



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE MERCHANT SHIPPING ACT**

CAP. 389

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Kenya

## Merchant Shipping Act

Cap. 389

Legislation as at 11 December 2023

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# MERCHANT SHIPPING ACT

## CAP. 389

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[Amended by [Statute Law \(Miscellaneous Amendments\) Act, 2019 \(Act No. 12 of 2019\)](#) on 23 July 2019]

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[Amended by [Statute Law \(Miscellaneous Amendment\) Act, 2023 \(Act No. 19 of 2023\)](#) on 11 December 2023]

**An Act of Parliament to make provision for the registration and licensing of Kenyan ships, to regulate proprietary interests in ships, the training and the terms of engagement of masters and seafarers and matters ancillary thereto; to provide for the prevention of collisions, the safety of navigation, the safety of cargoes, carriage of bulk and dangerous cargoes, the prevention of pollution, maritime security, the liability of ship-owners and others, inquiries and investigations into marine casualties; to make provision for the control, regulation and orderly development of merchant shipping and related services; generally to consolidate the law relating to shipping and for connected purposes**

### Part I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Merchant Shipping Act.

## 2. Interpretation

In this Act, unless the context otherwise requires—

“apprentice” means an apprentice to sea service;

“authorised officer” in relation to any provision of this Act, means a person designated as such by the Director-General under the Kenya Maritime Authority Act (Cap. 370);

“Authority” means the Kenya Maritime Authority established under the Kenya Maritime Authority Act (Cap. 370)

“bareboat charter registration” means a legal arrangement whereby the nationality of the bareboat charterer, as the owner of the ship *pro hac vic*, is allocated to the ship and evidenced by flying the flag of that nation during the life of the charter;

“bareboat charter terms” in relation to a ship, means the hiring of the ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and the crew;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters related to merchant shipping;

“cargo ship” means a ship which is not a passenger ship;

“certificate of competence” means a certificate issued to a person under Part VII which entitles the person to be employed in the capacity stated in the certificate;

“certificate of registry” means a certificate by that name granted pursuant to section 34;

“charter period” means the period during which the ship is chartered on bareboat charter terms;

“child” means a person under eighteen years of age;

“Collision Regulations” means the Convention on the International Regulations for Preventing Collisions at Sea, 1972;

“consular officer” means a person discharging the duties of a consular officer on behalf of the Government of Kenya, and when used in relation to a State other than Kenya means the officer recognised by the Government of Kenya as a consular officer of that other State;

“contravention” includes failure or refusal to comply;

“country of original registry” unless the context provides otherwise shall be construed as the “country of underlying registry”;

“country of underlying registry” means the registry and flag to which the ship reverts upon termination of the bareboat charter;

“court” means the High Court of Kenya;

“damage to the environment” means a substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents;

“dangerous goods” or “goods of a dangerous nature” shall carry the same meaning as contained in the SOLAS Convention, as amended from time to time;

“declaration of transmission” means a declaration authenticating the transmission of property under section 83 of this Act;

“designated ship” means a ship for the time being under provisional registration;

“Director-General” means the Director-General of the Kenya Maritime Authority appointed under the Kenya Maritime Authority Act (Cap. 370);

“distressed seafarer” includes any seafarer in distress in any place outside Kenya and any seafarer whether a citizen of Kenya or not, shipwrecked from a Kenyan ship or is otherwise in distress in any place;

“employer” in relation to a seafarer, means the person who has entered into a crew agreement with the seafarer for the employment of the seafarer on a ship;

“equipment” in relation to a ship, includes every thing or article belonging to or used in connection with, or necessary for the navigation and safety of the ship;

the time being used or intended to be used wholly for the purpose of conveying persons wishing to fish for pleasure;

“foreign country” means any country or place other than Kenya;

“foreign ship” means a ship not registered in Kenya;

“foreign going ship” means a ship employed in voyages beyond the limits of a local trade voyage;

“freeboard” means the distance measured vertically downwards amidships, from the upper edge of the deck line to the upper edge of the related loadline;

“freight” includes passage money and hire;

“Government” means the Government of the Republic of Kenya;

“Government ship” means any ship owned by the Government or held by any person on behalf of or for the benefit of the Government;

“grain” includes millet, wheat, maize (corn), oats, rye, barley, rice, pulses, sesame and seeds;

“harbour” includes estuaries, piers, jetties and other works in or at which ships can obtain shelter or ship and unship goods or passengers;

“inspector” means the person appointed as such under section 14 of the Kenya Maritime Authority Act (Cap. 370);

“international voyage” means a voyage from a port or place in Kenya to a port or place outside the territorial limits of Kenya, or conversely;

“islands” means all the islands comprised within the Republic of Kenya;

“internal waters”, in relation to Kenya, means Kenyan waters landward of the baselines for measuring the breadth of its territorial sea;

“Kenyan ship” means a ship registered in Kenya under this Act, and “Kenyan vessel” and “Kenyan fishing vessel” shall be construed accordingly;

“Kenyan waters” mean the sea or other waters within the seaward limits of the territorial sea of Kenya;

“Load Line Convention” means the International Convention on Load Lines, 1966 as may, from time to time, be amended;

“Load Line Convention ship” means a ship that is—

- (a) of a kind to which the Load Line Convention applies; and
- (b) registered in a country the Government of which has accepted or acceded to the Load Line Convention and has not denounced that Convention;

“local load line certificate” means a certificate by that name issued under regulations made for the purpose of Part X;

“local safety certificate” means a certificate by that name issued under regulations made for the purpose of Part IX;

“local voyage” means a voyage between the mainland and the mainland and any of the islands or between any of those islands;

“managing owner” means a person other than the registered owner who undertakes the day to day management of the ship on behalf of the owner;

“maritime casualty” means a collision of vessels, stranding or other incident of navigation or other occurrence on board a vessel or external to it, resulting in material damage or imminent threat of material damage to a vessel or cargo;

“maritime service provider” means any person providing in the maritime industry the service of crewing agencies, pilotage services, clearing and forwarding agents, port facility operator, shipping line, shipping agent, terminal operator, container freight station, quay side service provider, general ship contractor, ship broker, ship breaker, ship chandler, cargo consolidator, ship repairer, maritime training or such other service as the Cabinet Secretary may, by notice in the *Gazette*, appoint;

“master” includes every person, except a pilot, having command or charge of a ship and, in relation to a fishing vessel, means the skipper;

“mile” means an international nautical mile of 1,852 metres;

“Minister” means the Cabinet Secretary;

“mortgage” means an instrument of security of the kind referred to in section 95;

“motor ship” includes a steamship and any other ship propelled by machinery, but not a sailing ship;

“national flag” means the national flag of Kenya;

“near coastal voyage” means—

- (a) a voyage made exclusively within waters under Kenyan jurisdiction; and
- (b) the ship is for the entire voyage within fifty miles from a safe haven in the Kenya; or
- (c) a voyage which, by agreement between Kenya and another state, is considered or treated as a near coastal voyage;

“new ship” means a ship—

- (a) the keel of which was laid; or
- (b) that has been substantially—
  - (i) altered; or
  - (ii) reconstructed,

after the commencement of this Act;

“nuclear ship” means a ship provided with a nuclear power plant;

“official log book” means the official log book required to be kept under section 198;

“Organization” means the International Maritime Organization and “IMO” shall be construed accordingly;

“owner” in relation to a ship, or “shipowner” means, in respect of a registered ship, the registered owner and includes a demise charterer and a managing owner or a managing agent;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on the business of the ship;
- (b) a person on board the ship, either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled;

“passenger ship” means a ship which is constructed for, or which is habitually or on any particular occasion used for carrying more than twelve passengers and includes a ship that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding house, guest house or other establishment;

“pilot” in relation to the ship, means a person not belonging to the ship who has the lawful conduct of the ship;

“pleasure vessel” means any vessel including a dive boat which at the time it is being used is—

- (a) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family of the owner;
- (b) in the case of a vessel owned by a body corporate, one on which the persons are employees, officers or shareholders of the body corporate, or their immediate family;
- (c) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion;
- (d) any vessel wholly owned by or on behalf of a club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of the club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;
- (e) in the case of any vessel referred to in paragraph (a) or (b), no other payments are made by or on behalf of the users of the vessel, other than by the owner; and in this definition—
  - (i) “immediate family” means, in relation to an individual, the husband or wife of the individual, and a relative of the individual or the relative’s husband or wife;
  - (ii) “relative” means brother, sister, ancestor or lineal descendant, and “owner” includes charterer;

“pollution” means the introduction, directly or indirectly, by human activity, of wastes into the sea which results or is likely to result in deleterious effects including harm to living resources and marine ecosystems, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;

“port” means a place, whether proclaimed a harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers;

“port authority” includes all persons entrusted with the function of managing, regulating and maintaining a harbour;

“port of registry” in relation to a ship, means the port at which she is registered or is provisionally registered;

“prescribed” means prescribed by regulations made under this Act;

“proceedings” in relation to Part XIX and XX, includes any suit, approval or application;

“proper officer” in relation to any function or activity under this Act, means a person authorised by the competent authority to perform that function or activity and includes a consular officer;

“proper return port” in relation to seafarer, means—

- (a) the port from which he was shipped;
- (b) in the case of a seafarer, other than a seafarer shipped in Kenya, a port in the country to which he belongs; or
- (c) in the case of a discharged seafarer, a port agreed by the seafarer at the time of his discharge;

“property” means any property not permanently and intentionally attached to the shoreline and includes freight at risk, and wherever the context so requires also includes a vessel, cargo, equipment and effects;

“property of a seafarer” means any monies due to a seafarer, his personal effects, the proceeds of the sale of such effects and the balance of any wages due to a seafarer;

“receiver of wreck” means a person appointed as such under the Kenya Maritime Authority Act (Cap. 370);

“register” means the register of ships referred to in section 25;

“Registrar of Ships” means a person appointed as such under the Kenya Maritime Authority Act (Cap. 370);

“regulations” means the regulations made under this Act;

“Safety Convention” has the meaning assigned to it in section 229 of the Act;

“sailing vessel” means any description of a vessel provided with sufficient sail area for navigation under sails alone, whether or not fitted with mechanical means of propulsion; but does not include a pleasure vessel;

“salvage” includes, subject to the Salvage Convention, all expenses properly incurred by the salvor in the performance of the salvage services;

“Salvage Convention” means the International Convention on Salvage, 1989;

“salvage operation” means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters;

“salvage services” means services rendered in direct connection with salvage operations;

“salvor” means any person rendering salvage services;

“seafarer” includes every person (except a master, pilot or apprentice duly contracted or indentured and registered) employed or engaged in any capacity on board a ship;

“seagoing” in relation to a vessel, means a vessel proceeding to sea beyond internal waters;

“ship” includes every description of vessel used in navigation;

“ship registered under this Act” means a ship registered under Part IV;

“small ship” means a ship of less than 24 metres;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as affected by any amendment made under Article XII of that Convention;

“submersible craft” means a ship that can travel under water but which operates on a tether or umbilical to a tender such as submarines, surface vessel or platform but shall in any event, not include a submarine;

“surveyor of ships” means a person appointed under the Kenya Maritime Authority Act (Cap. 370);

“tonnage certificate” means a certificate granted pursuant to section 26;

“Tonnage Convention” means the International Convention on Tonnage Measurement of Ships, 1969;

“tonnage regulations” means regulations made under section 60 of this Act;

“vessel” includes any ship, boat, sailing vessel, or other description of vessel used in navigation;

“wages” includes emoluments;

“wreck” includes flotsam, jetsam, lagan and derelict found in or on the shores of the sea or of any tidal water, the whole or any portion of a ship lost, abandoned, stranded or in distress, any portion of the cargo, stores or equipment of such a ship, and any portion of the personal property on board such a ship when it was lost, stranded, abandoned or in distress, and includes the following when found in the seas or in tidal water or on the shores thereof—

- (a) goods which have been cast into the sea and then sink and remain under water;
- (b) goods which have been cast or fall into the sea and remain floating on the surface;
- (c) goods which are sunk into the sea, but are attached to a floating object in order that they may be found again;
- (d) goods which are thrown away or abandoned; and

- (e) a vessel abandoned without hope or intention of recovery.

[Act No. 18 of 2014, Sch.]

### 3. Application of the Act

- (1) Unless otherwise expressly provided, this Act shall apply to—
- (a) Kenyan ships wherever they may be; and
  - (b) all other ships while in a port or place in, or within the territorial and other waters under the jurisdiction of Kenya.
- (2) Except as otherwise provided in this Act nothing in this Act shall apply to—
- (a) vessels of the Kenya Police;
  - (b) vessels of the Kenya Navy or foreign navy;
  - (c) aircraft of the defence forces, any other ships belonging to or under the control of the Government while employed otherwise than for profit or reward in the service of the Government.
- (3) The Cabinet Secretary may make regulations prescribing the manner and extent to which the provisions of this Act shall apply to Government ships operated for non-commercial purposes.
- (4) This Act applies to regulation of ships in inland waters.

## Part II – ADMINISTRATION

### 4. Power of Cabinet Secretary to administer Act

The Cabinet Secretary shall, in addition to any other power conferred on him by any other provisions of this Act, be responsible for the administration and implementation of this Act.

