IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2025

CORAM: **LOVELACE–JOHNSON (MS), JSC (PRESIDING)**
PROF. MENSA-BONSU (MRS), JSC
KULENDI, JSC
ADJEI-FRIMPONG, JSC
DZAMEFE, JSC

CIVIL MOTION
NO. J5/90/2025

2ND DECEMBER, 2025

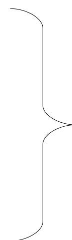
THE REPUBLIC

VRS.

THE HIGH COURT, TEMA .... RESPONDENT

EX PARTE:

1. **THE VESSEL MT ROSE**
2. **LEMLA OIL COMPANY LIMITED**
3. **THE OWNERS AND PARTIES INTERESTED IN THE VESSEL MT ROSE.**



APPLICANTS

KMO GOLDLINK INTERNATIONAL COMPANY LIMITED. .... INTERESTED PARTY

RULING

MAJORITY OPINION:

KULENDI, JSC:-

INTRODUCTION

1. In considering the present application, we found the dicta of our illustrious and venerable brother Adjei-Frimpong JSC to be apt and worth reproducing as follows; "It is right to state here that generally, the rules of practice and procedure do not look favourably to ex parte applications. And why should they? Is the principle not **universal** that every person who may be affected by a decision of court must be given an opportunity to be heard? **It is plain that the principle of audi alteram partem is the nerve center of the fair trial rules enshrined in the 1992 Constitution.** It is for this reason that **ex parte applications** are granted only in exceptional cases and in cases of extreme urgency where it is near impossible to proceed in the normal way."

REPUBLIC V. HIGH COURT, KOFORIDUA, EX PARTE; ERNEST YAWKUMI, HENRY BOAKYE YIADOM AND 2 OTHERS (AS INTERESTED PARTIES) [CIVIL MOTION NO: J5/37/2025] DATED 11TH JUNE 2025.

2. The above erudite statement of this Court which it spoke through our brother Adjei-Frimpong JSC is in tandem with an earlier decision of this Court in the oft quoted case of **BARCLAYS BANK V GH CABLE CO LTD & ORS (1997-1998 2GLR 61 @ 67-68)** wherein the Court, speaking through Acquah JSC uttered the following words of sage:

   > "It is not permissible and indeed it is a travesty of justice for a court to make an ex parte order in force pending the final judgement of the suit…"

3. The present application turns on a consideration of the nature and extent to which courts may entertain ex parte motions and the nature and extent of orders

that may be permissible when courts consider ex parte motions without affording persons an opportunity to be heard.

4. The Applicant herein seeks an order for certiorari to quash the ruling of the High Court, dated 5th September, 2024 coram; Her Ladyship Justice Rita Agyeman-Budu

(Mrs.) delivered in Suit No. E2/115/2024. In the said ruling, the learned trial judge granted a motion ex parte and, among others, made consequential orders arresting and/or detaining the Applicant vessel within the jurisdiction pending the provision of a bank guarantee in the sum of One hundred and fifteen thousand dollars and ninety-five thousand Ghana cedis inclusive of interests and costs to be issued by a reputable Ghanaian bank and deposited with the Registrar of the Court.

BACKGROUND:

5. The Interested Party filed a Writ of summons and Statement of Claim on 27th August, 2024 in respect of a maritime action for the reliefs endorsed therein. On 29th August, 2024 the Interested party filed a motion ex parte for the arrest and detention of the Applicant Vessel and same was heard and granted by the trial judge on 5th September, 2025. The grant of the ex parte motion resulted in the following consequential orders by the trial judge:

> "IT IS HEREBY ORDERED that the 1st Defendant THE VESSEL "MT ROSE" which is presently docked at Tema Harbour, Tema be arrested and detained at the Tema Port or anywhere within the jurisdiction of this Court pending the provision of a Bank Guarantee in the sum of One Hundred and Fifteen
>
> Thousand United States Dollars (US$115,000.00) and Ninety-five Thousand Ghana Cedis (95,000.00) inclusive of interest and costs to be issued by a reputable Ghanaian Bank and to be deposited with the Registrar of this Court.

IT IS AGAIN ORDERED that the Officers of the Ghana Navy confiscate the following documents of the 1st Defendant: THE VESSEL MT. ROSE

i. International Tonnage Certificate (1969).

ii. International Loadline Certificate. iii. International Certificate of Registration. iv. Cargo Ship Safety Equipment Certificate.

v. Cargo Ship Safety Construction Certificate and Attachment.

vi. International Ship Safety Management Certificate.

vii. Crew List and Crew Passport.

viii. Discharge books of all the Ship Crew.

IT IS FURTHER ORDERED that the Officers of the Ghana Navy Service be stationed on board THE VESSEL MT ROSE at the anchorage to enable and facilitate the enforcement of the order of arrest and detention.

The Captain of the said VESSEL MT. ROSE is to deposit the Log Book and Registration documents of the 1st Defendant THE VESSEL MT. ROSE with the Tema Port Harbour Master.

IT IS FURTHER ORDERED that Plaintiff's Writ of Summons and Statement of Claim filed on the 27th of August 2024 be affixed thereof on the mast of THE VESSEL MT. ROSE or on the outside of any suitable part of the said Vessel."

6. The Applicant says that they are constrained to bring the present Application at this time, 23rd July, 2025 because the facts leading to the ruling were only brought to their attention after June 2025. They state that they have till date not been served with the Writ of Summons and Statement of Claim.

7. It is the contention of the Applicant that orders made Ex parte must be for a specified period or duration and that period must be expressly stated in the order. It is further averred that the trial judge went beyond her jurisdiction when she made those orders ex parte beyond the ten (10) days statutory limit for such ex parte orders. They contend that they are ready to defend the action on its merits if given the opportunity and that the rules on Maritime actions and rules on applications and injunctions do not clothe the High Court with the jurisdiction to make such orders on an ex parte application.

GROUNDS:

8. The Applicant seeks to impeach the ruling of the trial High Court Judge on the following grounds:

> "a. The trial judge lacked jurisdiction to make the orders contained in her ruling ex parte without giving the Applicants an opportunity to be heard.
>
> b. The trial Judge went beyond her jurisdiction when she made the ex parte orders to be effective beyond the 10 day statutory limit for such ex parte orders.
>
> c. The trial Judge went beyond her jurisdiction to make an order for service of the Writ of Summons and Statement of Claim by posting on the mast of the Vessel MT Rose when there was no application for substituted service of the Writ of Summons and Statement of Claim."

THE OPPOSITION OF THE INTERESTED PARTY

9. The Interested Party is opposed to the application and deposes that, contrary to the representations of the Applicant, the ruling and the Writ of Summons were brought to their notice far earlier than June, 2025. It was deposed that after the High Court, Tema issued the above orders for the arrest and detention of the 1st Applicant, the ship sailed out of the waters of Ghana on 16th September, 2024 and was found in the Nigerian waters. The Applicant had

to cause the arrest of the vessel by an order of the Federal Court of Nigeria issued on 30th September, 2024 by a motion ex parte.

10. It is contended that by local and domestic law and practice, applications for warrants of arrests of ships or any maritime property are made ex parte and not on notice either under statutory rights of action in rem under Section 446 of the Ghana Shipping Act, 2003 (Act 645) or under Section 20 of the Courts Act (Act 459). It is argued that it is the warrant of arrest and execution of same as well as service of the writ that invokes the admiralty jurisdiction of the High Court.

Specifically, the Interested Party states in Paragraphs 15, 16, 17 and 18 as follows;

"15. I am advised by Counsel for the Interested Party herein that upon the arrest of the MT ROSE, the 2nd Applicant herein as owners of the vessel had the right in law to apply to set aside the warrant of arrest for wrongful arrest or postbail/security for the release of the vessel.

