Williams Akintokun v Legal Practitioners Disciplinary Committee* (2014) LPELR-22941(SC).

enforcement and to the Merchant Shipping Act the content, priority and forced-sale consequences of maritime liens. That reading is sensible, but it is a division of labour rather than a reconciliation, and it leaves the interface untouched. The difficulty is not that Nigerian courts have openly contradicted the statutes; it is that the legislative materials themselves invite different emphases depending on whether the court is focused on commencement of the action, the nature of the lien, forced sale or final distribution.[20]

5.0 THE SECOND AMBIGUITY: COMPETING PRIORITY REGIMES

The divergence extends from classification into priority, and it is here that the commercial consequences concentrate. The Merchant Shipping Act supplies a fully articulated internal hierarchy and a forced-sale code: section 68 gives the section 67 liens priority over mortgages and preferential rights, section 69 ranks them, and sections 75 and 76 provide that court costs arising out of arrest, sale and distribution are paid first, after which the balance is distributed among holders of maritime liens, preferential rights and registered mortgages.[21] The Admiralty Jurisdiction Act contains no comparable general ranking provision. Section 14 addresses priority only in the narrow context of general maritime claims involving a sister ship, while section 15(3) gives certain detained civil claims priority on sale ahead of all claims except the Admiralty Marshal's expenses.[22] One statute therefore offers a distribution waterfall; the other speaks partly to arrest, partly to general maritime claims and partly to statutory detention.

[20] Fajemirokun (n 17).
[21] Merchant Shipping Act 2007, ss 68, 69, 75 and 76.
[22] Admiralty Jurisdiction Act (n 2) ss 14 and 15(3).

Order 17 of the AJPR 2023 attempts to impose order upon this uncertainty and, in doing so, exposes its depth. The hierarchy it prescribes resembles the Merchant Shipping Act far more closely than the Admiralty Jurisdiction Act, treating personal injury and port dues as high-ranking claims and subordinating mortgages to them.[23] Yet rules of court organise practice and procedure; they cannot amend an Act of the National Assembly or resolve a substantive inconsistency between two federal statutes.[24] The Rules therefore behave as though the broader Merchant Shipping Act categories must now be operationalised, while the Admiralty Jurisdiction Act remains formally unamended.[25] Order 17 is practically valuable and doctrinally inconclusive, and a system in which courts, practitioners and financiers must infer the relationship between two Acts from scattered provisions and a procedural code is one in which outcomes are less predictable than a mature maritime market requires.

A second and quieter difficulty is that the priority list is headed by the machinery of enforcement itself. Order 17 places statutory or court charges and the Admiralty Marshal's expenses first, which is defensible in principle because the court assumes responsibility for custody, security, reporting and sale once a vessel is arrested, and Order 9 requires the Marshal to maintain custody and file periodic status reports.[26] Hill is right that the law must protect the officer of the court who preserves the res, since without preservation the rights of all claimants become illusory.[27] But the practical consequence is that the

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[23] Admiralty Jurisdiction Procedure Rules 2023, O 17 rr 1-2.

[24] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 4; Admiralty Jurisdiction Act (n 2) s 21.

[25] G Elias, 'Spotlighting the Key Innovations and Changes in the Admiralty Jurisdiction Procedure Rules 2023' (2024) 8-10.

[26] Admiralty Jurisdiction Procedure Rules 2023, O 9; O 17 r 1.

[27] Christopher Hill, *Maritime Law* (6th edn, Informa 2003) 401-410.

first charge on the fund is neither the seafarer's wages nor the salvage that saved the ship, but the administrative cost of keeping the vessel under arrest, and those costs escalate with the duration of the arrest.[28] Port, canal and pilotage dues rank immediately above mortgages, and they continue to accrue while the vessel lies idle, so that a ship immobilised for the benefit of claimants remains a revenue-generating object for the port system.[29] Meeson and Kimbell warn that preservation costs and public dues may, if unchecked, consume the fund before ordinary priorities become meaningful.[30] A clear order of distribution does not solve the problem that the fund may already have been exhausted by the time the court comes to apply it.[31]