### 5. Delegation by Cabinet Secretary

- (1) The Cabinet Secretary may, by notice in the *Gazette*, delegate to the Director-General or any other officer appointed under this Act and specified in such notification, the exercise of any powers (other than the power to make regulations) or the performance of any duties conferred or imposed on him by or under this Act, subject to such conditions and restrictions as may be specified in such notification.
- (2) A delegation in the terms of subsection (1) shall not affect the exercise of such powers of the performance of such duties by the Cabinet Secretary.
- (3) Every officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of such delegation.

### 6. Relief from prosecution

No action shall lie against the Government or any public officer or other person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

### 7. Power of Cabinet Secretary to give directions

The Cabinet Secretary may from time to time give the Director-General such general directions, not inconsistent with the provisions of this Act or any regulations made thereunder, on the policy to be

pursued in the administration of this Act, as he may consider necessary, and the Director-General shall forthwith take such steps as are necessary or expedient to give effect thereto.

## 8. Regulations

- (1) The Cabinet Secretary may make regulations generally for the better carrying out into effect the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make regulations for the following purposes—
  - (a) the extent to which this Act may be applicable to Government ships which are engaged in government non-commercial service;
  - (b) the facilitation of the enforcement of any international convention or instrument relating to this Act;
  - (c) prescribing anything that may be prescribed under this Act;
  - (d) prescribing fees, stamp duties and all other payments required under this Act;
  - (e) the holding of enquiries and investigations;
  - (f) port state control of ships while in Kenyan ports;
  - (g) the granting and withdrawal of licences for maritime service providers;
  - (ga) prescribing the requirements for licencing as a maritime services provider, the conditions subject to which a maritime services provider should operate and the standards to be maintained in the provision of services;
  - (h) oversight and monitoring of service delivery in the maritime sector, having regard to availability, quality, standards of service, cost, efficiency of production and distribution of such services.

[Act [No. 12 of 2012](#), Sch.]

## 9. Director-General to maintain documents

The Director-General shall maintain in his/her office or some other designated public library or repository, a copy of—

- (a) all conventions and international instruments referred to in this Act that have application in Kenya;
- (b) all regulations and notices made pursuant to this Act,

and, upon payment of a prescribed fee, copies shall be made available for inspection and for the taking of copies thereof by members of the public, seafarers or persons interested in shipping or protection of the marine environment, or other matters provided for in this Act.

## 10. Surveys, inspections and monitoring

- (1) The Director-General or a person authorised by him for the purpose, may board, inspect and survey any ship to which this Act applies, enter port facilities in Kenya, demand the production of documents, records and other evidence; and take testimony of witnesses under oath, for the purposes of conducting inspection and survey and for undertaking other activities authorised or required under this Act.
- (2) In carrying out the duties under subsection (1), the Director-General or a person authorised by him shall follow a laid down code of conduct.

## 11. Communication, co-operation and consultation

The Director-General may communicate, co-operate and consult as necessary and appropriate with—

- (a) departments and agencies of the Government;
- (b) Governments of other States who are parties to the international conventions to which Kenya is a party;
- (c) Governments of other states in the Indian Ocean region;
- (d) international, inter-governmental and non-governmental organisations;
- (e) shipowners, seafarers associations, ship agents and other organisations involved or interested in shipping or in protection of the marine environment,

for purposes of furthering the objects of this Act.

## 12. Registrar of Kenyan Ships and Registrar of Seafarers

- (1) The Director-General shall be the Registrar of Kenyan Ships and the Registrar of Seafarers.
- (2) In exercise of his powers under subsection (1) the Director-General may designate any other officer to perform the duties of a registrar of Kenyan ships and a registrar of seafarers.

## 13. General power to dispense with requirements of the Act

- (1) The Director-General may, upon such conditions, if any, as he thinks fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act, or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the matters specified in subsection (2).
- (2) The matters required for purposes of subsection (1) are—
  - (a) that the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances;
  - (b) that the action taken or provision made as respects the subject-matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

## Part III – RESTRICTION ON TRADING

### 14. Restriction on trading in Kenyan waters

- (1) A ship shall not trade in or from the waters of Kenya unless the ship—
  - (a) is a Kenyan ship; or
  - (b) has a certificate of foreign registry.
- (2) Subject to the provisions of any regulation or any treaty or agreement with any foreign Government, only Kenyan ships may be engaged in any local trade in Kenyan waters.
- (3) The Cabinet Secretary may make regulations to provide for the circumstances under which foreign ships may engage in local trade in Kenyan waters.
- (4) Every owner, agent and master of a ship that contravenes subsection (1) or (2) commits an offence and each shall be liable, upon conviction, to a fine not exceeding one million shillings and the ship shall be liable to be detained until such time as the owner, agent or master shall each have paid their respective fines.

**15. Requirement for insurance cover**

- (1) Every Kenyan ship shall carry an insurance cover against risks of loss or damage to third parties, and in particular—
  - (a) in respect of the shipowners liabilities to a crew member under any provision of Part VII; and
  - (b) claims in respect of loss or damage caused by any cargo carried on board the ship.
- (2) Every foreign ship anchoring in or trading in or from Kenyan waters or entering a port in Kenya shall carry insurance cover against risks of loss or damage to third parties.
- (3) Where a ship is in contravention of this section, the owner shall be deemed to have committed an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

**16. [Deleted by Act No. 19 of 2023, Sch.]****Part IV – REGISTRATION AND LICENSING OF SHIPS*****Registration*****17. Kenyan ship**

- (1) A ship shall be regarded as a Kenyan ship for the purposes of this Act if the ship is registered in Kenya under this Part.
- (2) A ship shall be registered as a Kenyan ship if it is—
  - (a) of 24 metres or more;
  - (b) owned by persons qualified to own a Kenyan ship; and
  - (c) not exempted from registration.

**18. Qualifications for owning Kenyan ship**

- (1) Subject to section 50, a ship shall not be registered in Kenya under this Act unless the ship is owned wholly by persons qualified to own a Kenyan ship, namely—
  - (a) the Government;
  - (b) nationals of Kenya;
  - (c) corporation registered in Kenya;
  - (d) individuals or corporations owning ships hired out on bareboat charter to nationals of Kenya;
  - (e) individuals or corporations in *bona fide* joint venture shipping enterprise relationships with nationals of Kenya as may be prescribed;
  - (f) such other persons as the Cabinet Secretary may by order determine.
- (2) The Cabinet Secretary shall make regulations prescribing the manner and conditions under which any other persons or classes of persons may own Kenyan ships.

**19. Obligations to register Kenyan ship**

- (1) Whenever a ship is owned wholly by persons qualified to own a ship in Kenya, that ship shall, unless it is registered in some other State, be registered in Kenya in the manner provided in this Part.

- (2) Every Kenyan ship, and every Kenyan Government ship shall be registered in one of the register books kept pursuant to section 25.
- (3) Where the master of any ship which is owned wholly by persons qualified to own a registered Kenyan ship fails, on demand, to produce the Certificate of Registry of the ship or such other evidence as satisfies the Director-General that the ship complies with the requirements of subsection (1), that ship may be detained until that evidence is produced.
- (4) Any ship which is wholly owned by persons qualified to own a Kenyan ship, and which immediately before the commencement of this Part, is registered in Kenya in accordance with the Merchant Shipping Act (Repealed) is entitled to be registered under this Act, but subject to such conditions as may be prescribed.
- (5) A ship required to be registered under this Act shall not be recognised as a Kenyan ship and shall not be entitled to the rights and privileges accorded to Kenyan ships under this Act unless it is so registered.

## 20. Refusal of registration

- (1) Notwithstanding that any ship in respect of which an application for registration has been made is entitled to be registered, the Registrar of Ships may refuse to register such ship where he is satisfied that having regard to—
  - (a) the condition of the ship so far as is relevant to safety, security or to any risk of pollution;
  - (b) the safety, health and welfare of persons employed or engaged in any capacity on board the ship; or
  - (c) the possibility that the ship is being used for criminal purposes,it would be detrimental to the interests of Kenya or of international shipping for the ship to be registered.
- (2) Where it appears to the Registrar of Ships that a ship in respect of which an application for registration has been made is not entitled to be registered, having regard to the matters mentioned in subsection (1)(a), (b) or (c), he shall inform the applicant, or any representative person for the time being appointed in relation to the ship, and the ship shall not be registered.
- (3) Any person aggrieved by the decision of the Registrar may appeal to the Director-General whose decision shall be final.

## 21. Termination of registration

- (1) The Registrar of Ships may, subject to subsection (5), terminate a ship's registration in the following circumstances—
  - (a) where the Director-General is satisfied that—
    - (i) having regard to the matters mentioned in section 20(1)(a), (b) or (c), it would be detrimental to the interests of Kenya or of international shipping for a registered ship to continue to be registered;
    - (ii) any penalty imposed on the owner of a registered ship in respect of a contravention of this Act, or of any instrument in force under this Act, has remained unpaid for a period of more than three months and no appeal against the penalty is pending; or
    - (iii) any summons for any such contravention has been duly served on the owner of a registered ship and the owner has failed to appear at the time and place appointed for the trial of the information or complaint in question and a period of not less than three months has elapsed since that time,and the Director-General so informs the Registrar of Ships;

- (b) the annual registration fee has not been paid;
  - (c) the tonnage fees of a registered ship has remained unpaid for a period of two years or more;
  - (d) a registered ship is no longer entitled to remain registered;
  - (e) on application by the registered owner stating that he wishes to terminate the registration of the ship; or
  - (f) upon a registered ship becoming a total loss or being otherwise destroyed by, *inter alia*, shipwreck, demolition, fire or sinking.
- (2) In the event of a registered ship being in any condition referred to in subsection (1), every registered owner of the ship or any share therein shall, immediately upon obtaining knowledge of the event, inform the Registrar of Ships who shall make an entry thereof in the register.
- (3) Where—
- (a) the registration of a ship is terminated under subsection (1), the Registrar of Ships shall notify all registered mortgagees of the termination of the ship's registration;
  - (b) registration is terminated under subsection (1)(d) or (e), the Registrar of Ships shall forthwith issue a closure transcript to the owner of the ship.
- (4) On receipt of the closure transcript referred to in subsection (3)(b), the owner shall immediately surrender the ship's certificate of registry to the Registrar of Ships for cancellation.
- (5) Where—
- (a) the circumstances referred to in subsection (1)(a) applies, and it appears to the Registrar of Ships that subsection (1)(b), (c) or (e) applies, the Registrar of Ships may serve notice on the owner or on any representative person for the time being appointed in relation to that ship to produce, within twenty-one days, evidence sufficient to satisfy the Director-General or the Registrar of Ships, as the case may be, that the ship is eligible to remain on the register, and if at the expiry of that period the Director-General or the Registrar of Ships, as the case may be, is not so satisfied, the Registrar of Ships may—
    - (i) extend the notice and ask for further information or evidence; or
    - (ii) serve a final notice informing the owner or the representative person of the termination of the ship's registry, and such termination shall take effect seven days from the date of service of that notice;
  - (b) the Registrar of Ships serves a notice under this subsection on the owner of a ship in respect of which a mortgage is registered, the Registrar of Ships shall send a copy of that notice to the mortgagee at the address recorded for him in the register;
  - (c) a ship's registration is terminated under this subsection, the Registrar of Ships shall issue a closure transcript and the owner of the ship shall forthwith surrender its certificate of registry for cancellation.
- (6) Any person who—
- (a) in connection with the making of any representations in pursuance of subsection (5) (a), knowingly or recklessly furnishes information which is false in a material particular commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years imprisonment, or to both such fine and imprisonment;
  - (b) fails, without reasonable cause to surrender a certificate of registry when required to do so under subsection (5)(c), commits an offence and shall be liable, upon conviction, to a fine

not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

[Act [No. 18 of 2014](#), Sch.]

## **22. Restriction on de-registration of ships**

Subject to section 95(6), the Registrar of Ships shall not permit the de-registration of a ship, except upon giving prior notice in writing to all registered holders of mortgages on such ship which are registered under this Act.

## **23. Certificate of de-registration**

- (1) Upon the de-registration of a ship the Registrar of Ships shall issue to the owner of such ship a certificate of de-registration in the prescribed form.
- (2) On receipt of the certificate of de-registration referred to in subsection (1), the owner shall immediately surrender the ship's certificate of registry to the Registrar of Ships for cancellation.
- (3) A person who fails, without reasonable cause, to surrender a certificate of registry when required to do so under this Part, commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

### *Procedure for Registration*

## **24. Non-liability of the Registrar of Ships**

No action shall lie against the Registrar of Ships or any officer acting in that capacity or discharging any of his functions under this Act in respect of anything done or omitted to be done by him or her in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him or her under the Act.