16. Counsel for the Interested Party has advised me and I verily believe the same to be true that the essence of the exercise of an action in rem in maritime cases for the arrest of a ship, is to compel the provision of security and if security is not forthcoming to enable the Admiralty Court to sell the vessel free of all encumbrances to satisfy the claims against the ship.

17. The warrant of arrest is not issued as an interim order to allow a defendant/respondent as the case may be to oppose the grant or refusal on same on a repeat application on notice.

18.1 am advised by Counsel that Order 25 rules under C. I. 47, do not apply in maritime cases. Rules of Procedure for maritime cases are specially provided for under Order 62 of C.I. 47."

THE LAW:

11. The supervisory jurisdiction of this Court is stated in **Article 132 of the Constitution** as follows:

> "The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power."

12. The Court has fashioned out the circumstances under which it may exercise its supervisory jurisdiction to include instances such as:

    a) Where the Court below acts in want or excess of jurisdiction

    b) Where there is an error patent on the face of the record

    c) Failure to comply with the rules of natural justice; and

    d) A decision given in breach of the Wednesbury principles of irrationality, illogicality or unreasonableness.

13. A court may be said to have exceeded its jurisdiction when the judgment or order issued is of a kind that the court has no power to issue or when a court entertains or deals with a matter it otherwise has no power or authority to deal with.

14. This Court in its ruling dated 5th November, 2014 in **CIVIL MOTION NO. J5/31/2014** entitled **THE REPUBLIC V. HIGH COURT (FINANCIAL DIVISION)** quoted the Australian case of **TSIMPINOS V. ALLIANZ (AUST)**

WORKERS' COMPENSATION (SA) Pty.Ltd. (2004) 88 SASR 311; (2004)

233 LSJS 300

> "that there is excess of jurisdiction where the court does an act, the doing of which is within its power but then it performs the act in breach of the conditions which authorize the doing of acts of that class or nature."

15. The present application is one that hinges on the contention that the High Court exceeded its jurisdiction in making the orders ex parte to be effective beyond ten (10) days and further ordering the service of the Writ of Summons and Statement of Claim by posting on the mast of the Vessel when there was no pending application for substituted service. There is also the plaint that the court lacked the jurisdiction to make such orders without affording the Applicants the opportunity to be heard.

RESOLUTION:

16. The present suit is one which borders the application of our rules of practice and procedure in maritime actions and the permissible limits of orders issued motion ex parte.

17. Before delving into the intricacies of the present application, it is worth noting that the matters implicated in this case borders on the Admiralty Jurisdiction of the Courts in Ghana. This is an original jurisdiction that is expressly vested in the High Court alone by section 20 of the Courts Act, 1993, Act 459. That is to say, neither

    the Circuits or District Courts can entertain actions that border on the exercise of admiralty jurisdiction or a maritime claim.

18. Being an area of law that has its roots in sea trade and commerce, its applicable principles are largely borrowed and domesticated to suit its unique characterisation in different jurisdictions. In Ghana, although substantive jurisdiction in maritime action is vested by section 20 of the Court's Act in the High Court, the practice and procedure by which the Courts exercise the

substantive jurisdiction are contained in the High Court, Civil Procedure Rules, 2004 (C.I 47), with special provisions contained in Order 62 of C.I 47 under the heading: " MARITIME ACTION".

19. It ought to be noted that, the fact that Order 62 of C.I 47 provides special rules for Maritime Actions does not orphan our Courts in instances where the said Order 62 fails to make express provisions for some procedure. The Proper construction to put to the applicable procedure and rules governing Maritime Actions is that the Provisions of the entire C.I 47 are applicable but subject to Order 62. This is an obvious deduction from Order 62 rule 1 of C.I 47 which states as follows:

"These Rules apply to maritime actions subject to the provisions of this Order."

20. Unlike Nigeria, where Order 7 of the Admiralty Jurisdiction Procedure Rules 2023 specifically provides for motions for an arrest of a ship to be made ex-parte, Our Order 62 is silent on same and hence recourse may be made to order 19 of C.I 47 on applications generally.

21. It is important to underscore the fact that maritime actions, being actions in rem, the absence of the vessel or ship against which the writ is issued from the jurisdiction may render the action vain and redundant. Thus it is understandable that, in consonance with practice, motions for the arrest of vessels shall be made Ex- Parte under Order 19 rule 3 of the C.I 47. This is because, the delay that is caused by proceeding on notice would or might entail irreparable damage or serious mischief if the said vessel sails out of the jurisdiction by the time the order is procured on notice.

22. Having obtained the Order for the Arrest of the Vessel by motion ex parte, the affected parte must be granted an opportunity to be heard before crystalising the order into one that subsists until the final determination of the suit or for the period of one (1) year as warranted by Order 62 of C.I 47. That is to say, an

order made ex parte must afford the affected party the right to have the matter determined on notice at a future time by way of a repeat application by the beneficiary of the order, or upon an application by the person affected to have same set aside, or upon an invitation to the affected persons to show cause why the order should not be made to subsist for a period of one (1) year.

23. In Nigeria, the mischief occasioned by the ex parte nature of orders for arrest warrants of vessels is cured by order 10 rules 1, 2 and 4 of the Admiralty Jurisdiction Procedure Rules, 2023 which permits the setting aside of Orders for Arrest Warrant to be made as follows:

> "1.—(1) A party to a proceeding may apply to the Court for the release of a ship or other property that is under arrest in the proceeding.
>
> (2) On an application under sub-rule (1) of this rule, the Court may order the release from arrest of the ship or other property as in Form 12 on sụch terms as are just.
>
> "4.—(1) Where the writ of summons is served simultaneously with an order for the arrest of any ship or other property, an interested person may apply for the release of the arrested ship or other property and the Court shall, within 3 days of filing and service of the application for release of the said ship or other property entertain the said application."

24. In contrast, there are no similar provisions in our admiralty rules in C.I 47 in general or Order 62 in particular.

25. The arrest of a vessel consequent upon a warrant obtained ex parte must be done in ways that do not foreclose the right of an interested party to be heard in respect of the vessels continuous detention, so that, even where owners of a vessel under arrest chooses to post bail for its immediate release, the warrant of

arrest can still be challenged at a future date in order to discharge the bail bond that may have been unjustifiably obtained.

26. Our courts generally, dread the deploy of ex parte orders in ways that forecloses the right to a challenge of the order eventhough an injustice may have been occasioned. This court has in the case of **BARCLAYS BANK V GH CABLE CO LTD & ORS (1997-1998 2GLR 61 @ 67-68)** said the following through the illustrious Acquah JSC (as he then was):

> "Now on the basis of this well settled principle, ex parte applications and orders for injunction are undoubtedly anomalies in our administration of justice." And had the rules of court not permitted such applications and orders to be made, they would have been nullities. Thus to prevent the misuse of ex parte applications for injunctions, the practise is that such applications are to be resorted to only in cases of extreme emergency, where the interest of justice requires that the court should intervene immediately without notice to the party affected. This implies that the urgent situation must be such that it will be improper or even imprudent to give notice of the application to the other party. And if the court is satisfied that the situation is urgent enough to require its intervention, the ex parte order that the court will make thereon should be for a very limited time of about seven days. **For it is not permissible and indeed it is a travesty of justice for a court to make an ex parte order in force pending the final judgement of the suit ..."**

27. Similarly, Acquah JSC cited the English case of **ANSAH V. ANSAH [1977] ALL ER 638 AT 642, CA,** where it was held as follows:

"**Orders made ex parte are anomalies in our system of justice which generally demands service or notice of the proposed proceedings on the opposite party** . . . Nonetheless, the power of the court to intervene

immediately and without notice in proper cases is essential to the administration of justice. But this power must be used with great caution and only in circumstances in which it is really necessary to act immediately… **If an order is to be made ex parte, it must be strictly limited in time if the risk of causing serious injustice is to be avoided. The time is to be measured in days, i.e. the shortest period which must elapse before preliminary hearing inter partes can be**

arranged…"

28. On the totality of our jurisprudence and the express rules of our practice and procedure in C.I 47, ex parte orders are an exception and not the norm. Therefore, unless otherwise specifically provided under C.I 47, order 19 thereof governs all applications. Applications under the Admiralty jurisdiction of the High Court are not excepted and foreign and/or international admiralty rules and practice, unless domesticated in our rules, and/or consistent with our jurisprudence, legal system, and the ends of justice, are inapplicable in our courts.