6.0 THE SHIP MORTGAGE IN THE SHADOW OF UNCERTAINTY

The instrument through which most multi-million-dollar maritime investment is secured is not the maritime lien but the ship mortgage, and it is the mortgagee that bears the sharpest edge of the ambiguity described above. A financier lending against a vessel is not merely concerned that a mortgage can be registered. It must also know which maritime claims will outrank that mortgage, how long those claims subsist, whether arrest and judicial sale can be conducted promptly, and whether the net proceeds will retain meaningful value after the

[28] ibid 403-408.
[29] Admiralty Jurisdiction Procedure Rules 2023, O 17 rr 1-2; *Bua International Ltd v Nigerian Ports Authority* (2015) LPELR-24638(CA).
[30] Nigel Meeson and John A Kimbell, *Admiralty Jurisdiction and Practice* (5th edn, Informa 2018) 167-173.
[31] Martin Davies and Anthony Dickey, *Shipping Law* (4th edn, Lawbook Co 2016) 85-92.

Marshal's expenses, port dues and administrative claims have been satisfied.[32]

Nigerian law answers the first of those questions clearly and the remainder poorly. Registration is orderly: section 57 of the Merchant Shipping Act establishes priority among registered mortgages according to the date of registration, so that as between competing mortgagees the position is ascertainable from the register.[33] The difficulty lies above the mortgage rather than beside it. Section 68 subordinates registered mortgages to the maritime liens listed in section 67, and Order 17 places possessory liens, salvage, wages, master's disbursements, personal injury and port dues ahead of mortgages.[34] That subordination is orthodox and internationally standard. It is intelligible, however, only if the set of super-priority claims is itself closed and knowable. In Nigeria it is not. A mortgagee cannot state with confidence whether a claim for damage done by a ship, which is a maritime lien for the purposes of section 5(3) but absent from section 67, will be ranked ahead of its security at distribution, nor whether a claim recognised by section 67 but omitted from section 5(3) will be treated as a true lien or as a general maritime claim.[35] The mortgage is therefore subordinated to a class whose membership cannot be exhaustively enumerated.

The second uncertainty concerns duration. The Merchant Shipping Act gives maritime liens an overriding character, keeps them attached to

32 J A Ajonumah, 'Ship Mortgage in Nigeria: An Analysis of Contemporary Issues' (2019) 18 *South East Asia Journal of Contemporary Business, Economics and Law* 240, 240-246.
33 Merchant Shipping Act 2007, s 57.
34 ibid s 68; Admiralty Jurisdiction Procedure Rules 2023, O 17 rr 1-2.
35 Admiralty Jurisdiction Act (n 2) s 5(3); Merchant Shipping Act 2007, s 67; Fajemirokun (n 17).

the ship notwithstanding change of ownership, and extinguishes them only upon forced sale under section 75 or lapse under section 73.[36] These are classic features of strong maritime security, and from the perspective of the seafarer or salvor they are unobjectionable. But strength for one class of creditor is uncertainty for another unless the law identifies precisely which claims enjoy that status. A mortgage financing a vessel acquired on the secondary market inherits liens which attached before its security was registered and which it had no means of discovering, and it cannot determine from the statutes alone which of those invisible encumbrances will survive to compete against it.

The third uncertainty concerns residual value, and it is the most damaging. Even a mortgagee that has correctly identified the claims ranking above it must estimate what will remain. Forced sale clears title and shifts claims to the proceeds, which is why it remains central to admiralty enforcement, but clearance of title does not create value.[37] Where sale follows months of deterioration, market depreciation and escalating charges, the fund distributed will be smaller than the fund a faster system would have produced, and the mortgagee, ranking below every maritime lien and below the Marshal's expenses and port dues, absorbs the shortfall first among the secured creditors. The mortgage is, in effect, the residual claimant on a fund of unpredictable size and unpredictable prior charges.