## **25. Register of ships**

- (1) There shall be a register of Kenyan ships for all ships registered in Kenya.
- (2) The register shall be maintained by the Registrar of Ships.
- (3) The Director-General may give directions of a general nature with regard to the discharge of any of the functions of the Registrar of Ships.
- (4) The register may consist of separate register books and shall be so constituted as to distinguish registrations of small ships, pleasure vessels and submersible craft and may otherwise distinguish between classes or descriptions of ships.
- (5) The register shall be maintained in accordance with the registration regulations and any directions given by the Director-General under subsection (3).
- (6) The register shall be available for public inspection upon payment of the prescribed fees.
- (7) Except as provided in regulations made under section 79, entries in the register in relation to property in a ship shall be made in accordance with the following provisions—
  - (a) the property in a ship shall be divided into sixty-four shares;
  - (b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than sixty-four individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner;

- (c) a person shall not be entitled to be registered as owner of a fractional part of a share in a ship, but any number of persons not exceeding five may be registered as joint owners of a ship or of any share or shares therein;
  - (d) joint owners shall be considered as constituting one person only as regards the persons entitled to be registered, and shall not be entitled to dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered;
  - (e) a body corporate shall be registered as owner by its corporate name.
- (8) The register shall be automated for the purposes of providing collaboration with other agencies and enabling linkage to the National Electronic Window System established under section 3 of the National Electronic Single Window System Act.

[Act No. 25 of 2022, Sch.]

## 26. Surveying and tonnage of ships

- (1) Before registration every ship shall be surveyed by a surveyor of ships and her tonnage ascertained in accordance with the tonnage regulations made under this Act, and the surveyor shall grant a certificate specifying the ship's tonnage and build, and such other particulars descriptive of the identity of the ship as may for the time being be required by the Director-General and such certificate shall be delivered to the Registrar of Ships before registration.
- (2) When the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations that tonnage shall be treated as the tonnage of the ship except so far as those regulations provide, in specified circumstances, for the ship to be re-measured and the register amended accordingly.

## 27. Marking of ships

- (1) Every ship other than small ships shall, before registration, be marked permanently and conspicuously to the satisfaction of the Director-General as follows—
  - (a) her name shall be marked on each of her bows, and her name and the name of her port of registry shall be marked on her stern, in letters of a contrasting colour so as to be clearly visible, such letters to be of a length not less than one decimetre, and of proportionate breadth;
  - (b) her official number and net tonnage shall be permanently marked on a main part of the ship's permanent structure that is readily visible and accessible in such manner as may be specified by a surveyor of ships;
  - (c) in the case of every such ship built after the date of metric conversion, a scale of decimetres, or of metres and decimetres, denoting a draught of water shall be marked on each side of her stem and her stern post in figures at two-decimetre intervals and at intervening two decimetre intervals, if the scale is in metres and decimetres, the capital letter "M" being placed after each metre figure; the top figure of the scale showing both the metre and (except where it marks a full metre interval) the decimetre figure; the lower line of the figures, or figures and letters (as the case may be), coinciding with the draught line denoted thereby; the figures and letters being not less than one decimetre in length and being marked by being cut in and painted in a contrasting colour so as to be clearly visible, or in such other way as the Director-General may approve.
- (2) Where the scale showing the ship's draught of water is in any respect inaccurate, so as to be likely to mislead, the owner of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

- (3) The marks required by this section shall be permanently continued, and no alteration shall be made therein, except in the event of any of the particulars thereby denoted being altered in the manner provided by this Act.
- (4) Where an owner or master of a registered ship neglects to keep his ship marked as required by this section, or if any person conceals, removes, alters, defaces, or obliterates or suffers any person under his control to conceal, remove, alter, deface, or obliterate any of the said marks, except in the event referred to in subsection (3), that owner, master, or person commits an offence, and for each such offence, shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment and, on a certificate from a surveyor of ships that a ship is insufficiently or inaccurately marked, the ship may be detained until the insufficiency or inaccuracy has been remedied.
- (5) It shall be a defence for an owner, master or person referred to in subsection (4) to prove—
  - (a) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence; or
  - (b) that the commission of the offence was for the purpose of escaping capture by an enemy.
- (6) Where a ship proceeds to sea without being marked in accordance with this section, the owner commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (7) The Director-General may exempt any ship or class of ships from all or any of the requirements of this section.

## **28. Application for registration**

An application for registration of a ship shall be made, in the case of individuals, by the person requiring to be registered as owner, or by some one or more of the persons so requiring if more than one, or by his or their agent, and, in the case of bodies corporate, by their agent, and the authority of the agent shall be testified in writing, if appointed by individuals, under the hands of the appointers, and, if appointed by a body corporate, under the common seal of that body corporate or by deed or instrument under seal in accordance with the Companies Act (Cap. 486).

## **29. Declaration of eligibility**

A person shall not be entitled to be registered as owner of a ship or of a share therein until he, or, in the case of a body corporate, the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration of eligibility, referring to the ship as described in the certificate of the surveyor, and containing the following particulars—

- (a) a statement of his qualifications to own a Kenyan ship, and in the case of a body corporate, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Kenyan ship;
- (b) in the case of a foreign ship, a statement of her foreign name; and
- (c) a statement of the number of shares in the ship the legal title to which is vested in him or, as the case may be, the body corporate, whether alone or jointly with any other person or persons.

## **30. Evidence of title on first registry**

On the first registration of a ship such evidence of title shall be produced as may be specified in the registration regulations.

**31. Entry of particulars in register**

When the requirements for registration have been complied with, the Registrar of Ships shall register a ship by entering in the register particulars respecting the ship.

**32. Documents to be retained by Registrar of Ships**

On the registration of a ship, the Registrar of Ships shall retain in his possession the survey certificate, the builders certificate, if any, and all declarations of ownership.

**33. Port of Registry**

- (1) Subject to subsection (2), the port of Mombasa shall be the port of registry of a ship registered under this Act and the port to which the ship belongs.
- (2) The Cabinet Secretary may, by order, declare any other port of Kenya as a port of registry.

**34. Certificate of Registry**

- (1) On completion of the registration of a ship, the Registrar of Ships shall issue a certificate of registry comprising such particulars respecting the ship as may be specified in the registration regulations.
- (2) A certificate of registry shall be valid for a period of twelve months from the date of issue, and shall be renewed annually on payment of the prescribed fee, and if the ship complies with all other conditions prescribed under this Act and is seaworthy and properly found and equipped and has not been altered in any significant manner since the certificate was issued.

**35. Custody of certificate**

- (1) The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge, or interest whatever had or claimed by any owner, mortgagee, or other person to, on, or in the ship.
- (2) Where any person, whether interested in the ship or not, refuses on request to deliver up the certificate of registry when in his possession or under his control to the person entitled to the custody thereof for the purposes of the lawful navigation of the ship, or to the Registrar of Ships, any officer of customs, or other person entitled by law to require such delivery, any court capable of taking cognisance of the matter may summon the person so refusing to appear before such court, and to be examined touching such refusal, and unless it is proved to the satisfaction of such court that there was reasonable cause for such refusal, that person commits an offence and shall be liable, upon conviction, to a fine not exceeding seventy thousand shillings, or to imprisonment for a term not exceeding five months, or to both such fine and imprisonment.
- (3) Where the person so refusing is proved to have absconded so that the warrant of, or process of a court cannot be served on him, or if he persists in not delivering up the certificate, the court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate mislaid, lost, or destroyed, or as near thereto as circumstances permit.

**36. Use of improper certificate**

Where a master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of the ship, he commits an offence, and in respect of each such offence, shall be liable, upon conviction, to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding six years, or to both such fine and imprisonment, and the ship shall be liable to forfeiture under this Act.

**37. Grant of new certificate and endorsement of change**

- (1) The Registrar of Ships may, with the approval of the Director-General, and upon the surrender to him of the certificate of registry of a ship, issue a new certificate in lieu thereof.
- (2) Whenever a change occurs in the registered ownership of a ship, the Registrar of Ships may endorse the change on the certificate of registry or issue a new certificate of registry.
- (3) The master shall, for purposes of endorsement by the Registrar of Ships referred to in subsection 2, deliver the certificate of registry to the Registrar of Ships forthwith after the change.
- (4) Where the master fails to deliver to the Registrar of Ships the certificate of registry as required by subsection (2), he commits an offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings, or to imprisonment to a term not exceeding four months, or to both such fine and imprisonment.

**38. Duplicate certificates**

- (1) Where it is shown to the satisfaction of the Registrar of Ships that the certificate of registry has been lost, stolen or destroyed or has become defaced or illegible ("the event"), he may issue to the owner a duplicate of that certificate, which shall be marked as such, and shall be of the same effect as the original.
- (2) Where a duplicate certificate of registry is issued the original, if then available or if subsequently found or recovered, shall be forthwith surrendered to the Registrar.
- (3) Where—
  - (a) the port where the ship is at the time of the event or, as the case may be, where it first arrives after the event, is not in Kenya; and
  - (b) the master of the ship, or some other person having knowledge of the facts of the case, makes a declaration before the proper officer as to the event,the proper officer shall notify the Registrar.
- (4) On being notified of the event and being satisfied that the ship is entitled to be issued with a duplicate certificate, the Registrar shall—
  - (a) send by facsimile or any other form of electronic transmission to the proper officer a copy of the duplicate certificate which the proper officer shall endorse with a statement of the circumstances under which it is granted; or
  - (b) where there are no facsimile or other electronic transmission facilities, the proper officer shall issue a temporary certificate so endorsed.
- (5) The facsimile or other electronically transmitted version of the duplicate certificate, or the temporary certificate, as the case may be, shall be surrendered to the Registrar of Ships, as soon as an original duplicate certificate referred to in subsection (1) is received by the owner.
- (6) Any person who fails, without reasonable cause, to surrender a certificate of registry when required to do so under subsection (2) commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment to a term not exceeding four months, or to both such fine and imprisonment.

### 39. Endorsement of change of master on certificate

Whenever the master of a Kenyan ship is changed, a memorandum of the change shall be endorsed on the certificate of registration—

- (a) if the change is made in consequence of a ruling of a court or marine inquiry; by the presiding officer of that court; or
- (b) if the change occurs from any other cause, by the Registrar of Ships, or by the proper officer at the port where the change takes place.

### 40. Provisional certificate of registry

- (1) Where a ship becomes entitled to be registered while at port in a country outside Kenya, then subject to subsection (3), the proper officer may, on the application of the master of the ship, issue to him a provisional certificate stating—

- (a) the name of the ship;
- (b) the time and place of its purchase and the names of its purchasers;
- (c) the name of its master;
- (d) the best particulars respecting its tonnage, the time and place of its construction and other particulars which he is able to obtain,

and shall forward a copy of the certificate at the first convenient opportunity to the Registrar of Ships.

- (2) The statutory declaration referred to in subsection (1) shall include—
  - (a) a declaration as to ownership; and
  - (b) declaration that the foreign registry, if any, of the ship has been closed.
- (3) No provisional certificate shall be granted by any person under this section unless he is satisfied that an application under registration regulations for registry of the ship has been made or is intended.
- (4) A provisional certificate under this section shall have the effect of a certificate of registry until the expiration of three months after its date of issue or until the arrival of the ship at a port in Kenya, whichever happens earlier, and on either of those events happening shall cease to have effect.
- (5) The master of every ship in respect of which a provisional certificate is issued under this section shall, within ten days of the ship's first arrival at a port in Kenya deliver the certificate to the Registrar of Ships, and where any master fails to comply with this subsection, he commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

### 41. Temporary pass in lieu of Certificate of Registry

Where it appears to the Director-General that by reason of special circumstances it is desirable that permission be granted to a ship to pass, without being previously registered, from any port in Kenya to any other port within or outside Kenya, the Director-General may, in any case in which the ship belongs to a country whose law provides for the issuance of temporary passes, direct the Registrar of Ships to grant a pass and that pass for the time and within the geographical limits therein mentioned shall have the same effect as a Certificate of Registry, and the Registrar of Ships when so directed shall grant the pass accordingly.

#### *Interim Registration in the Course of Transfer of Ownership*

## 42. Registration of transfer of ownership

- (1) This section applies where—
  - (a) there is in existence a written contract for the transfer of a ship or a share in a ship; and
  - (b) pursuant to the terms of that contract, the owner has agreed—
    - (i) to transfer the ship or any share in the ship to a person qualified to own Kenyan ships and who intends to register the ship in Kenya; and
    - (ii) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
  - (c) upon the execution of the bill of sale the ship will be entitled to be registered in Kenya.
- (2) Where this section applies, the Registrar of Ships may, if satisfied that it is proper for him to do so—
  - (a) enter in the register the particulars as may be set out in registration regulations subject to the modifications set out in subsection (3); and
  - (b) grant to the transferee a certificate of registry which shall be valid for a period of twenty-one days from its date of issue.
- (3) The modifications referred to in subsection (2)(a) are that—
  - (a) the name and description required to be entered shall be the name and description of the transferee of the ship or of the share therein; and
  - (b) there shall also be entered a note that the registration is conditional upon a bill of sale transferring the ship or the share therein to the person or persons named in the register being produced to the Registrar of Ships within twenty-one days.
- (4) The Registrar of Ships shall only be satisfied that it is proper for him to make the entry in the register and grant a certificate of registry pursuant to subsection (3) if—
  - (a) sections 26, 27, 28, and 29 and the registration regulations as modified by subsection (3) have been complied with; and
  - (b) the transferee, or in the case of a body corporate the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration, referring to the ship as described in the surveyor's certificate issued pursuant to section 26, and containing the following particulars—
    - (i) if he is a person qualified to own a Kenyan ship, a statement of his qualifications to own a Kenyan ship, or in the case of a body corporate, of such circumstances of the constitution and the business thereof as proof of it to be qualified to own a Kenyan ship;
    - (ii) if the ship is a foreign ship, a statement of the ship's foreign name;
    - (iii) a statement that there is in existence a written contract for the transfer of the ship or a share in the ship and that the ship is not registered in Kenya; and
    - (iv) a statement that the owner has agreed—
      - (aa) to transfer the ship or any share in the ship to the transferee;
      - (bb) to provide the transferee with a bill of sale of the ship and a certificate stating that the ship is free from registered mortgages; and
      - (cc) to procure the termination of the registration of the ship in the country in which it is then registered; and

- (c) there is produced to the Registrar of Ships a certified copy of the contract referred to in the declaration made pursuant to paragraph (b).
- (5) Where a ship is registered under subsection (2), the transferee shall within twenty-one days after the date of issue of the certificate of registry under subsection (2)(b), deliver to the Registrar of Ships—
- (a) a declaration made in accordance with section 29; and
  - (b) a bill of sale executed in accordance with a contract the certified copy of which has been produced to the Registrar of Ships in accordance with subsection (4)(c),
- and thereupon the Registrar of Ships shall make the entries in the register required by section 31 and issue a certificate of registry in accordance with section 34.
- (6) Where the transferee does not comply with the requirements of subsection (5) the registration of the ship shall automatically terminate at the expiration of the certificate of registry granted under subsection (2)(b) and the certificate of registry and any certificate issued in respect of the ship under this Act shall be delivered to the Registrar of Ships.