29. It is therefore to be noted that in the face of our courts posturing in respect of ex parte applications, the far sweeping orders of the trial court in the ex parte orders must not be allowed to stand as the said orders completely foreclosed any avenue for affected persons to be heard in respect of the ex parte orders.

30. We note that the Interested party has referenced Section 20 of the Courts Act and Section 446 of the Ghana Shipping Act as statutory backing for the trial judge's ex parte orders which in our opinion ought to have been made in ways that did not foreclose the right of affected persons to be heard at a future date. For the purpose of analysis, we produce the said section 20 of the Courts Act as follows:

" Section 20—High Court Jurisdiction in Maritime Matters.

(1) The High Court shall, subject to the provisions of any other enactment, have jurisdiction to hear and determine any of the following questions or claims—

(a) a question as to the title to or ownership of a ship, or the proceeds of the sale of a ship, arising in an action relating to possession, salvage, damage, necessaries, wages or bottomry;

(b) a question arising between the co-owners of a ship registered at a port in Ghana as to the ownership, possession, employment or earnings of that ship, or any share of it, with power to settle any account outstanding and unsettled between the parties in relation to it, and to direct the ship, or any share of it, to be sold, or to make such order as the Court thinks fit,

(c) a claim for damage to a ship (whether received on the high seas or within the territorial waters or for damage done by a ship);

(d) subject to section 249 of the Merchant Shipping Act, 1963 (Act 183), a claim in the natureof salvage for services rendered to a ship (including services rendered in saving life from a ship), whether rendered on the high seas or within the territorial waters, and whether a wreck in respect of which the salvage is claimed is found on sea or land;

(e) a claim in the nature of towage, whether the services were rendered on the high seas or within the territorial waters;

(f) a claim for necessaries supplied to a foreign ship (whether supplied on the high seas or within the territorial waters) and a claim for necessaries supplied to a ship elsewhere than in the port to which the ship belongs;

(g) a claim by a seaman for wages earned by him on board a ship, whether due under a special contract or otherwise, and a claim by the master of a ship for salary earned by him on board the ship and for disbursements made by him on account of the ship;

(h) a claim in respect of a mortgage of any ship, being a mortgage duly registered under the Merchant Shipping Act, 1963 (Act 183), or in respect of any

mortgage of a ship which is, or the proceeds of which are, under the arrest of the Court; (i) a claim for building, equipping or repairing a ship, if at the time of the institution of the proceedings the ship is, or the proceeds of it are, under the arrest of the Court;

(j) a claim arising out of an agreement relating to the use or hire of a ship, or the carriage of goods or persons in a ship, or in tort in respect of goods or persons carried in a ship.

(2) The High Court also has power—

(a) in an action of restraint instituted by part-owners, to give such relief as it considers just and equitable, including the imposition of bail on defendant partowners to ensure the safe return of any ship;

(b) to remove for good cause the master of any ship within the jurisdiction of the

High Court and to appoint a new master;

(c) to give such relief as it considers just and equitable including the granting of injunctions, in respect of injurious acts done upon the high seas.

(3) In this section, "damage" includes loss of life and personal injuries, and "ship" includes any description of vessel used in navigation not propelled by oars.”

31. The provisions of section 20 of Act 459 which we have set out above deals with the jurisdiction of the High Court in maritime matters. Nowhere does the said section state that the High Court may or must entertain ex parte motions, let alone make such extensive and pseudo final orders even before the final determination of the case without affording any of the affected parties the right of a hearing.

32. Similarly, Section 446 of Act 645, on which the application for the ex parte orders are also supposed to have been anchored, does not, from our reading, vest any jurisdiction in the Court to make such ex parte orders, without more. The said Section states as follows;

" Section 446—Actions in rem

In any case in which an action may be brought against a ship other than actions arising from claims to the possession or ownership of any share in it, or any claim in respect of a mortgage or charge on a ship or any share, where the person who would be liable on the claim in any action in personam, when the cause of action arose, was the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against

(a) that ship, if at the time when the action is brought, the ship is beneficially owned in respect of all the shares by that person; or (b) any other ship which, at the time when the action is brought, is beneficially owned as under paragraph (a), but in determining whether a person would be liable on a claim in an action in personam, it shall be assumed that the habitual residence or a place of business of that person is within Ghana."

33. We have taken the pain to quote in extenso the alleged statutory jurisdictional basis in order to demonstrate the falsity of such an argument and to further heighten that the rules of court and not substantive law forms the procedural basis for ex parte applications before the trial court. Therefore, the trial judge ought to have confined herself to the limits of the procedural jurisdiction as patently stated in the rules of court and amplified by case law.

34. It is instructive to reiterate that whilst the High Court (Civil) procedure rules dedicates Order 62 to maritime actions, Order 19 is for applications generally (whether ex parte or on notice). Order 62 sets out some procedural rules for a

warrant of arrest of a vessel but is not provide for ex parte applications and orders.

35. The exigencies associated with vessels generally and the risk of rendering an action moot should a vessel which is a subject matter of a court suit leave the jurisdiction makes it understandable that courts may resort to Order 19 rule 3 of

C.I 47 and in appropriate and justifiable cases, entertain such applications for a warrant of arrest ex parte and make such orders as may be necessary to secure the rights of the parties. This recourse does not deviate from the reasoning and logic behind ex parte applications. Nonetheless, in order to do justice to arrested vessels, there ought to be an opportunity afforded affected persons to be heard before a court may confirm such warrant of arrest which per the rules are to subsist for a period of one (1) year from the date of its issuance.

36. Whilst the sense of urgency that may characterise the issuing of ex parte orders for the arrest and detention of a vessel is not lost on us, we think that a more progressive approach would be to afford the vessel owners or persons affected by the said ex parte orders an opportunity to be heard, by way of a repeat application on notice to affected persons or a caveat permitting such affected persons to apply to have same set aside or even to show cause why the order for the seizure ought not be made in the first place, or pendente lite or for the period of one year. This would afford the trial judge an opportunity to hear both sides before confirming warrants of arrest which per the rules have a lifespan of a year from the date of their issuance.

37. We are therefore of the considered opinion that whilst the Court was initially, within its jurisdiction to entertain the motion ex parte, the court exceeded its jurisdiction when it made its ex parte orders to subsist pending the final determination of the suit without affording the Applicants any opportunity, whatsoever, to be heard.

38. We are careful not to insist that the ten (10) rule applies to ex parte orders that may be issued in maritime actions because they do not, properly speaking, fall within Order 25. Order 25 regulates injunctions and not maritime actions which, as we have indicated, are governed by order 62. Further, warrants of arrest of vessels in maritime actions are directed at the "rem" and targeted at the seizure of the vessel as property whereas injunctions orders generally are "in personam" and would not mandate the physical seizure of property but are generally directed at the actions of parties to the Suit.

39. However, in all cases, the right to be on notice and be heard or the right to be heard at some point at a reasonable practical opportunity is sacred and nonnegotiable as a fair trial and an ends of justice pre-requsite of our system of justice. Therefore the time set may be directed by the Court having regard to a period that may be reasonably necessary to allow the beneficiary of the ex parte order repeat the application on notice to affected persons or permit such affected persons to apply to have same set aside or even to show cause why the order for the seizure ought not be made in the first place, or pendente lite or for the period of one year.