The commercial response to those three uncertainties is predictable and, from the lender's standpoint, entirely rational. The exact risk envelope of the mortgage cannot be modelled, so it is priced conservatively.[38] A prudent financier confronted with unresolved questions about super-priority claims and the practical erosion of sale

[36] Merchant Shipping Act 2007, ss 71, 73 and 75.
[37] Admiralty Jurisdiction Act (n 2) s 8; Jackson (n 7) 332-338.
[38] Tekle (n 9) 45-47.

proceeds will increase the risk premium, require additional collateral, shorten tenors, reduce advance ratios, or decline to lend against the ship at all.[39] Some will seek protections beyond the ship mortgage itself, whether corporate guarantees, foreign-law security packages, offshore accounts or forum selection clauses directing enforcement elsewhere.[40] Each of those adjustments is a transfer of value away from the Nigerian shipowner and, cumulatively, away from the Nigerian maritime sector. The harm does not fall on lenders, who simply reprice. It falls on the borrower whose vessel is a less reliable financing asset in a legal environment where priority is contestable, and on the jurisdiction whose ships are financed on worse terms than their physical characteristics warrant.[41]

It follows that the ambiguity between the two statutes is not a neutral defect. It operates asymmetrically. Maritime liens survive it because they sit at the top of every candidate hierarchy; the mortgage, sitting immediately beneath a class of uncertain size, absorbs the whole of the uncertainty. Since the mortgage is the instrument through which vessel acquisition and fleet renewal are financed, an ambiguity that falls disproportionately on mortgagees is an ambiguity that falls disproportionately on capital formation in the sector.

7.0 JURISDICTIONAL AMBIGUITY AND THE WAGE LIEN

A third source of uncertainty is institutional rather than definitional. Against the exclusive admiralty jurisdiction conferred by section 251(1)(g) stands section 254C(1) of the Constitution, inserted by the Third Alteration, which confers on the National Industrial Court jurisdiction, to the exclusion of any other court, over civil causes and matters relating to labour and employment and to disputes connected

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[39] Ajonumah (n 32) 240-246.

[40] Olayinka Afe and Michael Akinyemi, 'Shipping Laws and Regulations: Nigeria' (ICLG, 8 November 2025) paras 4.1, 4.9.

[41] Tetley (n 6) 59-74; Jackson (n 7) 335-338.

with wages and other employee entitlements.[42] Read separately, each provision is emphatic; read together, they pose an institutional puzzle. Is a seafarer's wage claim primarily a labour dispute, or an admiralty claim, given that maritime law has historically elevated it into a lien enforceable against the ship?

The tension has not remained theoretical. In *Assuranceforeningen Skuld (Gjensidig) v MT Clover Pride* the Federal High Court, Lagos, upheld an objection that wage-related crew claims fell within the exclusive jurisdiction of the National Industrial Court, declined jurisdiction and discharged the arrest.[43] A contrary line emerged in *Amarjeet Singh Bains v The Vessel MT Sam Purpose (Ex MT Tapti)*, where the Federal High Court held that it retained jurisdiction because the claim remained rooted in admiralty, drawing support from section 91 of the Labour Act, which excludes from the definition of "worker" persons employed in vessels to which the laws regulating merchant shipping apply.[44] That reasoning preserved the functional unity of wage lien and ship arrest, but it was substantially undermined on appeal in *The Vessel MT Sam Purpose (Ex MT Tapti) v Bains*, where the Court of Appeal held that unpaid crew wages fall within the exclusive jurisdiction of the National Industrial Court.[45]

[42] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 254C(1)(a), (k), inserted by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.

[43] *Assuranceforeningen Skuld (Gjensidig) v MT Clover Pride & Palm Spring Global Ltd* Suit No FHC/L/CS/1807/2017 (Federal High Court, Lagos, unreported); Advocaat Law Practice, 'Crew Wages No Longer a Maritime Claim under Nigerian Law?' (2021).

[44] *Amarjeet Singh Bains & 6 Ors v The Vessel MT Sam Purpose (Ex MT Tapti)* Suit No FHC/L/CS/1365/2017 (Federal High Court, Lagos, 28 March 2018, unreported); Labour Act, Cap L1, Laws of the Federation of Nigeria 2004, s 91.

[45] *The Vessel MT Sam Purpose (Ex MT Tapti) & Anor v Bains & Ors* (2021) LPELR-56460(CA); *Morrison Akinadewo & Anor v Mekkod Longline Co Ltd* (National Industrial Court, 4 June 2025).