#### **43. Consequences of registration**

- (1) Where a ship is registered under section 42, it shall be deemed to be a Kenyan ship for the purposes of this Act.
- (2) Where a ship is registered under section 42 it shall not hoist any colours other than Kenyan national colours specified in section 91.

#### **44. Application of Part to registered ship**

Where a certificate of registry has been issued in respect of a ship under section 42(2)—

- (a) the provisions of this Part shall apply to the ship and its registration; and
- (b) any act or thing required to be done or not done under this Act by the owner of a ship shall be deemed to be required to be done or not done by the transferee, and—
  - (i) the transferee shall be liable for doing or omitting to do such act or thing as if he were the owner of the ship; and
  - (ii) a reference to “owner” in this Act shall, in the case of such a ship as is mentioned in this subsection, be deemed to be a reference to “transferee” and the words “registered owner” and “registered ownership” shall be construed accordingly.

#### **45. Definition of transferee**

In sections 42 and 44, “transferee” means a person to whom the ownership of a ship or a share in a ship is to be transferred in the circumstances set out in section 42(1).

#### *Name of Ship*

#### **46. Name of ship**

- (1) Every ship registered in the register shall have a name, and two or more ships shall not bear the same name.
- (2) A Kenyan ship shall not be described by any name other than that by which it is for the time being registered.
- (3) The Registrar of Ships may, in accordance with the provisions of any regulations made under this Act, refuse the registration of any ship by the name by which it is proposed to register that ship if

it is already the name of a registered Kenyan ship or a name so similar as is calculated or likely to deceive or to offend the public interest.

- (4) If the Registrar refuses to register a ship by the name that is proposed or if the requirements of the regulations referred to in subsection (3) are not complied with, that ship shall not be registered under the name proposed, or until the regulations are complied with, as the case may be.
- (5) If any person acts or suffers any other person under his control to act in contravention of this section or omits to do or suffers any other person under his control to omit to do anything required by this section, he commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment to a term not exceeding twelve months, or to both such fine and imprisonment, and the ship may be detained until the provisions of this section are complied with.

#### **47. Change of name of ship**

- (1) A change shall not be made in the name of a ship without the prior written permission of the Registrar of Ships.
- (2) An application to effect a change of ship's name shall be in writing and, if the Registrar of Ships is of the opinion that the application is reasonable, he may grant permission, and thereupon require notice thereof to be published in such form and manner as he thinks fit.
- (3) On being granted permission to change the name of the ship, the owner shall forthwith ensure that the change is in the register and in the ship's certificate of registry, and on her bows and stern.
- (4) Where it is shown to the satisfaction of the Registrar of Ships that the name of any ship has been changed without his permission he shall direct that her name be altered to that which she bore before the change, and the name shall be altered on her bows and stern accordingly.

#### **48. Identity marks for fishing vessels**

- (1) On the registration of a fishing vessel the registrar shall allocate to it a combination and sequence of letters and numerals (hereinafter called the "identity mark") which he shall cause to be entered in the register book.
- (2) Same letters and identity mark of a registered fishing vessel shall not be allocated to any other fishing vessel.
- (3) Every registered fishing vessel shall display the identity mark allocated to it under this section on each side of its bow and shall show its Port of Registry on the stern.

#### **49. Offences**

Where any person acts, or suffers any person under his control to act, in contravention of section 48, or omits to do, or suffers any person under his control to omit to do, anything required by that section, commits an offence, and for each such offence shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment and, except in the case of an application being made under that section with respect to a foreign ship which not having at any previous time been registered as a Kenyan ship has become a Kenyan ship, the ship may be detained until there is compliance with that section.

#### **50. Register books for ships under construction**

- (1) The Registrar shall keep a register book for ships under construction which shall contain the names of the ships under construction.
- (2) A ship under construction may be entered in the register book for ships under construction from the date of the signing of the contract for construction until it is placed on another register after completion.

*Registration of Alterations and Registration Anew***51. Registration of alterations**

- (1) When a Kenyan ship, other than a small ship is so altered as not to correspond with the particulars relating to its tonnage or description in the register, notification of the alteration shall be given within thirty days after the completion of the alteration to the Registrar of Ships, and the notice shall be accompanied by a Certificate of Survey stating the particulars of the alteration.
- (2) Upon receipt of a notice of alteration of a Kenyan ship under subsection (1), the Registrar of Ships shall either cause the alteration to be registered or direct that the ship be registered anew.
- (3) Where there is a failure to comply with the requirements of subsection (1) or with a direction under subsection (2), the Registrar of Ships may suspend the Certificate of Registry of the ship in respect of which the failure occurs.
- (4) If default is made in registering a ship anew after it has been altered or in registering the alteration, the owner of the ship commits an offence and upon, conviction shall be liable to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment and, in addition, to a fine of ten thousand shillings for every day during which the offence continues after conviction and the ship shall be liable to forfeiture in case of default to comply within one month.

**52. Rules for registration of alterations**

- (1) For purposes of registration of an alteration in a ship, the ship's Certificate of Registry shall be produced to the Registrar of Ships within sixty days after the alteration, and he shall either—
  - (a) retain the Certificate and grant a new Certificate of Registry containing a description of the ship as altered; or
  - (b) endorse and sign on the existing certificate a memorandum of the alteration.
- (2) The particulars of the alteration and the fact of the new certificate having been issued or an endorsement having been made shall be entered by the Registrar in the register book.
- (3) The particulars of the alteration so made, and the fact of the new certificate having been issued, or an endorsement having been made, shall be entered by the Registrar of Ships in the register.

**53. Registration anew on change of ownership**

Where the ownership of a ship has changed, the Registrar of Ships may, on the application of the new owners of the ship, register the ship anew.

**54. Provisional Certificate where ship registered anew**

- (1) Where a Kenyan ship is outside of Kenya and consequent upon notification is to be registered anew, a proper officer or other appropriate authority designated to act on behalf of the Government shall issue to the master on his application, either a provisional certificate, describing the ship as altered, or provisionally endorse the particulars of the alteration on the existing certificate.
- (2) Where the proper officer or other appropriate authority issues a provisional certificate or provisionally endorses a certificate under this section, he shall add to the certificate or endorsement a statement that the same is made provisionally.
- (3) The master of every ship in respect of which a provisional certificate is issued or a certificate is endorsed under this section shall, within ten days of the ship's arrival thereafter at a port in Kenya or within six months of the date of issue or endorsement of the certificate, whichever is earlier, deliver that certificate to the Registrar of Ships and, if any master fails to comply with this subsection, commits an offence and shall be liable, upon conviction, to a fine not exceeding one

hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

- (4) Where any ship in respect of which a provisional certificate is issued or a certificate is endorsed under this section first arrives thereafter at a port in Kenya, application for registration of that ship anew shall be made to the Registrar of Ships and the other requirements requisite for registration shall be complied with; and, if, in respect of any such ship, there is failure to comply with this subsection, the owner of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment and, in addition, to a fine of ten thousand shillings for every day during which the offence continues after conviction and, in the event of failure to comply within a period of one month, the ship shall be liable to be expelled from Kenyan waters.

#### **55. Procedure for registration anew**

- (1) Where a ship is to be registered anew, the Registrar of Ships shall proceed as in the case of first registry, and on the surrender to him of the existing certificate of registry, and on compliance with the other requirements for registration, or in the case of a change of ownership, compliance with such of them as the Registrar of Ships thinks fit, shall register the ship anew, and grant a new certificate.
- (2) When a ship is registered anew, her former register shall be considered as closed, except so far as relates to any unsatisfied mortgage or existing certificates of sale or mortgage entered thereon, but the names of all persons appearing on the former register to be interested in the ship, as owners or mortgagees shall be entered on the new register, and the registration anew shall not in any way affect the rights of any of those persons.

#### **56. Restriction on re-registration of abandoned ships**

Where a ship has ceased to be registered as a ship by reason of having been wrecked or abandoned or for any reason other than capture by the enemy

or transfer to a person not qualified to own a Kenyan ship, the ship shall not be re-registered until such ship has, at the expense of the applicant for registration, been surveyed by a surveyor and certified by him to be seaworthy.

### *Licensing*

#### **57. Ships to be licensed**

- (1) Subject to subsections (2) and (3), every ship of 24 metres and below and every vessel of whatever length trading or operating solely within the territorial and inland waters of Kenya shall be licensed under this Act.
- (2) Ships registered under this Act shall be exempted from being licensed under this section.
- (3) The Director-General may in writing exempt, either generally or specifically, ships from compliance with subsection (1), subject to such conditions as he may stipulate.

#### **58. Qualifications for owning a licensed Kenyan ship**

- (1) A ship shall not be licensed in Kenya unless it is owned wholly by persons referred to in section 18.
- (2) No more than eight persons may be registered as joint owners of a licensed Kenyan ship.
- (3) Within seven days, or such further time as may be allowed by the Director-General after a change of ownership of a licensed Kenyan ship, the owner shall notify the Registrar of Ships of such change in writing.

- (4) Where the owner of a licensed Kenyan ship fails to comply with subsection (3), the licence of the ship shall be deemed to have been cancelled.
- (5) The Director-General may in writing exempt any ship from the provisions of subsection (1).

## 59. Regulations on licensing

The Cabinet Secretary may make regulations regarding licensing of ships and licensed Kenyan ships, in particular for the following matters—

- (a) the manning of and the life-saving, safety and fire-fighting equipment to be carried on such ships;
- (b) the examination and certification of officers, skippers, mechanics and deckhands;
- (c) surveys and inspections;
- (d) the appointment of surveyors;
- (e) the keeping of records;
- (f) fees;
- (g) discipline;
- (h) operating permits;
- (i) exemption of ships from licensing.

### *Tonnage Measurement*

## 60. Tonnage regulations

- (1) The tonnage of any ship to be registered under this Part shall be ascertained in accordance with regulations made by the Cabinet Secretary, referred to in this Act as tonnage regulations, and whenever the tonnage of any ship has been ascertained and registered in accordance with the tonnage regulations, the same shall be repeated in every subsequent registration thereof, unless any alteration is made in the form or capacity of the ship, or unless it is discovered that the tonnage of the ship has been erroneously computed; and in either of those cases shall be re-measured, and her tonnage determined and registered according to the tonnage regulations.
- (2) Tonnage regulations may—
  - (a) make different provisions for different descriptions of ships or for the same description of ships in different circumstances;
  - (b) make any compliance dependent on any conditions set in such regulations, to be evidenced in such manner, as may be specified;
  - (c) prohibit or restrict the carriage of goods or stores in spaces not included in the net tonnage and may provide for making the master and the owner each liable for an offence and upon conviction liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months where such a prohibition or restriction is contravened.
- (3) Tonnage regulations may make provision—
  - (a) for assigning to a ship, either instead of or as an alternative to the tonnage ascertained in accordance with the other provisions of the regulations, a lower tonnage applicable where the ship is not loaded to the full depth to which it can safely be loaded;
  - (b) for indicating on the ship, by such mark as may be specified in the regulations, that such a lower tonnage has been assigned to it;

- (c) where the lower tonnage has been assigned to it as an alternative, for indicating on the ship the depth to which the ship may be loaded for the lower tonnage to be applicable.
- (4) Tonnage regulations may provide for the measurement and survey of ships to be undertaken, in such circumstances as may be specified in the regulations by persons appointed by such organisations as may be authorised for the purpose by the Director-General.
- (5) Tonnage regulations may provide for the issue, by the Director-General or by persons appointed by such organisations as may be authorised for the purpose by the Director-General, of certificates of the tonnage of any ship or of the tonnage which is to be taken for any purpose specified in the regulations as the tonnage of a ship not registered in Kenya, and for the cancellation and surrender of such certificates in such circumstances as may be prescribed by the regulations.
- (6) Regulations requiring the surrender of any certificate may make a failure to comply with the requirement an offence punishable upon conviction with a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding four months.
- (7) In making the tonnage regulations, the Cabinet Secretary shall pay due regard to the provisions of the Tonnage Convention.