40. On the plaint of whether the Court erred in ordering the Writ of Summons and Statement of Claim to be posted on the mast of the vessel MT Rose when there was no application for substituted service, we think that the trial judge was within her right to so order. This is consistent with **Order 62 Rule 8** which states as follows:

> Rule 8—Service of Warrant or Writ on Ships
>
> (1) Subject to subrule (2), service of a warrant of arrest or writ in an action against a ship, freight or cargo shall be effected by
>
> (a) Affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure; and (b)

On removing the warrant or writ, leaving a copy of it affixed, in the case of the warrant, in its place and in the case of the writ on a sheltered conspicuous part of the ship.

41. Even though we find that the writ was properly served on the vessel MT Rose the same cannot be said of the 2nd and 3rd Applicants. Specifically, the 2nd and 3rd Applicants deposed at paragraph 7 of the affidavit in support that, " the Applicants have not been served with a writ of summons and a statement of claim till date". Whilst the Interested Party positively asserts service on the vessel MT Rose in paragraph 5 of the affidavit in opposition, there is no similar deposition on service

of the Writ and Statement of claim on the 2nd and 3rd Applicants in the entire 19 paragraph affidavit. At best, the Interested Party merely alleges at paragraph 6 that "the 2nd Applicant as owner of the 1st Applicant cannot feign ignorance of the warrant of arrest and the Writ of Summons issued and served from the registry of the High Court, Tema". We cannot impute service on the 1st Applicant as amounting to service on the 2nd and 3rd Applicants in the manner prescribed under Order 7 Rule 3 of the High Court Civil Procedure Rules, 2004 (C.I. 47). The 2nd and 3rd Applicants, having been purposefully sued as parties to this action, are each entitled to be served in their own rights, at least, with the originating processes. The failure so to do is therefore fatal to the proceedings and any and all consequential orders emanating therefrom.

42. In the premises, it is our considered opinion that these ex parte orders, having regard to their nature and scope and the circumstances under which they were made, without affording the Applicants a hearing in the first place and an opportunity to be heard at a future date, are an affront to the principles of natural justice and ought not be countenanced.

43. We therefore have no hesitation in coming to the conclusion that the trial judge acted in excess of jurisdiction when she made orders ex parte, which orders on

the face of it are to subsist pending the final determination of the case without affording the affected parties the opportunity to be heard. The application therefore largely has merit and ought to succeed in part.

CONCLUSION:

44. It is for these reasons that by a majority of 3-2 (Mensa-Bonsu and Adjei-Frimpong dissenting), we ordered that the ruling of the High Court, Tema, Coram; Her Ladyship Justice Rita Agyeman- Budu dated 5th September 2024 be brought up to this Court for quashing and same was quashed.

(SGD.) E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

(SGD.) A. LOVELACE-JOHNSON (MS)

(JUSTICE OF THE SUPREME COURT)

(SGD.) S. DZAMEFE

(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

ADJEI-FRIMPONG, JSC

> "Admiralty law is a body of law, and the administration of a body of law, with roots in public international law, civil law, international commerce, international agreement and the law of nations. Its history is rich and its contents are vibrant and modern. It is only an arcane or obscure branch of the law to those whose legal thinking is formed exclusively by land-based human activity." Hon. Justice James Allsop.

On September 5, 2024, the High Court sitting in Tema granted an application ex parte for the arrest of the Vessel "MT ROSE". The relevant portion of the order which is attached to the instant application as Exhibit MTR 3 records:

> "IT IS HEREBY ORDERED that the 1st Defendant THE VESSEL "MT ROSE" which is presently docked at Tema Harbour, Tema be arrested and detained at the Tema Port or anywhere within the jurisdiction of this Court pending the provision of a bank guarantee in the sum of One Hundred and Fifteen Thousand United States dollars (US$115,000.00) and Ninety-five thousand Ghana Cedis (95,000) inclusive of interest and costs to be issued by a reputable Ghanaian Bank and to be deposited with the Registrar of this Court.
>
> IT IS AGAIN ORDERED that the Officers of the Ghana Navy confiscate the following documents of the 1st Defendant: THE VESSEL MT ROSE
>
> i. International Tonnage Certificate (1969). ii. International Loadline Certificate.
>
> iii. International Certificate of Registration iv. Cargo and ship Safety Equipment Certificate
>
> v. Cargo Ship Safety Construction Certificate and Attachment vi. International Ship Safety Management Certificate vii. Crew List and Crew Passport viii. Discharge books of all Ship CREW.

IT IS FURTHER ORDERED that the Officers of the Ghana Navy Service be stationed on board THE VESSEL MT ROSE at the anchorage to enable and facilitate the enforcement of the order of arrest and detention.

The Captain of the said VESSEL MT ROSE is to deposit the Log Book and Registration documents of the 1st Defendant THE VESSEL MT ROSE with the Tema Harbour Master.

IT IS FURTHER ORDERED that Plaintiff's writ of Summons and Statement of Claim filed on the 27th of August 2024 be affixed thereof on the mast of the VESSEL MT

ROSE or on the outside of any suitable part of the said Vessel."

The Applicants herein whose names appear on the originating notice as THE VESSEL MT

ROSE, LEMLA OIL COMPANY LIMITED and OWNERS AND PARTIES INTERESTED IN THE VESSEL MT ROSE invoke the supervisory jurisdiction of this Court pursuant to article 132 of the Constitution seeking an order in the nature of certiorari, directed at the High Court to bring up for the purpose of being quashed and the quashing of the above orders.

The Grounds put forth by the applicants have been set out follows:

a. The trial judge lacked jurisdiction to make the orders contained in her ruling ex parte without giving the Applicants an opportunity to be heard.

b. That the trial judge went beyond her jurisdiction when she made the ex parte orders to be effective beyond the 10-day statutory limit for such applications.

c. The trial Judge went beyond her jurisdiction to make an order for service of the Writ of Summons and Statement of Claim by posting on the mast of the Vessel

MT Rose when there was no application for substituted service of the Writ of Summons and Statement of Claim

It will be noticed that the Order sought to be quashed was made on September 5, 2024. The instant application was brought on July 7, 2025, some 10 months after the order. The applicants however prayed this Court to admit the application, for the reason that, the antecedent facts leading to the application were not brought to their notice until after June 2025. They add that even as at the hearing of the application in this Court, they had not been served with the writ of summons and statement of claim.

On a closer examination of the processes on record, the facts do not reflect the absolute truth of the applicants' explanation. By a search attached to the Interested Party's affidavit in opposition as Exhibit KMO 1, the writ of summons and statement of claim were served on the Vessel MT Rose on September 12, 2024, some seven days after the High Court made its orders. The search also shows that the warrant of arrest was posted on the Vessel the same day.

The Interested Party's affidavit in opposition contains an indisputable deposition that in breach of the order of arrest, the Vessel on September 16, 2024, absconded from the Tema anchorage and sailed into the Nigerian waters. By a NOTE OF PROTEST signed by the Harbour Master of the Tema Harbour attached to the affidavit in opposition as Exhibit KMO 2, the Tema Harbour authority protested the unlawful departure of the vessel from the anchorage and served notice of its right to claim all charges incurred by the Vessel during her stay at the anchorage and all other charges that may arise pursuant to her unlawful departure.

There is yet Exhibit KM4 which shows that at the instance of the Interested Party, the Federal High Court of Nigeria, Lagos, in the exercise of its admiralty jurisdiction on September 30, 2024, ordered the arrest of the Vessel within its jurisdiction. The order

was based on an ex parte application filed in that Court on September 27, 2024. This is seen from Exhibit KM3 attached to the Interested Party's affidavit in opposition.

From the foregoing it could not be true that the first time the Interested Party's writ and statement of claim came to the applicants' attention was June 2025. The service of the processes on the vessel and subsequent events, belie the account of the applicants. This being an admiralty action in rem, service on the vessel would have had procedural law implications on the notice on the other applicants. Be that as it may, given the significant procedural and substantive law matters which have arisen in this application and this Court being the final Court with an inherent duty to bring clarity to bear on legal matters such as this, we deem it a useful venture going into the merits. We proceed to set out the arguments of the parties in brief.