The difficulty is not merely that the claim is redirected but that the receiving forum does not sit easily with the lien's procedural architecture. The action in rem is peculiar to admiralty; arrest is peculiar to admiralty; the Admiralty Jurisdiction Act is framed around the Federal High Court; and the AJPR 2023 were made for proceedings in that court.[46] It is one thing to observe that the National Industrial Court possesses all the powers of a High Court for the exercise of its jurisdiction; it is quite another to conclude that it thereby acquires a freestanding admiralty jurisdiction or the statutory basis for arresting a vessel in rem.[47] For present purposes the significance of the conflict is evidentiary as much as doctrinal. A framework in which the correct forum for the highest-ranking maritime lien has been genuinely contested for the better part of a decade is a framework in which no participant can price enforcement risk with confidence.[48]

8.0 FROM LEGAL UNCERTAINTY TO COMMERCIAL RISK

Legal uncertainty is transmitted into commercial behaviour through three channels. The first is the realisation period. An arrested vessel is an asset in enforced idleness, continuing to attract port charges, watchkeeping and preservation costs, agency fees, insurance and minimum crewing expenses, and often maintenance necessary to prevent deterioration.[49] Delay is generated principally by satellite litigation over whether the court has been properly seised, whether the

[46] Admiralty Jurisdiction Act (n 2) ss 1, 5, 19 and 21; Admiralty Jurisdiction Procedure Rules 2023, O 1 r 1.

[47] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 254D(1).

[48] Chijioke Collins Ani and Chinwe Patricia Iloka, 'Delineating Jurisdictional Indicators of Maritime Claims in Nigeria: The Case of Unpaid Crew Wages of the Vessel MT Sam Purpose (Ex MT Tapti)' (2021) 3(3) *International Review of Law and Jurisprudence* 74.

[49] Hill (n 27) 401-410.

vessel is liable to arrest, whether the claim is truly maritime, and whether a foreign arbitration clause binds the parties.[50] In *The Owners of the MV Lupex v Nigerian Overseas Chartering and Shipping Ltd* the dispute became entangled in the relationship between admiralty proceedings and a foreign arbitration, and *MV S Araz v LPG Shipping SA* shows how the procedural basis of arrest may become determinative long before the claim is tested on its merits.[51] *Nigerian Ports Authority v MV Ocean Falcon* illustrates the consequence: prolonged detention and the continued accrual of port-related liabilities may consume the value ultimately available, so that port dues acquire practical dominance over earlier claims.[52]

The second channel is creditor adaptation. Rational creditors do not wait for the fund to be exhausted; they adjust in advance. Some demand advance payment, some tighten trading terms, some insist on bank guarantees or letters of indemnity, and some avoid exposure altogether where enforcement is regarded as too cumbersome.[53] Chartering decisions, bunker supply arrangements, port agency relationships and trade-finance structures all begin to reflect defensive pricing, so that Nigeria pays an indirect cost even in disputes that never culminate in arrest litigation.[54]

The third channel is jurisdictional reputation. Attractiveness as a maritime jurisdiction is not determined only by geography, cargo volume or port depth; it is shaped by whether the forum is seen as

[50] Meeson and Kimbell (n 30) 133-139.

[51] *The Owners of the MV Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR (Pt 844) 469 (SC); *MV S Araz v LPG Shipping SA* (2000) 15 NWLR (Pt 691) 622.

[52] *Nigerian Ports Authority v MV 'Ocean Falcon'* (2017) LPELR-43421(CA).

[53] Hill (n 27) 401-410.

[54] Meeson and Kimbell (n 30) 167-173.

legally intelligible, procedurally efficient and commercially balanced.[55] Nigeria's advantages are real: a strategic West African location, a large import-dependent economy, substantial oil and gas shipping activity, and continuing investment in port modernisation and maritime governance.[56] But those advantages do not automatically translate into juridical attractiveness. A jurisdiction that offers arrest on paper while allowing value to decay in practice, and that recognises maritime liens while leaving their content, priority and forum uncertain, sends mixed signals to a market that is acutely sensitive to legal friction.[57]

The mismatch between infrastructure ambition and legal architecture is the point at which this becomes a question of economic policy rather than procedural housekeeping. A country attracting external financing for port refurbishment on the scale announced in March 2026, and reporting sustained growth in throughput, cannot indefinitely maintain an enforcement framework that discounts the ship as a security asset.[58] The discount is not theoretical. It is paid in higher risk premiums, more conservative credit behaviour, and a jurisdictional reputation that lags behind Nigeria's actual maritime potential.[59]