### **61. Tonnage of ships of foreign countries adopting tonnage regulations**

- (1) Where it appears to him that the Tonnage Convention has been adopted by a foreign Country and is in force in that country, the Director-General may apply the provisions of that convention to the ships of such country as provided in this section.
- (2) The Director-General may order that ships of the foreign country shall, without being re-measured in Kenya, be treated as being of the tonnage denoted by their certificates of registry or other national papers, to the same extent, and for the same purposes as the tonnage denoted in the certificate of registry of a Kenyan ship is treated as being the tonnage of that ship.
- (3) An order by the Director-General under subsection (2) may—
  - (a) operate for a limited time; and
  - (b) be subject to such conditions and qualifications, if any, as the Director-General may consider expedient.
- (4) Where it appears to the Director-General that the tonnage of any foreign ship, as measured by the rules of the country to which the ship belongs, materially differs from what it would be under the tonnage regulations, he may order further that any of the ships of that country may, for all or any of the purposes of this law, be re-measured in accordance with the tonnage regulations.

#### *Miscellaneous*

### **62. Provisions relating to infancy or other incapacity**

- (1) Where by reason of the infancy, unsoundness of mind or any other cause, any person interested in any ship or any share therein is incapable of making any declaration or doing anything required or permitted by this Act to be made or done in connection with the registration of the ship or share, the guardian or trustee, if any, of that person, or, if there is none, any person appointed on application made on behalf of any such person, or of any other person interested, to a court of competent jurisdiction, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such act or thing in the name, and on behalf, of the incapacitated person.
- (2) All acts done by any such person in the name, and on behalf, of the incapacitated person shall be as effectual as if done by the infant, person of unsound mind or incapacitated person.

### 63. Entry of trusts in register book

No notice of any trust, express, implied or constructive, shall be entered in the register book or be receivable by the Registrar of Ships, and, subject to any rights and powers appearing in the register book, to be vested in any other person, and the registered owner of a ship or of a share therein shall have power absolutely to dispose of the ship or share in the manner in this Act provided and to give effectual receipts for any money paid or advanced by way of consideration.

### 64. Definition of “beneficial interest”

The expression “beneficial interest”, where used in this Part, includes interests arising under contract and other equitable interests, and accordingly without prejudice to—

- (a) the provisions of this Act for preventing notice of trusts from being entered in the register book or received by the Registrar of Ships;
- (b) the powers of disposition and of giving receipts conferred by this Act on registered owners and mortgages; and
- (c) the provisions of this Act relating to the exclusion of unqualified persons from the ownership of Kenyan ships, interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships in respect of their interests therein in the same manner as in respect of any other personal property.

### 65. Liability of beneficial owner

Where any person has a beneficial interest, otherwise than by way of mortgage, in any ship or share in a ship registered in the name of some other person as owner, the person so interested shall, as well, as the registered owner, be subject to all pecuniary penalties imposed by this or any other enactment on the owners of ships or shares therein, so however that proceedings may be taken for the enforcement of any such penalties against both or either of the aforesaid parties, with or without joining the other of them.

### 66. Registration of ship’s owner

- (1) The name and address of the managing owner for the time being of every ship registered at a port in Kenya shall be registered with the Registrar of Ships.
- (2) Where there is no managing owner there shall be registered the name of such other person to whom the management of the ship is entrusted by or on behalf of the owner; and any person whose name is so registered shall, for the purposes of this Act, be under the same obligations, and subject to the same liabilities, as if he were the managing owner.
- (3) If default is made in complying with this section, the owner commits an offence and shall be liable, upon conviction, or, if there are more owners than one, each owner shall be liable in proportion to his interest in the ship, to a fine not exceeding in the aggregate three hundred thousand shillings, or imprisonment for a term not exceeding two years, or to both such fine and imprisonment each time the ship leaves any port in Kenya.

### 67. Dispensing with declaration

Where, under this Part any person is required to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the Registrar of Ships, and it is shown to the satisfaction of the Registrar of Ships that from any reasonable cause that person is unable to make the declaration, or that the evidence cannot be produced, the Registrar of Ships may, with the approval of the Director-General and on the production of such other evidence, and subject to such terms as he may think fit, dispense with the declaration or evidence.

**68. Modes of declaration**

- (1) Declarations required to be made under this Part shall be made before a Registrar of Ships, a proper officer or any other person authorised by law to administer oaths.
- (2) Declarations required to be made under this Part may be made on behalf of a body corporate by the Managing Director or any other officer of the body corporate authorised by it for the purpose.

**69. Application of fees**

All fees authorised to be taken under this Part shall, except where otherwise provided in this Act be applied in payment of the general expenses of carrying into effect the provisions of this Part.

**70. Returns by Registrar of Ships**

The Registrar of Ships shall transmit to the Authority returns in such form and at such times as the Director-General may direct, of all registrations, transfers, transmissions, mortgages and other dealings with ships which have been registered by or communicated to him in his capacity as Registrar of Ships and of the names of the persons concerned in the same, and such other particulars as may be directed by the Director-General.

**71. Inspection and evidence of register book, etc.**

- (1) Any person may, on application to the Registrar of Ships during the hours of his official attendance and on payment of such fee as shall be from time to time determined by the Director-General inspect any register book.
- (2) The following documents shall be admissible in evidence in the manner provided by this Act—
  - (a) any register book under this Part on its production from the custody of the Registrar of Ships or other person having the lawful custody thereof;
  - (b) certificate of registry under this Act purporting to be signed by the Registrar of Ships or other proper officer;
  - (c) an endorsement on a certificate of registry purporting to be signed by the Registrar of Ships or other proper officer;
  - (d) declaration made under this Part in respect of a Kenyan ship.
- (3) A copy or transcript of the register of Kenyan ships kept by the Authority shall be admissible in evidence and have the same effect to all intents as the original register of which it is a copy or transcript.

**72. Documents and instruments as to registration**

- (1) The following instruments and documents shall be in such form as the Cabinet Secretary may prescribe—
  - (a) certificate of survey;
  - (b) declaration of ownership by an individual owner;
  - (c) declaration of ownership on behalf of a body corporate as owner;
  - (d) certificate of registry;
  - (e) certificate of de-registration;
  - (f) provisional certificate;

- (g) declaration of ownership by an individual transferee;
  - (h) declaration of ownership on behalf of a body corporate as transferee;
  - (i) declaration of ownership by transmission;
  - (j) mortgages;
  - (k) declaration of mortgagee taking by transmission.
- (2) The Cabinet Secretary may make such alterations in the forms so prescribed as he may deem requisite, and shall by notice in the *Gazette* give due notice of his intention to alter any such form.
- (3) A Registrar of Ships shall not be required, without the special direction of the Director-General, to receive and enter in the register book any bill of sale, mortgage or other instrument for the disposal or transfer of any ship or share therein, or any interest therein, which is made in any form other than that for the time being required under this Part, or which contains any particulars other than those contained in such form.
- (4) The Director-General may, for carrying into effect this Part give such instructions to his officers regarding—
- (a) the manner of making entries in the register book;
  - (b) the execution and attestation of powers of attorney;
  - (c) any evidence required for identifying any person;
  - (d) the referral to the Director-General of any matter involving doubt or difficulty;
  - (e) any act or thing to be done in pursuance of this Part as he thinks fit.

### 73. Forgery of documents

Any person who forges, fraudulently alters or assists in forging or fraudulently altering, or procures to be forged or fraudulently altered, any register book, builder's certificate, certificate of survey, certificate of registry, declaration, bill of sale or instrument of mortgage, under this Part, or any entry or endorsement required by this Part to be made in or on any of those documents, commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand shillings, or both.

### 74. False declaration

- (1) Any person who, in the case of any declaration made in the presence of, or produced to a registrar under this Part or in any document or other evidence produced to such registrar—
- (a) wilfully makes, or assists in making, or procures to be made any false statement concerning the title to or ownership of, or the interest existing in any ship, or any share in a ship; or
  - (b) utters, produces or makes use of any declaration or document containing any such false statement knowing the same to be false,
- commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years, or a fine not exceeding five hundred thousand shillings, or both.
- (2) Without prejudice to the provisions of subsection (1), any person who wilfully makes a false declaration concerning the qualification of himself or of any other person or of any body corporate to own a Kenyan ship or any share therein, commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding three years or a fine not exceeding five hundred thousand shillings, or both, and that ship or share shall be subject to forfeiture under this Act, to the extent of the interest of the declarant, and also, unless it is proved that the declaration was made without authority, of any person or body corporate on behalf of whom the declaration was made.

**75. Liability of ships not registered**

- (1) Where a Kenyan ship is by this Act required to be registered, then such a ship, if not so registered, shall not be entitled to any benefits, privileges or advantages usually enjoyed by Kenyan ships.
- (2) The payment of dues, the liability to fines and forfeitures and the punishment of offences committed on board a ship required to be registered, but which has not been registered, or by any person belonging to such ship shall be dealt with in the same manner in all respects as if she were a registered Kenyan ship.

**76. Fees**

The Cabinet Secretary may prescribe the fees payable for the registration, transfer including transmission, new registration, mortgage and transfer of mortgage.

***Registration of Small Ships*****77. Registration of small ships**

- (1) Subject to subsections (2) and (3) and other provisions of this Act, a small ship that trades outside the limits of Kenyan territorial waters is required to be registered under this Act.
- (2) Ships registered under section 19 are exempted from being registered under this section.
- (3) This section shall apply to ships in Lake Victoria which ply beyond waters under the jurisdiction of Kenya.
- (4) The Director-General may in writing exempt, either generally or specifically, small ships from compliance with subsection (1), subject to such conditions as he may stipulate.

**78. Qualifications for owning a small ship**

- (1) A small ship shall not be registered in Kenya unless it is owned wholly by individuals or corporations ordinarily resident in Kenya.
- (2) No more than eight persons may be recorded as joint owners of a registered small ship.
- (3) Within seven days, or such further time as may be allowed by the Director-General, after a change of ownership of a small ship, the owner shall notify the Registrar of Ships in writing of such change.
- (4) Where the owner of a registered small ship ceases to be resident in Kenya, or where he fails to comply with subsection (3), the certificate of registration of the ship shall be deemed to have been cancelled.
- (5) The Director-General may in writing exempt any small ship from the provisions of subsection (1).

**79. Regulations for registration of small ships**

The Cabinet Secretary may make regulations regarding small ships, and, without prejudice to the generality of the foregoing, the regulations may provide for the following matters—

- (a) forms and procedures for registration;
- (b) registration of change of ownership;
- (c) survey and inspection;
- (d) the keeping of records;
- (e) fees.

*Transfers and Transmissions***80. Transfers**

- (1) A registered ship or a share therein, when disposed of to a person qualified to own a Kenyan ship, shall be transferred by a bill of sale.
- (2) The bill of sale shall contain such description of the ship as is contained in the surveyor's certificate, or some other description sufficient to identify the ship to the satisfaction of the Registrar of Ships, and shall be executed by the transferor in the presence of, and be attested by, a witness or witnesses.

**81. Declaration of transfer**

Where a registered ship or a share therein is transferred in accordance with section 80(1), the transferee shall not be entitled to be registered as owner thereof until he, or, in the case of a body corporate, the person authorised by this Act to make declarations on behalf of the body corporate, has made and signed a declaration (in this Act called "declaration of transfer") referring to the ship, and containing—

- (a) a statement of the qualification of the transferee to own a Kenyan ship, or if the transferee is a body corporate, of such circumstances of the constitution and business thereof as prove it to be qualified to own a Kenyan ship; and
- (b) declaration that, to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to be owners of Kenyan ships, and the ship is otherwise entitled to be registered.

**82. Registration of transfer**

- (1) Every bill of sale for the transfer within the Kenyan registry of a registered ship or of a share therein, when duly executed, shall be produced to the Registrar of Ships, with the declaration of transfer, and upon being satisfied that the ship remains entitled to be registered in Kenya, the Registrar of Ships shall thereupon enter in the register the name of the transferee as owner of the ship or share, and shall endorse on the bill of sale the fact of that entry having been made, with the date and time thereof.
- (2) Bills of sale of a ship or of shares therein shall be entered in the register in the order of their production to the Registrar of Ships.
- (3) Upon the transfer being registered in the manner provided in subsection (1), the Registrar of Ships shall issue a new certificate of registry.

**83. Transmission of property in ship on death, bankruptcy, marriage, etc.**

- (1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 80, and a majority interest remains in the ownership of a person qualified to be an owner of a Kenyan ship—
  - (a) that person shall authenticate the transmission by making and signing a declaration (in this Act called "declaration of transmission") identifying the ship and containing the several statements hereinbefore required to be contained in a declaration of transfer, or as near thereto as circumstances admit, and also provide a statement of the manner in which the property has been transmitted;
  - (b) where the transmission is consequent upon bankruptcy, the declaration of transmission shall be accompanied by such evidence as is acceptable by the court as proof of the title of persons claiming under a bankruptcy;
  - (c) the transmission is consequent upon death, the declaration of transmission shall be accompanied by the instrument of representation, or an official extract therefrom;

- (d) the transmission was consequent upon an order of a court, a copy of the order or judgement of that court.
- (2) The Registrar of Ships, on receipt of the declaration of transmission so accompanied, and upon being satisfied that the ship remains entitled to be registered in Kenya, shall enter in the register the name of the person entitled under the transmission as owner of the ship or share the property in which has been transmitted, and, where there is more than one such person, shall enter the names of all those persons in the register, but those persons, however numerous, shall, for the purpose of the provisions of this Act with respect to the number of persons entitled to be registered as owners, be considered as one person.