Summary of the applicants' arguments

The applicants argue that the grant of the order of arrest upon an ex parte application was in breach of the rules of natural justice. According to Counsel for the applicants, the rules of natural justice go to the core of every legal decision and once such breach is established, it ought not be left to stand. Counsel contends that the trial judge proceeding to hear the application ex parte without notice to the applicants and not giving the applicants the opportunity to respond amounted to a breach of natural justice. REPUBLIC

VRS HIGH COURT, LAND DIVISION-ACCRA EX PARTE NII NOI MORTON & ORS, Civil Appeal No. J4/21/2016 dated 28th July 2016 cited.

Counsel refers to Order 19 rule 3 of High Court (Civil Procedure Rules) C.I. 47 which provides that the court may proceed to hear applications ex parte if it deems proper to do so. However, the nature of the application before the High Court was such that the Interested Party made vivid allegations against the applicants which required the trial judge to give them the opportunity to respond before making the orders. VASQUEZ VRS QUARSHIE [1968] GLR 62; REPUBLIC VRS HIGH COURT, DENU; EX PARTE AGBESI

AWUSU II (NO.2) (NYONYO AGBOADA SRI III INTERESTED PARTY [2002-2004] SCGLR 907 Cited.

Arguing against the order not containing a limited period, reference is made to Order 19 rule 3 of C.I 47, sub-rule 1 of which provides for an application ex parte where any of the rules provides or where, having regard to the circumstances, the Court considers it proper to admit the application to be made. In Counsel's argument, all the orders granted by the court in respect of the ex parte application for the arrest of the vessel were made without timelines or without specifying any period for which they should remain in force which was not permissible under the rules. BARCLAYS BANK VRS GHANA CABLE CO.LTD & ORS [1997-98]2 GLR 61 at 67-68 cited.

Finally, Counsel contends that in the absence of an order of substituted service, the order of service by posting on the vessel was made in excess of jurisdiction.

Summary of the Interested Paty's response

In strong riposte, Counsel for the Interested Party states that the instant application demonstrates the applicants' misconception or lack of appreciation of admiralty actions in rem and how it operates. Founding his argument, reference is made to the provisions of Section 20(1) of the Courts Act, 1993 (Act 459) which enact the admiralty jurisdiction of the High Court "subject to the provisions of any other enactments". Further reference is made to Section 446 of the Ghana Shipping Act (Act 645) which creates the statutory right of an action in rem. According to Counsel, it was this statutory right of an action in rem which the Interested Party exercised to invoke the in rem jurisdiction of the High Court in exercise of which the order of arrest was made.

Counsel then points to the procedure set out in Order 62 of the High Court (Civil Procedure) Rules, C.I 47, rule 1(1) of which states: "These Rules apply to maritime actions subject to the provisions of this order". He contends that the Order 62

provisions are special rules that deal with maritime actions and must be distinguished from other rules of general application in the C.I 47 such as Order 19 which the applicants rely on. Counsel submits that whilst Order 62 is silent on whether an application for the warrant of arrest to issue should be made ex parte or on notice, Order 62 Rule (2(1) provides thus: "after a writ has been issued in an action, a warrant of arrest of the property against which an action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or defendant." He refers to Rule 2(3) which provides that an applicant must file "request for the issue of the warrant together

with an affidavit".

Counsel points out that the rules do not prescribe the form of the request, but the established practice has been by an ex parte application which is the practice followed by many common law jurisdictions. He resorts to Order 82 of C.I 47 thus: "Where in respect of any matter of procedure, no provision is made by these Rules, the procedure for the time being in force in any common law country may where convenient be applied". Counsel refers to various judicial decisions and text writers to demonstrate that the established practice in common law countries is to file an application for warrant of arrest to issue ex parte. It was therefore proper in law when the application in this case was made and granted ex parte by the High Court.

Responding to the challenge against the order failing to impose a limited period, Counsel submits that in admiralty, the essence of the arrest of the res is to compel the provision of security for the maritime claim and if the security was not provided, the res was sold free from all encumbrances to satisfy the claim if established. The warrant of arrest was therefore not an interim order and it was highly unconventional in global admiralty practice to make an arrest order to last for a limited period of say ten (10) days. The universal practice was that an owner or a person interested in the res has the right to apply to set aside the arrest if the order was wrongfully made.

Finally on the question of service by posting as ordered by the High Court, Counsel submits that the trial Judge acted in accordance with Order 62 rule 8(1) of C.I 47 and that there was no excessive exercise of the Court's jurisdiction.

Resolution

Reading the arguments of the applicants in this application, and as we listened to Counsel in his oral arguments, it dawned on us the urgency in clarifying some of the basic principles of admiralty. We shall therefore indulge ourselves a measure of elaboration to throw light on what is patently a unique arena of the law.

First, from the processes filed in this application this maritime litigation started this way.

The Interested Party agreed with the Vessel Interest of the M.T. ROSE to charter her. The parties agreed on a hire for which the Interested Party was made to pay a deposit of USD 140,000. It turned out that the Vessel was not fit for the purpose of the charter, that is to say, she was unseaworthy. Not even after the Interested Party had been made to advance further funds for repairs on her. In the events that followed, the Interested Party requested a refund of the hire paid, failing which it decided to exercise a lien which it thought it had over her. It was to enforce the lien that the admiralty in rem jurisdiction of the High Court was invoked leading to the issuance of the warrant of arrest and the related orders.

Under our law, the admiralty jurisdiction of the High Court is provided for under Section 20 of the Courts Acts, 1993 (Act 459) (as amended). The Section lists a gamut of maritime claims for which the High Court's admiralty jurisdiction may be invoked. It will not be useful to produce the list here. For, out of the lot, what is material to this case is contained in Section 20(1)(j) as follows:

> "The High Court shall, subject to the provisions of any other enactment, have jurisdiction to hear and determine any of the following questions or claims—(j) a claim arising out of an agreement relating to the use or hire of a ship, or carriage

> of goods or persons in a ship, or in tort in respect of goods or persons carried in a ship."

It appears the claim of the Interested Party which was an agreement relating to the hire of the Vessel fell under this provision for which the in rem jurisdiction of the High Court was invoked. Let us at this stage discuss in some detail the nature of the admiralty in rem jurisdiction of the High Court.

Nature of the in rem jurisdiction and its exercise.

In admiralty, an action in rem is one in which the action proceeds against the res, that is the subject matter of the litigation itself be it a ship, cargo, or freight and for which the claimant can obtain judgment. That judgment becomes wholly enforceable against the res as if it was an ordinary legal person. The theorists have called it the "personification" theory. We do not dabble in theories in a determination of this nature. But by this distinctive concept, the res can be sued, arrested, held liable and sold in execution all without the appearance or involvement of the owner or party interested in it at any stage. This is the epitome of the uniqueness of the in rem jurisdiction of the Court in admiralty. It is indeed an ancient concept dating back to the 1600s. It is a concept which has had to wallow in jurisprudential controversy and been subjected to scholarly critique. Yet, it survived it all till today presumably due to the peculiar nature of maritime law and practice anchored in the unavoidable modern day human need to protect cross-national trade and sea commerce. In the words of Sir Jessel MR in The City of Mecca [1881] 5 P.D 106 at 112:

> "You may in England and in most countries proceed against the ship. The writ [now claim form] may be issued against the owner of such a ship, and the owner may never appear, and you may get your judgment against the ship without a single person being named from beginning to end. That is an action in rem and it is perfectly well understood that the judgment is against the ship."