9.0 COMPARATIVE BENCHMARKS: THE 1993 AND 1999 CONVENTIONS

Comparison with international instruments shows that Nigeria's difficulties are not inherent in admiralty law but are problems of

[55] ibid 127-139.
[56] Afe and Akinyemi (n 40); Nigerian Maritime Administration and Safety Agency, 'NIMASA Ends 2025 on a High' (2025).
[57] World Bank, 'Shipping and Ports' (accessed 25 March 2026); UNCTAD, *Review of Maritime Transport 2025* (24 September 2025).
[58] Reuters (n 1); Bloomfield LP, 'Nigerian Maritime Industry: 2025 in Review' (12 January 2026).
[59] Jackson (n 7) 335-338.

legislative design. A point of accuracy should be recorded: Nigeria is listed in the United Nations Treaty Collection as having acceded to the International Convention on Maritime Liens and Mortgages 1993 on 5 March 2004, whereas it does not appear as a party to the International Convention on Arrest of Ships 1999. By virtue of section 12 of the Constitution, no treaty has domestic force unless enacted by the National Assembly, so adherence at the international level does not cure the municipal inconsistencies described above.[60]

The 1993 Convention removes uncertainty at source, and does so in terms that speak directly to the mortgagee. Article 4 creates an *exhaustive* list of maritime liens, so that the class ranking above a mortgage is closed and knowable. Article 5 gives those liens priority over registered mortgages and other charges and ranks them in the order listed, subject to the special treatment of salvage. Article 12 provides that upon a forced sale conducted in accordance with its notice requirements the vessel is sold free of all pre-existing mortgages, charges and liens.[61] The instrument thus supplies a closed and integrated narrative running from creation to priority to extinction. Nigerian law, by contrast, requires the practitioner, judge or financier to move between section 5(3) of the Admiralty Jurisdiction Act, sections 57 to 76 of the Merchant Shipping Act and Order 17 of the AJPR 2023 to answer questions the Convention resolves within a single scheme. Tetley's defence of codified maritime priorities is persuasive precisely here, since security loses value when priority must be reconstructed through litigation instead of being announced in the governing instrument.[62]

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[60] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12; International Convention on Maritime Liens and Mortgages (adopted 6 May 1993, entered into force 5 September 2004); International Convention on Arrest of Ships (adopted 12 March 1999, entered into force 14 September 2011).

[61] International Convention on Maritime Liens and Mortgages 1993, arts 4, 5 and 12.

[62] Tetley (n 6) 59-74.

The 1999 Convention offers a complementary lesson directed at procedure. Article 1 provides a modern list of maritime claims for which arrest may be sought; article 3 identifies when the particular ship or a sister ship may be arrested; article 4 requires release once sufficient security has been provided in a satisfactory form, empowers the court to fix its nature and amount in default of agreement, and provides that the giving of security is not an admission of liability; article 5 regulates rearrest; and article 7 addresses jurisdiction on the merits.[63] Security substitution is the decisive comparative difference, because it transforms arrest from a purely immobilising device into a calibrated instrument of leverage: the claimant obtains security, the owner returns the vessel to trade, and the court preserves the dispute without presiding over asset decay. Nigerian practice recognises that logic, since release upon payment into court or provision of security is available and letters of undertaking from International Group P&I Clubs are commonly accepted, but the framework remains piecemeal and the interval between arrest, argument over acceptable security and eventual sale leaves substantial room for delay.[64]

10. PROPOSALS FOR REFORM

A unified statutory schedule of liens and priorities. The primary reform is legislative rather than procedural. A single schedule should be enacted stating which claims qualify as true maritime liens, the order in which they rank, the effect of judicial sale, and the extent to which the Marshal's expenses, port dues and preservation costs come ahead of private claims. The list should be exhaustive on the model of article 4 of the 1993 Convention, so that a mortgagee can identify the closed class ranking above its security. Commercial actors should not

[63] International Convention on Arrest of Ships 1999, arts 1, 3, 4, 5 and 7.
[64] Admiralty Jurisdiction Procedure Rules 2023, O 9 r 6(3); Bloomfield LP (n 15) 10-12.