#### **84. Order for sale on transmission to unqualified person**

- (1) Where the property in a registered ship or share therein is transmitted to any person by any lawful means other than a transfer under section 80, but as a result of the transmission the ship no longer remains in the ownership of persons qualified to be owners of a Kenyan ship, then the court may, on an application by or on behalf of that person, order a sale of the property so transmitted and direct that the proceeds of sale, after deducting the expenses of the sale, shall be paid to that person or otherwise as the court directs.
- (2) The court may require any evidence in support of the application it may think requisite, and may make the order on any terms and conditions it may think just, or may refuse to make the order, and generally may act in the case as the justice of the case requires.
- (3) Every such application for sale shall be made within four weeks after the occurrence of the event on which the transmission has taken place, or within such further time (not exceeding one year from the date of the occurrence) as the court may allow.
- (4) Where such an application is not made within the time aforesaid, or if the court refuses an order for sale, the ship or share transmitted shall thereupon be subject to forfeiture under this Act.

#### **85. Transfer of ship or sale by order of Court**

Where the court, whether under this Act or otherwise, orders the sale of any ship or share therein, the order of the court shall contain a declaration vesting in some person named by the court the right to transfer that ship or share, and that person shall be entitled to transfer the ship or share in the same manner and to the same extent as if he were the registered owner, and the Registrar of Ships shall deal with any application relating to the transfer of the ship or share made by the person so named as if that person were the registered owner.

#### **86. Power of Court to prohibit transfer**

The court may, if it thinks fit without prejudice to the exercise of any other power of the court, on the application of any interested person, make an order prohibiting for a time specified, any dealing with a ship or any share therein, and the court may make the order on any terms or conditions it thinks just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires and the Registrar of Ships without being made a party to the proceedings, shall on being served with the order or an official copy obey the same.

### **Part V – NATIONAL CHARACTER AND FLAG**

#### **87. Declaration of national character of ship**

- (1) An officer of the port authority shall not grant clearance for any ship until the master of such ship has declared to that officer the name of the nation to which he claims that she belongs, and that officer shall thereupon inscribe that name on the clearance certificate.

- (2) Where a ship attempts to proceed to sea without such clearance, she may be detained until the declaration is made.

### **88. Offences relating to Kenyan character of ship**

- (1) Where the master or owner of a ship which is not a Kenyan ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a Kenyan ship then, except as provided by subsections (2) and (3), the ship shall be liable to forfeiture and each of the master, owner and charterer, if any, commits an offence and, upon conviction, shall be liable as provided in section 89.
- (2) No liability shall arise under subsection (1) where the assumption of Kenyan national character has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.
- (3) Where the registration of any ship has terminated by virtue of any provision of this Act or the registration regulations, any marks prescribed by such regulations displayed on the ship within the period of fourteen days beginning with the date of termination of that registration shall be disregarded for the purposes of subsection (1).
- (4) Where the master or owner of a Kenyan ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship, the ship shall be liable to forfeiture and each of the master, owner and charterer, if any, commits an offence and liable as provided in section 89.
- (5) Where a person uses the Kenyan flag and assumes the Kenyan character on board a ship owned in whole or in part by any person not qualified to own a Kenyan ship for the purpose of making it appear to be a Kenyan ship, the ship shall be liable to forfeiture under this Act, unless the assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in the exercise of some belligerent right.
- (6) In any proceeding for enforcing any such forfeiture in accordance with subsection (2), the burden of proving the right to use the Kenyan flag and to assume the Kenyan national character shall be upon the person using and assuming the same.

### **89. Penalty**

- (1) A person who commits an offence under section 88 shall be liable, upon conviction, to imprisonment for a term not exceeding six months or a fine not exceeding thirty thousand shillings, or both.
- (2) Section 92 applies to offences committed within Kenya as well as outside Kenya.

### **90. Right to fly flag of Kenya**

- (1) A ship registered or licensed in accordance with this Act shall be entitled to fly the national flag of Kenya.
- (2) Nothing in this section shall be construed to prohibit Kenyan ships which are exempt from registration under this Act from using on the waters of Kenya the national colours of Kenya.

### **91. Nationality and colours**

- (1) A Kenyan ship shall hoist the proper national colours—
  - (a) on a signal being made to her from any ship or aircraft belonging to the Kenya Defence Forces;
  - (b) on entering or leaving any Kenyan or foreign port;
  - (c) when passing a warship of any navy;

- (d) (d) while in a Kenyan port, from sunrise to sunset.
- (2) If default is made in complying with subsection (1), the master of the ship commits an offence and, upon conviction, shall be liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not exceeding two months, or to both such fine and imprisonment.
- (3) Where there are hoisted on board any Kenyan ship, any colours or pendant usually worn by ships of the Kenyan Navy, or the national colours of any other country, the master of the ship or the owner thereof, if he is on board the ship, and every other person hoisting the pendant or colours, commits an offence and upon conviction shall be liable to a fine not exceeding two hundred thousand Kenya shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment and to seizure of the colours or pendant.
- (4) Where there are hoisted on board any Kenyan ship, any colours or pendant usually worn by ships of the Kenya Defence Forces or the national colours of any other State, the master of the ship, or the owner thereof if he is on board the ship, and every other person hoisting the pendant or colours, commits an offence and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment and to seizure of the colours or pendant by the State.[Act [No. 18 of 2014](#), Sch.]

## 92. National flag on foreign ship

- (1) A person who uses or permits any person to use the Kenyan flag on board a foreign ship for the purpose of making that ship appear to be a Kenyan ship commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding one year or a fine not exceeding two hundred and fifty thousand shillings, or both.
- (2) In any proceedings under this section, the burden of proving the right to use the flag and to assume the appearance of a Kenyan ship is upon the person using the flag of Kenya.

## 93. Proceedings on forfeiture of a ship

- (1) Where any ship has become liable to forfeiture under this Act—
- (a) any commissioned naval or military officer; or
  - (b) any person appointed by the Cabinet Secretary for the purposes of this section,
- may seize and detain the ship and bring the ship for adjudication before the Court.
- (2) Where a ship is subject to adjudication under this section the Court may—
- (a) adjudge the ship and her equipment to be forfeited to the State; and
  - (b) make such order in the case as seems just.
- (3) No officer or person bringing proceedings under this section shall be liable in damages in respect of the seizure or detention of the ship, notwithstanding that the ship has not been proceeded against or, if proceeded against, adjudicated not liable to forfeiture, if the Court is satisfied that there were reasonable grounds for the seizure or detention.
- (4) Where the Court is not so satisfied the Court may award costs and damages to the party aggrieved and make such other order as the Court thinks just.

## Part VI – PROPRIETARY INTERESTS IN SHIPS

### *General*

#### 94. Rights of owners and mortgagees

- (1) Subject to any rights and powers appearing from the register to be vested in any other person, the registered owner of a ship or of a share in a ship shall have power absolutely to dispose of it provided the disposal is made in accordance with this Act.
- (2) Subsection (1) does not imply that interests arising under contract or other equitable interests cannot subsist in relation to a ship or a share in a ship, and such interests may be enforced by or against owners and mortgagees of ships in respect of their interest in the ship or share in the same manner as in respect of any other personal property.
- (3) The registered owner of a ship or of a share in a ship shall have power to give effectual receipts for any money paid or advanced by way of consideration on any disposal of the ship or share.

#### *Mortgages*

#### 95. Mortgage of ship or share

- (1) A registered ship, or a share in any such ship, may be made a security for a loan or the discharge of any other obligation.
- (2) The instrument creating any such security (referred to in this Part as “a mortgage”) shall be in the prescribed form.
- (3) Where a mortgage executed in accordance with subsection (2) is produced to the Registrar of Ships, he shall register the mortgage in the prescribed manner.
- (4) Mortgages shall be recorded by the Registrar of Ships in the order in which they are produced for the purposes of registration and the registrar shall enter and sign on each mortgage a statement to the effect that it has been registered by him, stating the date and time of the registration.
- (5) Where it is stated in the mortgage instrument that it is prohibited to create further mortgages over a vessel without the prior written consent of the mortgagee, the Registrar of Ships shall make a note in the register to such effect, and the Registrar of Ships shall not register any further mortgage unless the consent in writing of the holder of a prior mortgage is produced to him, and any mortgage registered in violation of this provision shall be null and void.
- (6) Where it is stated in the mortgage instrument that it is prohibited to transfer the ownership of a ship or terminate the registration of the ship in the manner provided in section 21(1)(d), without the prior written consent of the mortgagee, the Registrar of Ships shall make a note in the register to such effect, and the Registrar of Ships shall not record a transfer of ownership of the ship or terminate the ship’s registration, as the case may be, unless the appropriate consent in writing of the holder of the mortgage is produced to him, and any recording in the register of a transfer of ownership or a termination of the ship’s registration in the circumstances referred to in this subsection shall be null and void.
- (7) A mortgage may be registered in the register referred to in section 25(1) in respect of a provisionally registered ship, and where a mortgage is so registered, it shall be subject to all relevant provisions relating to mortgages under this Act and the registration regulations.
- (8) A mortgage registered pursuant to subsection (7) shall continue to be a registered mortgage until it is discharged, even if the provisional registration of the ship in respect of which the mortgage was registered, ceases to be effective.
- (9) For the purposes of subsection (1), “ship” includes a ship under construction.
- (10) A mortgage in respect of a ship under construction shall be entered in the register referred to in section 25(1), however, upon the registration of such ship under construction being transferred to another appropriate part of the register as provided in section 25(4), the entries relating to

the mortgage, unless the mortgage is discharged, shall in like manner be transferred to the same appropriate part of the register.

- (11) A mortgage in respect of a ship under construction shall, for the purposes of determining priority under this or any other law, and in all other respects, be treated as a registered ship mortgage and shall continue to be treated as such until it is discharged, even if the ship under construction ceases to be registered under this Act; and a ship under construction shall, for the purposes of a mortgage thereon under this or any other law, be treated as maritime property.

#### **96. Priority of mortgages**

Where two or more mortgages are registered in respect of the same ship or share, the priority of the mortgagees between themselves shall be determined by the order in which the mortgages were registered and not by reference to any other matter.

#### **97. Priority notices**

Registration regulations may provide for the giving to the Registrar of Ships by intending mortgagees of "priority notices" in a form prescribed by or approved under the regulations which, when recorded in the register, shall determine the priority of the interest to which the notice relates.

#### **98. Authority to sell or mortgage out of Kenya**

- (1) Where a registered owner of a Kenyan ship or a share therein, is desirous of disposing by way of sale or mortgage of that ship or share at any place out of Kenya, he may make application, by declaration in writing, to the Registrar of Ships.
- (2) In an application under subsection (1), there shall be set forth the following particulars—
- (a) the name and address of the person by whom the power mentioned in the certificate is to be exercised, together with—
    - (i) in the case of a sale, the minimum price at which a sale is to be made if it is intended to fix any such minimum; or
    - (ii) in the case of a mortgage, the maximum amount thereof, if it is intended to fix any such maximum;
  - (b) the place where the power is to be exercised, or, if no place is specified, a declaration that the power may be exercised anywhere, subject to this Act;
  - (c) the limit of time within which the power may be exercised.
- (3) Subject to section 99(1), in the case of an application to dispose of a ship by way of sale, the Registrar of Ships shall enable any such applicant to dispose of the ship or share in the manner desired in accordance with subsection (4).
- (4) On receiving an application made under this section, the Registrar of Ships shall enter in the register book a statement of the particulars set forth in the application, and shall grant to the applicant a Certificate of Sale or a Certificate of Mortgage, as the case may require.
- (5) A Certificate of Sale and a Certificate of Mortgage shall—
- (a) each be in the prescribed form;
  - (b) not authorise any sale or mortgage to be made in Kenya or by any person not named in the certificate; and
  - (c) contain a statement of the particulars set forth in the application, and also a statement of any registered mortgages and certificates of any registered mortgages and certificates of sale or mortgage affecting the ship or share in respect of which the certificate is given.

**99. General rules for Certificate of Sale**

- (1) A Certificate of Sale shall not be granted except for sale of an entire ship.
- (2) The power conferred by any such certificate shall be exercised in conformity with the directions contained therein.
- (3) An agreement for sale entered in good faith in exercise of the power conferred by any such certificate to a purchaser for valuable consideration shall not be impeached by reason of the person by whom the power was given dying at any time between the giving of the power and the completion of the sale.
- (4) Whenever any such certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which the power is to be exercised, a sale made in good faith to a purchaser for valuable consideration without notice shall not be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.