The following commentary from the Supreme Court Practice (The White Book) 1997, Vol.1 Sweet & Maxwell Paragraph 75/1/5 at page 1309 aptly captures the concept: "An Admiralty in rem is in effect an action against a res. . . A res is usually a ship but may in some cases be cargo or freight, an aircraft or hovercraft. In such an action, the Plaintiff may cause the res to be arrested if it is within the jurisdiction. . . If the res is arrested, and the Plaintiff's action is successful, then unless the res has been released . . . judgment may be given against the res and an order made for its appraisement and sale. The proceeds of sale will be paid into Court and will, after deduction of the fees and expenses of the Admiralty Marshal in connection with the arrest, custody and appraisement and sale of the res will be available in or towards satisfaction of the Plaintiff's judgment. If, as is frequently the case, there is more than one action against the res, payment out of the proceeds of sale will be ordered in accordance with the Admiralty rules as to priorities of claims…"

The arrest of the res is therefore the fulcrum of the in rem jurisdiction. The essence of the arrest is to constitute the res as security for the claimant's claim. It is also upon the execution of the warrant of arrest that the jurisdiction of the court is assumed over the whole matter whether the owners have been served with the writ or not.

Writing on the subject of arrest in their widely circulated work, Admiralty Jurisdiction and Practice, 5th ed., Lloyd's Shipping Law Library, page 25 para 1.57 Meeson and Kimbell have stated:

> "It is a feature of the Admiralty procedure that not only may an action be brought in rem (so that jurisdiction may be founded by service of process upon the ship notwithstanding the absence of a means of establishing jurisdiction over the ship owner in personam) but the ship may also be arrested so as to provide security for the claim. This is often for practical purposes the reason to bring an in rem claim in the Admiralty Court as opposed to proceeding by means of an ordinary in personam claim against the debtor in the Admiralty or Commercial Court. A warrant of arrest of a ship may only be obtained in the context of an in rem claim."

In not so different terms, William Tetley also explains the concept in his seminal work International Maritime and Admiralty Law, International Shipping Publications, page 407: "In an action in rem, the ship concerned by the claim within the jurisdiction (and in some cases its cargo, freight and/or bunkers) may be arrested to found the court's jurisdiction and provide pre-judgment security; it usually also secures the defendant's appearance in the suit. Sister ship arrest in rem is also permitted under certain conditions. A judgment in the Plaintiff's favour in action in rem may be enforced only against the ship or other property arrested, unless the action has been served or the defendant has filed acknowledgment of issue of the in rem claim form or statement of claim (the modern day equivalent of the defendant's appearance), in which case the action proceeds as joint action in rem and in personam with the final judgment for the Plaintiff enforceable against the whole of the defendant's property."

An action in personam on the other hand which may also be deployed to enforce a maritime claim in certain cases involves proceeding exclusively against the owner of the res without impleading the res. And of course, expectantly, the claimant in an action in personam must concern himself with issues of service on mostly a foreign defendant. In the words of the learned editors of Halsbury's laws of England:

> "A claim in personam may be brought in the High Court in all cases within the Admiralty jurisdiction of that court, although the exercise of jurisdiction may be inhibited by the operation of rules of court relating to service of proceedings out of the court jurisdiction and in collision and other similar cases the jurisdiction of the court cannot in any event be exercised unless certain special conditions are fulfilled." Vol. 1(1), 4th ed., paragraph 306, page 420.

For more clarity, the distinction between admiralty jurisdiction in rem and in personam was espoused by the Nigerian Court of Appeal in CEMAR SHIPPING INC VRS M/T "CINDY GAIA" AND OTHERS [2012] Part 1 ALL N.A.L.R. 199 as follows:

> "An action in rem is a piece of legal machinery directed against a ship alleged to have been an instrument of wrong-doing in cases where it is to enforce a

maritime or statutory lien or in possessory action against the ship whose possession is claimed. A judgment in rem is a judgment good against the whole world. This does not mean that the vessel is the wrongdoer but that is the means by which the wrongdoer (its owner) has done wrong to some other party. It is an accepted legal theory that an action in rem is procedural. The purpose is to secure the defendant owner's personal appearance. An action in personam is directed against the person at fault and is dependent entirely upon the plaintiff being able properly and effectively to serve a summons on the defendant in connection with the legal complaint against the defendant particularly when the parties are in different jurisdiction. Therefore, the maritime shipping industry contains within its sphere, the concept of legal action available to an injured party through the machinery of the admiralty jurisdiction which allows, under certain clearly defined circumstances, the vessels to be sued n rem. An action in rem can be concluded by a judgment in rem. The ship owner may take part in the proceedings if he considers it appropriate to defend his property. It is essentially an action against his property (in rem) not against him. Thus, it can be seen that the distinction between in rem and action in personam is procedural only. Except in certain claims, the same cause of action may give rise to both actions depending on which action the Plaintiff initiates having regard to the procedural difficulties involved."

We have had to make the distinction clear because in the instant case, the Plaintiff, in proceeding in rem added the LEMLA OIL COMPANY LTD as 2nd Defendant. That however will not convert the action in rem to an action personam. For in action in personam, the action proceeds exclusively against the owner or person interested in the res. For emphasis, the res is not a party. That was why in the Nigerian case of K. MAERTSCH; THE OWNER OF M.V WALVIS 7 & ORS VRS OLA BISIWA reported in the NIGERIAN SHIPPING CASES, VOL XII 2013-2016 page 42, a warrant of arrest was set aside because the res was not made a party to the action at the inception of an in rem action.

An action commenced in rem remains so unless the owners or a person interested decides to defend and enters appearance whereupon the action proceeds jointly as in rem and in personam with the result that judgment obtained shall be enforceable against the res and the owners personal property. Thus, in the "TATRY" [1992]2 Lloyd's Rep. 552 it was held that after acknowledgment of service, in an admiralty action in rem, the claim does not lose its in rem character, but proceeds as a hybrid, being both in rem and in personam even though the res may have been released by the court." Again, in the "BROADMAYNE" [1916] BANKES L.J noted:

> "In my opinion, an action which has commenced as an action in rem continues as an action in rem unless it undergoes some alteration in its character by amendment, by order of the Court or under the Rules of Court."

We are satisfied on the authorities considered that the instant action was in rem and remained so despite the joinder LEMLA in the suit. It never became an action in personam for the explanation afore-given. It was in the context of the in rem action that the vessel MT ROSE was arrested with the effect that she constituted a security for the maritime claim the Interested Party was pursuing and also that the High Court assumed jurisdiction over the matter despite the non-service of the processes on her owners and LEMLA. Meeson and Kimbell, relying on decisions of judicial prominence comment on the effect of arrest as follows:

> "The arrest constitutes the ship or other property as security in the hands of the court for the claim and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. In the "Cella" a ship was arrested in respect of a claim for repairs which did not carry a maritime lien. Subsequently, the shipowners were ordered to be wound up and the liquidator claimed the proceeds of sale of the ship in the hands of the court as against the claimant. It was held by the Court of Appeal that the liquidator could not oppose the payment out to the claimant. Lord Esher MR said: "the moment that the arrest takes place, the ship is held by the Court as a security for whatever may be adjudged by it due to the claimant"; and Fry L.J said: The arrest enables the Court to keep the property as security to answer the judgment, and unaffected

by chance events which may happen between the arrest and the judgment"; and Lopes L.J said: "From the moment of the arrest the ship is held by the Court to abide the result in the action, and the rights of parties must be determined by the state of things at the time of the institution of the action, and cannot be altered by anything which takes place subsequently."

We wholly agree with these formidable legal expositions not only for their strong persuasive force but also for, as we shall demonstrate anon, their absolute conformity with the state of our statutory and procedural rules as well as the established practice in our courts. With this, we proceed to examine the arguments put forth by the applicants.

1. Application ex parte for warrant of arrest and grant thereof depriving the applicants of the opportunity to be heard.

The procedure for arrest is provided for under Order 62 Rule 2 of the High Court (Civil) Rule, (C.I 47) as follows:

"2. (1) After a writ has been issued in an action, a warrant for the arrest of the property against which the action or counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the Plaintiff or defendant.