be required to reconstruct priority from multiple texts of unequal authority, and a rule of court should not be left to perform the work of legislative reconciliation.[65]

i. *Protection of the mortgagee's informational position.* Alongside harmonisation, the Merchant Shipping Act's registration regime should be strengthened so that the register discloses as much of the encumbrance position as is practicable, and statutory provision should be made for notice to registered mortgagees of any arrest, application for sale or distribution affecting the vessel. A mortgagee that learns of an arrest late is a mortgagee unable to protect the fund, and inexpensive procedural protections of this kind materially improve the bankability of Nigerian-registered tonnage.

ii. *Jurisdictional clarification.* The National Assembly should amend the Constitution, the Admiralty Jurisdiction Act and the National Industrial Court Act to provide expressly that maritime crew wage claims attracting a maritime lien remain within the exclusive admiralty jurisdiction of the Federal High Court where enforcement is sought by an action in rem. Pending amendment, the superior courts should adopt a purposive construction under which the admiralty character of such a claim prevails over its employment dimension.

iii. *Procedural acceleration and security substitution.* The reduction of the waiting period for sale under the AJPR 2023 should be reinforced by mandatory timelines for valuation, interlocutory objections, sale orders and distribution, with arrest matters treated as fast-track commercial proceedings and appeals on non-dispositive

[65] Fajemirokun (n 17); International Convention on Maritime Liens and Mortgages 1993, art 4.

issues deferred until final judgment save in exceptional cases. The law should expressly recognise a broader range of substitute security, including ship bonds, bank guarantees and club letters of undertaking, with statutory guidance on acceptable forms, criteria for adequacy, the process for challenging sufficiency and the circumstances permitting rearrest.[66]

iv. *Custody and preservation.* A dedicated Admiralty Preservation Fund, financed through filing deposits, Marshal's charges and, where appropriate, recoverable contributions from the parties, should meet minimum maintenance, insurance, watchkeeping and preservation costs pending sale or release. Statutory allocation of responsibility among the Admiralty Marshal, the port authorities and any court-appointed custodian would prevent custody costs from accumulating diffusely, and the Marshal's office should be strengthened with specialised personnel and digital case tracking. Custody should preserve value rather than consume it.

v. *International alignment.* Nigeria should domesticate the 1993 Convention, to which it is already a party internationally, and adopt the arrest, release and rearrest architecture of the 1999 Convention. Domestication would supply the closed hierarchy the Admiralty Jurisdiction Act presently lacks and would signal to financiers that ranking in Nigeria is ascertainable in advance rather than reconstructible only after litigation.[67]

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[66] Admiralty Jurisdiction Procedure Rules 2023, O 7 r 1; O 9 r 6(3); Aret Adams, 'Arrest of Ship in Nigeria and the New Admiralty Jurisdiction Procedure Rules 2023' (2024) 14-15.

[67] International Convention on Maritime Liens and Mortgages 1993, arts 4-5 and 12; International Convention on Arrest of Ships 1999, arts 3-5.

11. CONCLUSION

The weakness of the Nigerian maritime security framework is not a weakness of substantive doctrine. Maritime liens are recognised, mortgages are registrable, arrest is available, and the Admiralty Jurisdiction Procedure Rules 2023 demonstrate a genuine capacity for modernisation. The weakness is that two federal statutes describe the same subject matter in different terms and have never been reconciled by amendment, so that the most basic question a secured creditor can ask, namely what ranks above me and what will be left, cannot be answered from the statute book with confidence.

That ambiguity has a price, and the price is paid in advance. It is paid by mortgagees in risk premiums and conservative advance ratios, by shipowners in constrained and costlier credit, by maritime service providers in defensive trading terms, and by Nigeria in forgone financing and a juridical reputation that lags behind its physical assets. A country committing substantial public and external capital to port refurbishment is committing capital to an asset class whose legal security it has not yet made predictable.

The remedy is not reinvention. The statutes already contain the raw materials of a coherent regime, the 2023 Rules have shown what a clear priority order looks like, and the 1993 Convention supplies a tested model of an exhaustive lien catalogue with defined consequences on forced sale. What is required is the legislative will to enact a single schedule of liens and priorities, restore the unity of forum and remedy in wage claims, discipline the timetable of arrest and protect the fund in custody. Certainty is the cheapest form of investment promotion available to a maritime nation, and it is presently the one Nigeria has left unclaimed.