**100. Sale and registration of ship under Certificate of Sale**

- (1) Where a Kenyan ship is sold, in exercise of a power conferred by a Certificate of Sale granted under this Part, to persons qualified to own a Kenyan ship—
  - (a) a transfer of the ship shall be made by Bill of Sale in the manner provided in this Part, and the Bill of Sale, when duly executed, and the Certificate of Sale shall be produced to a proper officer at the place at which the ship is sold, and that officer shall thereupon endorse and sign on the certificate of sale a statement of the fact of that ship having been sold, and shall forthwith notify the Registrar of Ships;
  - (b) the ship may be registered anew in the manner provided by this Act; and
  - (c) the Registrar of Ships, upon receipt of the Certificate of Sale and the ship's Certificate of Registry from a proper officer, each of those certificates having endorsed thereon an entry of the fact of the sale having taken place, shall thereupon enter the sale of the ship in the register book.
- (2) Where a Kenyan ship is sold in exercise of a power conferred by a Certificate of Sale, issued under this Part, to persons not qualified to own a Kenyan ship—
  - (a) the Certificate of Sale and the Certificate of Registry shall be produced to the proper officer at the place at which the ship is sold, and the proper officer shall endorse and sign on each of them a statement of the fact of that ship having been sold to persons not qualified to own a Kenyan ship;
  - (b) the proper officer making the endorsements required by paragraph (a) shall forward the Certificates of Sale and Registry, each being duly endorsed, to the Registrar of Ships;
  - (c) the Registrar of Ships, upon receipt of the Certificates of Sale and Registry, each being endorsed in accordance with paragraphs (a) and (b), shall make an entry of the sale in his register book, and the registration of the ship shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein; and
  - (d) where default is made in the production of the certificates mentioned in this subsection, the persons to whom the ship is sold shall be considered to have acquired no title to or interest in, the ship, and the person on whose application the Certificate of Sale was granted, and the person exercising the powers conferred thereby, each commits an offence.
- (3) Where no agreement for sale is entered into in exercise of the powers conferred by a Certificate of Sale granted under this Part, that certificate shall be delivered to the Registrar of Ships, and the Registrar shall thereupon cancel the certificate, and shall enter the fact of the cancellation in the register book; and every certificate so cancelled shall be void.

### 101. Registration in Kenya of foreign-registered ship

- (1) Where any ship registered in a foreign country is sold in exercise of a power conferred by a Certificate of Sale granted under the law of that country, to persons qualified to own a Kenyan ship, that ship may be registered in Kenya in accordance with this section.
- (2) Application for registration anew shall be made to the Registrar of Ships and there shall be produced to the Registrar of Ships the Bill of Sale by which the ship is transferred, the Certificate of Sale and the Certificate of Registry of the ship.
- (3) The Registrar of Ships, on registering the ship anew, shall—
  - (a) retain the Certificates of Sale and Registry, and shall endorse on each of those certificates an entry of the fact of a sale having taken place, and shall forward those certificates, so endorsed, to the Registrar of Ships at the ship's former Port of Registry; and
  - (b) enter in the register book such particulars as are, by this Act required to be entered therein in the case of the first registration of a ship in Kenya, and also a statement of any registered mortgages or certificates of mortgage enumerated on the Certificate of Sale.
- (4) On such registration anew—
  - (a) the description of the ship contained in her former Certificate of Registry may be transferred to the new register book, without her being resurveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee; and
  - (b) all persons appearing on the register to be interested in that ship as owners or mortgagees shall be deemed to have the same rights, and their rights shall be determined in the same manner, as if that ship had been first registered in Kenya in the manner provided in this Act and as if any unsatisfied mortgages or existing certificates of mortgage had been entered in the register book at that port.

### 102. Certificates of mortgage

The following provisions shall apply regarding certificates of mortgage—

- (a) the power conferred shall be exercised in conformity with the directions contained in the certificates;
- (b) every mortgage executed thereunder shall be registered by the endorsement of a record thereof on the certificate by the proper officer at the place at which the mortgage is executed;
- (c) a mortgage executed in good faith thereunder shall not be impeached by reason of the person by whom the power was given dying at any time between the giving of the power and the execution of the mortgage;
- (d) whenever the certificate contains a specification of the place at which, and a limit at time not exceeding twelve months within which, the power is to be exercised, a mortgage executed in good faith to a mortgagee without notice shall not be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given;
- (e) every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and where there are more mortgages than one so registered, the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice, be entitled to priority one before the other according to the date and time that each mortgage is registered on the certificate, and not according to the date of the mortgage;
- (f) subject to the foregoing rules, every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers, and be subject to the same liabilities, as he would have

had and been subject to, if his mortgage had been registered in the register book instead of on the certificate;

- (g) the discharge of any mortgage so registered on the certificate may be endorsed on the certificate by the Registrar of Ships or proper officer on the production of such evidence as is, by this Act required to be produced to the Registrar of Ships for the entry of the discharge of a mortgage in the register book; and, on that endorsement being made the interest, if any, which passed to the mortgagee shall vest in the same person or persons in whom it would, having regard to the intervening acts and circumstances, if any, have vested if the mortgage had not been made.

### 103. Loss of certificate of sale or mortgage

On proof at any time to the satisfaction of the Registrar of Ships that a Certificate of Sale or Mortgage is lost or destroyed, or so damaged as to be useless, and that the powers thereby given have never been exercised, or, if they have been exercised, then, on proof of the several matters and things that have been done thereunder, the Registrar of Ships may as circumstances require, either issue a new certificate or direct such entries to be made in the register book, or such other things to be done, as might have been made or done if the loss, destruction or damage had not taken place.

### 104. Revocation of certificate of sale or mortgage

- (1) The owner of a Kenyan ship, or a share therein in respect of which a Certificate of Sale or mortgage has been granted specifying the places where the power thereby given is to be exercised, may, by an instrument under his hand, authorise the Registrar of Ships by whom the certificate was granted to give notice to the proper officer at every such place that the certificate is revoked.
- (2) Notice shall thereupon be given accordingly and be recorded by the proper officer receiving it, and after it is recorded, the certificate shall be deemed to be revoked in respect of any sale or mortgage to be thereafter made at that place.
- (3) After it has been recorded, the notice shall be exhibited to every person applying for the purpose of effecting or obtaining a transfer or mortgage under the certificate.
- (4) A proper officer, on recording any such notice, shall inform the Registrar of Ships by whom the Certificate was granted whether any previous exercise of the power to which the certificate refers has taken place.

### *Maritime Liens*

### 105. Maritime liens

- (1) Subject to the provisions of this Act, the following claims may be secured by maritime liens—
  - (a) wages and other sums due to the master, officer and other members of the ship's complement, in respect of their employment on the ship;
  - (b) port and other waterway dues and pilotage dues;
  - (c) claims against the owner in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
  - (d) claims against the owner, based on a wrongful act and not on contract, in respect of loss of or damage to property occurring whether on land or on water, in direct connection with the operation of the ship;
  - (e) claims for salvage, wreck removal and contribution in general average.
- (2) In subsection (1), "owner" includes, in relation to a ship, the charterer, manager or operator of such ship.

## 106. Priority of liens

The maritime liens set out in section 105 shall take priority over mortgages and preferential rights registered under this Part, or arising under the law relating to insolvency, and except as provided in section 107 no other claim shall take priority over them.[Act No. 19 of 2015, Sch.]

## 107. Order of priority of liens

The maritime liens set out in section 105 shall—

- (a) rank in the order in which they are set out in that section, so however, that maritime liens securing claims for salvage, wreck removal and contribution in general average shall take priority over all other maritime liens which have attached to the ship prior to the time when the operations giving rise to such liens were performed;
- (b) in the case of claims arising under section 105(1) (a), (b), (c) or (d), rank *pari passu* among themselves;
- (c) in the case of claims arising under section 105(1)(e), rank in the inverse order of the time when the claim secured thereby accrued; and for this purpose claims for salvage shall be deemed to have accrued on the date on which the salvage operation was terminated, and claims for general average shall be deemed to have accrued on the day on which the general average act was performed.

## 108. Rights of ship builders and repairers

Where a preferential right arises, pursuant to the provisions of the law relating to bankruptcy, or insolvency, in respect of a ship in the possession of—

- (a) a ship builder, in order to secure claims for the building of the ship; or
- (b) a ship repairer, in order to secure claims for the repair of the ship, effected during such possession,

such rights shall be postponed to all the maritime liens set out in section 105 but may take precedence over any mortgage or other preferential right registered under this Part so long as the ship is in the possession of the ship builder or ship repairer, as the case may be.

### *Bareboat Charters*

## 109. Registration of bareboat charters

- (1) This section applies to any ship which—
  - (a) is registered under the law of a country other than Kenya;
  - (b) is chartered on bareboat charter term to a charterer who is a person qualified to own Kenyan ships; and
  - (c) is so chartered in circumstances where the conditions of entitlement to registration prescribed under section 29 read with the requisite modifications, are satisfied as respects the charterer and the ship.
- (2) The requisite modifications referred to in subsection (1)(c) of those conditions are the substitution for any requirement to be satisfied by or as respects the charterer of the ship.
- (3) A ship to which this section applies is entitled to be registered if an application for registration is duly made under section 28.
- (4) The registration of a ship registered by virtue of this section shall remain in force, unless terminated by virtue of registration regulations and subject to any suspension thereunder, for twenty four months or until the end of the charter period whichever is the earlier and shall then terminate by virtue of this subsection.

- (5) Throughout the period for which a ship is registered by virtue of this section—
- (a) the ship shall, as a Kenyan ship, be entitled to fly the Kenyan flag;
  - (b) this Act and any other law on marine pollution for the time being in force shall, subject to subsections (6) and (7), apply to the ship as a Kenyan ship or as a registered ship as the Acts apply to other Kenyan ships and to registered ships; and
  - (c) any other law applicable to Kenyan ships registered under this Act shall, subject to subsection (7), apply to the ship as a Kenyan ship or as a Kenyan registered ship.
- (6) The private law provisions for registered ships shall not apply to a ship registered by virtue of this section and any matters or questions corresponding to those for which the private law provisions for registered ships make provisions shall be determined by reference to the law of the country of original registration.
- (7) The Cabinet Secretary may, subject to subsection (8), by regulations, provide that any law falling within subsection (5)(b) or (c)—
- (a) shall not have effect in accordance with that subsection in relation to a ship registered by virtue of this section; or
  - (b) shall so have effect subject to any modifications as may have been specified in the registration.
- (8) No provision shall be made by any regulations under subsection (7) which would have the effect of relaxing the relevant requirements of regulations made under this Act within the provision in their application of this Act to a ship to which this section applies.
- (9) Regulations under subsection (7) may make such transitional, incidental or supplemental provision as appears to the Cabinet Secretary to be necessary or expedient, including provision divesting or providing for the divestment of ownership in the ship.
- (10) A ship shall not be registered under this Part without documentary proof that her registration in the underlying or original registry has been deleted.
- (11) The Cabinet Secretary may, by notice in the *Gazette*, exempt any ship or class of ships from the requirements of Part IV where such requirements are superfluous.

### **110. Overriding nature of maritime liens**

The maritime liens set out in section 105 shall arise whether the claims secured by such liens are against the owners, the demise or other charterer, manager or operator of the ship and such liens shall, subject to the provisions of section 112, remain attached to the ship, notwithstanding any change of ownership or of registration.

### **111. Claims arising from radioactive products, etc.**

A maritime lien shall not attach to a ship to secure a claim under section 105(1)(c) or (d) where such claim arises out of or results from the radioactive properties, or a combination of the radioactive properties with toxic, explosive or other hazardous properties, of nuclear fuel or of radioactive products or waste.

### **112. Limitation period**

- (1) The maritime liens relating to a ship set out in section 105 shall be extinguished after a period of one year from the time when the claims secured thereby arose unless, prior to the expiry of such period, the ship has been arrested and the arrest has led to a forced sale pursuant to the provisions of the rules of court or any other law for the time being in force relating to the sale of property in admiralty proceedings.

- (2) The one year period referred to in subsection (1) shall not be subject to interruption or suspension except that time shall not run during the period the lien holder is legally prevented from arresting the vessel.

### **113. Notification of sale**

Before a forced sale of a ship in accordance with section 112, the executing officer shall give or cause to be given thirty days' written notice of the time and place of such sale to—

- (a) all holders of mortgages and other preferential rights registered under this Part which have not been issued to bearer;
- (b) the holders of such mortgages and rights as have been issued to bearer, whose claims have been notified to the officer;
- (c) the holders of maritime liens set out in section 105, whose claims have been notified to the executing officer; and
- (d) the Registrar of Ships.

### **114. Effect of sale on mortgages**

- (1) In the event of the forced sale of a ship in accordance with section 112, and in accordance with this Part—
  - (a) all mortgages and other preferential rights registered under this Part, except those assumed by the purchaser with the consent of the holders thereof; and
  - (b) all liens and other encumbrances of whatever nature, but not including a charter party or contract for the use of the ship, shall cease to attach.
- (2) No charter party or contract for the use of the ship shall be deemed to be lien or encumbrance for the purpose of this section.

### **115. Disposition of proceeds of sale**

The costs awarded by the Court and arising out of the arrest and subsequent sale of a ship shall be paid first out of the proceeds of such sale, and the balance of such proceeds shall be distributed among—

- (a) the holders of maritime liens under section 105;
- (b) the holders of preferential rights under section 108; and
- (c) holders of mortgages and other preferential rights registered under this Part,

in accordance with the provisions of this Part and to the extent necessary to satisfy their claims.