(2) A party applying for the issue out of the registry of a warrant for the arrest of any property shall search the Caveat Book to ascertain whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a request for the issue of the warrant together with an affidavit made by the party or the party's agent containing particulars required by subrules (5) and (6) of this rule but the Court may allow a warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with the leave of the Court, a warrant of arrest against a foreign ship belonging to a port of a state that has a consulate in Ghana in an action for

possession of the ship or for wages, shall not be issued until notice that the action begun has been sent to the consul.

(5) Every affidavit shall state

(a) the name, address and occupation of the applicant for the warrant;

(b) the nature of the claim or counterclaim in respect of which the warrant is required and the fact that it has not been satisfied; and

(c) the nature of the property to be arrested and, if the property is a ship, the name of the ship and the port to which she belongs.

(6) Every affidavit in an action for possession of a ship or for wages shall state the nationality of the ship against which the action is brought and that the notice, if any, required by subrule (4) of this rule has been sent; and a copy of the notice shall be annexed to the affidavit.

In terms of the sub-rule (3) above, the primary documents to be filed for the issuance of the warrant are "request for the issue of the warrant together with an affidavit". The rule does not prescribe any form the request is to take but it does not also mention a motion. The use of a motion ex parte appears to have become the practice because that is what is obtainable in other maritime jurisdictions especially those of the common law fraternity. It has always been the practice in our courts to apply ex parte supported by an affidavit to obtain a warrant of arrest in an in action in rem. If a practice has been followed in our Courts for many years by common consent, it shall require a strong legal basis to reroute it especially so when it has a universal following. This underscores the crucial reference to the provision under Order 82 rule 1 of C.I 47 which states:

> "1. Where in respect of any matter of procedure, no provision is made by these Rules, the practice for the time in force in any common law country may where convenient be applied."

Now, the sheet anchor of the applicants' argument is order 19 of C.I 47. What the applicants fail to realize is that the provisions in Order 19 regulate applications in pending actions. Order 19 rule 1 subrule 1 states thus: "Every application in **pending proceedings** shall be made by motion." Clearly, Order 19 is comes into play after the jurisdiction of the Court has been invoked whether by a writ, petition or an originating notice of motion. Generally, Order 19 procedure cannot originate an action and invoke the jurisdiction of a Court. It is not an originating process.

In admiralty actions, because of its peculiar nature, until the res is arrested by which the court assumes jurisdiction over it, the action is not pending until the warrant is executed. It is true a writ ought to be issued in an admiralty action in rem. But it is obvious from the language of Rule sub-rule 1 thus: "2. (1) **After a writ has been issued** in an action, a warrant for the arrest of the property against which the action or counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the Plaintiff or defendant" that the writ need not be served, yet, the warrant of arrest can be issued. Put simply, under our rules, all you need is to issue the writ and the arrest can follow. The writ need not be served. It is only within the unique context of admiralty that a Court may make orders against a defendant who is yet to be served with a writ. And it is so because the warrant of arrest is the doorway to the court's assumption of its in rem jurisdiction. It is not merely the issuance of the writ that invokes the in rem jurisdiction of the Court in admiralty but the service or execution of the warrant of arrest. See K. MAERTSCH; THE OWNER OF M.V WALVIS 7 & ORS VRS OLA BISIWA (supra) at 55 C.A. Thus, until the warrant is executed whereupon the jurisdiction in rem is assumed over the subject, the action is not deemed pending for the provisions in Order 19 to apply. It is of course axiomatic that jurisdiction is the substructure of every action. A court cannot act when it has not assumed jurisdiction. Order 19 cannot be invoked when jurisdiction has not been assumed for the proceedings to be **"pending"**. This is what renders Order 19 inapplicable as far as requesting or applying for warrant of arrest under 62 rule 2 is concerned. For, it is after the execution of the warrant and the service thereof which usually coincides with the service of the writ that there will be pending proceedings.

It is significant also to point out from the provision in Order 62 rule 2 that, where prior notice was required to be given before the issuance of a warrant of arrest, this was specifically provided for under rule subrule (4) thus: (4) Except with the leave of the Court, a warrant of arrest against a foreign ship belonging to a port of a state that has a consulate in Ghana in an action for possession of the ship or for wages, shall not be issued until notice that the action begun has been sent to the consul.

I believe the framers of the rule would have stated so if it was contemplated that an application or request for the issuance of arrest warrant should be on notice. We here, bear in mind the maxim Expressum facit cessare tacticum; What is expressed, makes what is silent to cease. Curiously, the subrule (4) did not say 'service' on the consul. It says notice of the action should be given to the Consul. The provision therefore appears to have notification value only. It clearly envisages some diplomatic intervention in appropriate cases. Service of process triggers an obligation to take a procedural step.

Again thinking of it, the applicants' advocacy for pre-arrest hearing appears oblivious of the fact that in admiralty in rem, the defendant is a property not human or corporate person. The property may be a ship, cargo, or freight. That is why the word "property" is used in the provisions under Order 62 rue 2. The object of arrest is its seizure to serve as security. It smacks of absurdity to give notice to a target of seizure. We are afraid this is common-sensical. As the United States's Supreme Court noted in CALERO-TOLEDO V PEARSON YACHT LEASING COMPANY 416 U.S. 6663, 94 S. Ct. 2080, 40 2d 425 (1974) at 2029:

> "pre-seizure notice and hearing might frustrate the interests served by the statutes, since the property seized as here, a yacht, will often be a sort that could be removed to another jurisdiction. . . if advance warning were given."

My Lords, the issue of whether proceeding ex parte in admiralty in rem offends due process rules has been a subject of judicial brooding in some commonwealth

jurisdictions. A case in point is AMSTAR CORPORATION VRS S/S ALEXANDROS T 664. F.2d. 904 (4th Cir.1981) the antecedent facts of which bear semblance to the case at bar.

In that case. AMSTAR CORPORATION filed a suit against the vessel ALEXANDROS T and its owner NAVA SHIPPING CO. LTD for cargo damage. By an ex parte process, the Marshal arrested the vessel in exercise of the in rem jurisdiction of the Court. NAVA argued that the rules invoked for the arrest breached due process for want of its participation in the pre-arrest procedure which offended the 5th amendment. It prayed for the dismissal of the action for lack of jurisdiction. The District Court dismissed NAVA's contention. On appeal to the Court of Appeal, 4th Circuit which failed, it was decided that Rule C (under which the arrest procedure was exercised) had to be evaluated within the context of maritime law rather than common law principles. It was noted that proceedings in rem and ex parte seizure were maintained for the liabilities of the vessel and that such proceedings serve a substantial purpose that justified immediate seizure. It was further recognized that maritime liens and in rem proceedings were long standing elements of maritime law that served specific commercial needs of enforcing liens. The fact was taken into account also that, by the execution of the warrant, notice would reach the owners of the vessel through the master and the rules allowed immediate post arrest hearing for the arrest to be challenged.

A similar conclusion was reached in MERCHANTS NATIONAL BANK OF MOBILE VRS THE DREDGE GENERAL G.L. GILLESPI 663. F. 2d 1338 (5th Cir. 1980) where the Admiralty Rules C and E concerning in rem seizure of a vessel without a preliminary hearing was challenged.

The Court of Appeal of the 5th Circuit dismissed the challenge. The Court, like its counterpart in the AMSTAR drew a sharp distinction between maritime law and common law in examining the admiralty rules. It noted that maritime law had unique procedures

and substantive elements that had been recognized and preserved by congress and the courts for centuries. The rules were deep-rooted in maritime practice and served commercial needs of the maritime industry such as enforcement of maritime liens. These liens allow the parties to secure redress of certain maritime obligations directly through the vessel itself. Unlike common law liens, maritime liens endow the vessel with an independent legal personality allowing it to be held liable for such obligations. Therefore, according to the Court, applying common law procedural standards to maritime rules would not account for the substantive differences and the historical context of maritime law. Now, dismissing the argument of not affording pre-arrest hearing the Court reasoned as follows:

> "The argument for notice and hearing before seizure however falters at two crucial points. First, the inherent risk of deterioration, attachment of additional liens, destruction, alienation and conveyance to third parties which are present in the maritime context require that a vessel be subject to immediate seizure to be held in custody to protect and enforce a valid maritime lien. Seizure of a vessel pursuant to a valid lien has been necessary for centuries due to the wandering nature of a ship in commerce. Second, it is questionable whether a judge or magistrate on a pre-arrest basis could fairly consider complicated transaction bearing on the ultimate enforcement of the asserted maritime lien. A denial of the seizure might effectively dispose of the claim on the merits without trial. The lienor would then be denied due process under the Fifth Amendment." The Court further reasoned: "Because of the mobile and international character of shipping, arrest of a vessel may often be the only feasible method of acquiring jurisdiction, and thus providing forum for maritime claims. The procedure serves an important governmental and public interest. Similarly, the need for prompt action is recognized as peculiar to admiralty and a necessary part of the proceedings." Page 1701. Other similarly decided cases will include CENTRAL SOYA COMPANY VRS COX TOWING CORPORATION 417F. SUPP.

658 (N.D. MISS 1976); BETHLEHEM STEEL CORPORATION VRS S/T VALIANT KING 1977 A.M.C. 1719 (E.D. P.A. 1974); STONER VRS O/S

NEISKA 11 1978 A.M.C. 2650 (D.C. ALASKA 1978); A/S HJALMER BJORGES REDERI VRS THE TUGBOAT CONDOR 1977 A.M.C. 1969 (S.D. CAL. 1979).

Whilst we note that the above cases were mostly decided within the context of the United States' constitution, the principles of due process and fair hearing which underpin the decisions are obtainable in our constitutional framework and given that the applicants' argument revolve around those principles and given also the substantial commonality of the factual antecedents of the cases, we think the reasoning in them fit squarely into the context of this case. We are therefore persuaded by the decisions and desire to go by them. We make bold to state that the absence of pre-arrest hearing, what the applicants call denial of hearing by the trial Court did not breach any right of theirs. It was in tandem with the long standing practice in our courts which has a following of the practice in civilized nations. And we are here not talking about a mere historical attraction but a practical problem solving device that retains its importance in contemporary admiralty law.

Without going into the chapters and verses of the cases so confidently cited to us by

Counsel for the applicants, they are weightless to our determination of the ground of the application. To make clear, we hold that the ex parte process of arrest by which the MT ROSE was arrested did not breach due process principle and did not deprive the applicants of their right of hearing as contended. Under the rules nothing stood in the way if after the arrest the applicants desired to apply to set aside the order of arrest in the High Court. We therefore dismiss the applicants' argument on the first ground of the application.

2. The Order of arrest not made to order for a limited period.

The conclusion reached on the first ground largely answers the second. We have demonstrated that Order 19 of C.I 47 was not applicable to the application and grant of the ex parte warrant of arrest. Nothing therefore prevented the High Court from making

the order the way it did. We shall however re-emphasize the essence of arrest in admiralty in rem proceedings. Aside its jurisdictional effect it also constitutes the res as security to stand for the underlying claim of the Claimant. The res remains under arrest pending the determination of the claim. If the claim is established, the res shall be liable to be sold and the proceeds applied to satisfy the claim.

By this principle, the res is to remain under arrest unless the owner or the person interested posts bail or security sufficient to secure its release. In the absence of such security, the res remains under arrest pending the adjudication of the claim. In ANCHOR LTD VRS THE OWNERS OF THE SHIP ELENI 1 PSC 14, 15; NIGERIAN SHIPPING CASES VOL. 1 PAGE 42 Foster Sutton FCJ reiterated the principle: "…An action in rem is one in which the subject is itself sought to be affected, and in which the claimant is enabled to arrest the ship or other property, and to have it detained, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the proceeded against, where that is less than the amount of the claim."

The order of the High Court gave the option of provision of security. The applicants had the right to provide the alternative security. They also had the right to apply for postarrest hearing to make a case for vacation of the order. The practice in common law procedure where an ex parte order is made for a limited period is unknown to admiralty in rem proceeding. The arrest is the basis of the court's assumption of jurisdiction. The Court cannot make an order which has the effect of assumption of jurisdiction and in the same order limit or curtail its jurisdiction. I have made this point before in the case of

VISION METAL GENERAL TRADING FZC & ORS VRS MT PRIYE Suit No E1/01/2015 (unreported judgment dated 11th December 2014) H.C. In that case I held:

> "Granting an order for a limited period subject to extension is in my view unknown to the law. By the nature of an action in rem. It is the arrest that founds the Court's jurisdiction. Having assumed jurisdiction on the basis of the

> arrest, the Court cannot in the same order purport to curtail that jurisdiction. I think that results in an absurdity. Aside that another effect of the arrest is to constitute the res as security against the claim which is yet to be tried. Curtailing the order by time limit may defeat the rationale of the principle." This is a position I still hold to.

Additionally, the applicants' argument fails to take into account the procedure for Release under Rule 10 of Order 62. Subrule 1 provides:

> "10. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, the property shall only be released under the authority of an instrument of release, in this rule referred to as "release" issued out of the registry."

The provision is a re-enactment of Order 29 rule 1 of LN 140 A which provided: "Property arrested by warrant shall only be released under the authority of an instrument issued from the registry, to be called a release."

The release provision as understood, underscores the principle that (unless a sale is ordered by the Court), the property is meant to remain under arrest to abide the adjudication of the claim. We take the view that the requirement of a formal procedure for release from arrest is clearly incongruous with a limited arrest order. That is to say, it was for the contemplation that the property must remain under arrest pending the adjudication of the claim that the rules provide a formal procedure to follow if a defendant wanted the property to be released in the interim. We are guided by the principle of interpretation that the provisions of a statute must be read as a whole and effect given to every provision of the whole. LARBI VRS SALLOUN [1984-86]1 GLR 449. In effect the second ground of the application also fails.

The final ground of the application which alleges excess of jurisdiction on the part of the High Court in ordering the service of the Writ of Summons and Statement of Claim by posting on the mast of the Vessel MT ROSE when there was no application for substituted service ought to be dealt with more summarily. The order of the Court directed: "IT IS FURTHER ORDERED that Plaintiff's writ of summons and statement of claim filed on the 27th of August 2024 be affixed thereof on the mast of THE VESSEL MT. ROSE or on the outside of any suitable part of the said Vessel".

This mode of service was in clear compliance not only with the provisions of the Order 62 rule 5(1) which provides that the writ be served "…on the property against which the action is brought" but also with the known practice in admiralty. The ground has not merit and is also dismissed.

In our final analysis, we found no merit in the application and we have in this delivery demonstrated the legal basis of our position. We do not find the position of our brethren in the majority the right one. We therefore part ways with them.

Legislative Reform

There is hardly any doubt that this case and others similarly circumstanced in our courts reveal grave deficiencies in our statutory and procedural rules on admiralty. International trade hinges on the maritime industry, an industry unavoidably transnational and operating under a glut of international laws and regulations. The multiple contractual relationships between and among players in the industry make disputes and litigation inevitable, yet complex.

Litigating maritime disputes involves operating around extensive and complex legal and procedural rules. The sad commentary about our admiralty procedure rules is one of danger inviting rescue. It is said that, if one does not know to which port one is sailing, no wind is favourable. If this country is to position itself as a formidable maritime

jurisdiction to resolve maritime disputes and ultimately take full advantage of the maritime industry, then a fit for purpose admiralty procedure rules are required and urgently so. We are here talking about rules that identify the peculiarities of admiralty law, reasonably insulated from common law notions and align with international best practices.

(SGD.) R. ADJEI-FRIMPONG

(JUSTICE OF THE SUPREME COURT)

(SGD.) PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

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