### **116. Certifying ship free of mortgages, liens, etc.**

When a ship, registered in any country or a territory thereof, has been the subject of a forced sale in Kenya, the executing officer shall, at the request of the purchaser, and on being satisfied that the provisions of this Part have been complied with, issue a certificate to the effect that the ship is sold free of all mortgages, liens and other encumbrances, except those assumed by the purchaser, provided that the proceeds of such forced sale have been deposited with the authority competent to distribute such proceeds to the persons entitled thereto.

## **Part VII – ENGAGEMENT AND WELFARE OF SEAFARERS**

### *Interpretation and Application of Part*

## 117. Interpretation

- (1) In this Part—
  - “crew agreement” has the meaning given to it in section 119;
  - “mate” means a deck officer; and
  - “relief and maintenance” includes the provision of surgical or medical treatment and such dental and optical treatment, including the repair or replacement of any appliance, as cannot be postponed without impairing efficiency; and
  - “ship’s boat” includes a life-raft.
- (2) References in this Part to going to sea include references to going to sea from any country outside Kenya.
- (3) For the purposes of this Part, a seafarer is discharged from a ship when his employment in that ship is terminated.
- (4) For the purposes of this Part, a seafarer discharged from a ship is deemed to be discharged from a ship in any country and “left there” shall be deemed to be left behind in that Country notwithstanding that the ship also remains there.
- (5) Any power conferred by this Part to provide for or grant an exemption includes power to provide for or grant the exemption subject to conditions.

## 118. Functions of Registrar of Seafarers

- (1) The functions of the Registrar of Seafarers shall be to—
  - (a) conduct all business connected with the engagement and discharge of all persons who serve onboard Kenyan ships and all seafarers being nationals of Kenya who serve on foreign ships;
  - (b) afford facilities for engaging and discharging seafarers by maintaining registers of the names and conduct of—
    - (i) seafarers who apply to him for engagement;
    - (ii) seafarers shipped or discharged by him;
    - (iii) seafarers who produce continuous discharge certificates in proof of service in foreign or Kenyan ships;
    - (iv) seafarers who serve in Kenyan ships;
  - (c) cause copies of the certificates referred to in paragraph (b)(iii) to be kept at his office;
  - (d) perform such other duties relating to seafarers, apprentices and ships as are by or in pursuance of this or any other enactment relating to shipping entrusted to him.
- (2) The Director-General may appoint such persons as he thinks fit as Assistant Registrars of Seafarers who shall perform their duties under the direction of the Registrar of Seafarers.
- (3) No person shall, either as principal or as agent, engage or recruit a Kenyan seafarer for employment on board a Kenyan or foreign ship, without first obtaining a licence in the prescribed form from the Authority authorizing such person to engage or recruit Kenyan seafarers for sea service.
- (4) Any person who contravenes subsection (3) commits an offence and, upon conviction, shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

### 119. Contents of crew agreements

- (1) A crew agreement shall be in the prescribed form and shall be dated at the time of the first signature thereof, and shall be signed by the master before a seafarer signs his name.
- (2) The crew agreement shall show the place at which it is made, the surname and other names of the seafarer, his birth-place, and his age or date of his birth, and shall state clearly the respective rights and obligations of each of the parties, and shall contain as terms thereof the following particulars—
  - (a) the name of the ship in which the seafarers undertakes to serve;
  - (b) either the nature and, as far as is practicable, the duration of the intended voyage or engagement, or the maximum period of the voyage or engagement, which shall not exceed twelve months, and the port at which it is intended the crew shall be discharged, and the places or ports of the world, if any, to which the voyage or engagement is not to extend;
  - (c) the number and description of the crew;
  - (d) if possible, the place and date at which each seafarer is to be on board or to begin work;
  - (e) the capacity in which each seafarer is to serve;
  - (f) the amount of wages which each seafarer is to receive;
  - (g) the prescribed scale of the provisions which are to be furnished to seafarers;
  - (h) the time that is to expire after arrival at the port of discharge before the seafarer is discharged;
  - (i) any regulations as to conduct on board and as to fines, and other lawful punishment for misconduct which have been made by the cabinet secretary which the parties agree to adopt; and
  - (j) a list of persons under the age of eighteen years and the dates of their births.
- (3) The crew agreement shall be so drawn up as to admit of such stipulations to be adopted at the will of a master and seafarer in each case, whether respecting the advance and allotment of wages or otherwise, as are not contrary to law.
- (4) An agreement made to employ a seafarer under this section shall be terminated by—
  - (a) mutual consent of the parties thereto;
  - (b) the death of the seafarer; or
  - (c) the loss or total unseaworthiness of the ship.

### 120. Regulations on discipline

For the purpose of maintaining discipline on board Kenyan ships, the Cabinet Secretary may make regulations on—

- (a) any misconduct on board a ship as a disciplinary offence and enabling the master or such an officer as may be designated by the master to impose fines on seafarers committing disciplinary offences;
- (b) the procedure for the hearing of appeals against fines for disciplinary offences;
- (c) the setting up of a disciplinary committee of persons employed in a ship and for the exercise by all or any of those members of the powers of the master in dealing with disciplinary of offences;
- (d) the payment of fines for disciplinary offences.

## 121. Dealing with offences

Where any conduct is both a disciplinary offence and an offence against any of the provisions of this Act, then if it has been dealt with as a disciplinary offence, it shall not be dealt with as an offence against that provision.

## 122. Provisions relating to crew agreements

The following provisions shall have effect with respect to a crew agreement made in the case of ships trading from and beyond the waters of Kenya—

- (a) the agreement shall, subject to the provisions of this Act as to substitutes, be signed by each seafarer;
- (b) the Registrar of Seafarers shall cause the agreement to be read over and explained to each seafarer or otherwise ascertain that each seafarer understands the agreement before he signs it and shall attest each signature;
- (c) when the crew is first engaged, the agreement shall be signed in triplicate, and one part shall be forwarded to the owner, the other shall be retained by the master, another copy by the Registrar and shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequent to the first departure of the ship;
- (d) where a substitute is engaged in the place of a seafarer who duly signed the agreement and whose services are, within twenty-four hours of the ship proceeding to sea, lost by death, desertion or other unforeseen cause, the master shall before the ship proceeds to sea if practicable, and if not, as soon as possible thereafter, cause the agreement to be read over and explained to the substitute, and the substitute shall thereupon sign the same in the presence of a witness and the witness shall attest the signature;
- (e) an agreement may be made for a voyage or, if the voyage of the ship averages less than six months in duration, may be made to extend over two or more voyages, and an agreement as made to extend over two or more voyages is in this Act referred to as a “running agreement”;
- (f) a running agreement shall not extend beyond the twelve months’ period of time next following the date of the making of the agreement or the first arrival of the ship at her port of destination after the termination of the period;
- (g) on every return to the port where the crew was engaged before the final termination of a running agreement, the master shall make on the agreement an endorsement as to the engagement or discharge of seafarers, either that no engagements or discharges have been made or are intended to be made before the ship leaves port, or that all those made have been made as required by law, and if the master wilfully makes a false statement in any such endorsement, he commits an offence;
- (h) the duplicate crew agreement retained by the owner on the first engagement of the crew shall be kept by the owner for a period of seven years after the expiration of the agreement and shall be produced on demand made therefor by the Registrar of Seafarers or other proper officer;
- (i) except as provided in section 140 a crew agreement shall not purport to deprive any court of its jurisdiction to hear and determine disputes respecting the agreement.

## 123. Display, amendments, etc., of crew agreements

- (1) The master shall, at the commencement of every foreign voyage or engagement, cause a legible copy of the crew agreement omitting the signature to be displayed in some part of the ship which is accessible to the crew.
- (2) Every erasure, amendment or alteration in any crew agreement, except additions made for the purpose of shipping substitutes or persons engaged after the first departure of the ship, shall be

without effect unless proved to have been made with the consent of all persons interested in the erasure, amendment or alteration.

- (3) In any proceedings, a seafarer may introduce evidence to prove the contents of any crew agreement or otherwise to support his case without producing or giving notice to produce the agreement or any copy thereof.
- (4) Every person who fraudulently alters, makes any false entry in, or delivers a false copy of, any crew agreement commits an offence.

#### **124. Stipulations not to be contrary to the law of flag state**

In no case shall stipulations adopted by the parties be contrary to the laws of the flag state of the ship in matters relating to wages and conditions of employment of seafarers and master on board ships.

#### **125. Certificate of discharge of seafarers**

- (1) The master shall sign and give to a seafarer discharged from his ship, either on his discharge or on payment of his final dues, a certificate of his discharge in a prescribed form specifying the period of his service and the time and place of discharge.
- (2) A certificate of discharge under subsection (1) shall not contain any statement as to the wages or the quality of work of the discharged seafarer.
- (3) The master shall, upon the discharge of every certificated officer whose certificate of competency had been delivered to and retained by him, return the certificate to the officer.

#### **126. Character report on discharge of seafarer**

- (1) When a seafarer is discharged from a Kenyan ship, the master thereof shall make and sign a report known as a "character report" in the prescribed form, in which the master—
  - (a) shall report on the conduct, character and qualifications of the seafarer who is being discharged; or
  - (b) may state that he declines to give any report on the conduct, character and qualifications of the seafarer who is being discharged.
- (2) The master before whom the discharge of a seafarer is being made shall, subject to section 175, and if the seafarer so desires, give the seafarer a copy of the character report on him.
- (3) A person commits an offence if such a person—
  - (a) makes a false report of character knowing the same to be false;
  - (b) forges or fraudulently alters any certificate of discharge or character report or copy of a character report;
  - (c) fraudulently uses any certificate of discharge or character report, that is forged or altered or that does not belong to him,

and shall be liable on conviction to a fine not more than one hundred thousand shillings or to imprisonment for a term not exceeding six months, or both.

#### **127. Discharge on change of ship registry**

Where a Kenyan ship ceases to be registered as such any seafarer employed in the ship shall be discharged from the ship, unless he consents in writing to continue his employment in the ship and, in such a case the provisions of this Part relating to the payment of a seafarer's wages and the power of the Registrar of Seafarers or other proper officers to decide disputes about wages shall apply in relation to his wages as if the ship had remained registered in Kenya.

**128. Employment of children**

- (1) No child shall be employed in any Kenyan ship except—
  - (a) upon work approved by the Authority on board a school-ship or training ship; or
  - (b) where the Director-General certifies that he is satisfied, having due regard to the health and physical condition of the person and to the prospective and immediate benefit to him of the employment, that the employment will be beneficial to him.
- (2) Without prejudice to subsection (1), no child shall be employed in any capacity in any Kenyan ship unless there has been delivered to the master of the ship a certificate granted by a duly qualified medical practitioner certifying that such a child is fit to be employed in that capacity.
- (3) Every medical certificate under subsection (2)—
  - (a) shall be valid for one year from the date of issue, unless earlier revoked; and
  - (b) may at any time be revoked by a duly qualified medical practitioner if he is satisfied that the person is no longer fit for work.
- (4) No child shall be employed to work in the engine-room of any ship, unless that child is an apprentice working under supervision.

**129. Changes in crew of ships**

- (1) The master of every ship trading from and beyond Kenyan waters shall, before leaving Kenya, sign and send to the Director-General a full and accurate statement, in the prescribed form of every change which takes place in his crew before finally leaving and that statement shall be admissible in evidence.
- (2) Any master who without reasonable cause fails to comply with this section commits an offence.

**130. Change of master**

- (1) Where, during the progress of a voyage of a ship, the master is removed, superceded or for any other reason ceases to have command or charge of the ship, he shall deliver to his successor the Certificate of Registry and the various documents relating to the navigation of the ship and to the crew thereof which are in his custody; and if he fails without reasonable cause to do so, he commits an offence.
- (2) The successor to every master shall, immediately on assuming the command of a ship, enter in the official log book a list of the documents so delivered to him.

**131. Regulations on condition of service**

- (1) The Cabinet Secretary may make such regulations as he considers necessary or expedient to provide for—
  - (a) the conditions of service of persons serving in Kenyan ships and of Kenyan nationals serving in foreign ships;
  - (b) matters connected therewith and, in particular, relating to—
    - (i) apprenticeship to sea service;
    - (ii) engagement by foreign ships of Kenyan nationals;
    - (iii) the implementation of any international convention relating to the employment, welfare security certification or status of seafarers;
    - (iv) the avoidance of agreements made contrary to such regulations as may be prescribed;

- (v) wages in general and the rights related thereto of persons employed in Kenyan ships, securing safe working conditions, health and welfare for seafarers and apprentices employed in ships; and
  - (vi) the accommodation to be provided for seafarers and apprentices on board ships, the locations and standards of accommodation and all questions relating to the accommodation of seafarers and apprentices on board;
  - (c) the employment of children;
  - (d) prescribing the minimum numbers of the several classes of seamen required to be engaged as part of the crew of a ship;
  - (e) prescribing what proportion of any of the several classes of seamen comprising the crew of a Kenyan ship shall be Kenyan citizens.
- (2) In making regulations under subsection (1), the Cabinet Secretary shall have due regard to Seafarers' Code of the International Labour Organization.

### **132. Documents to be in English**

- (1) Except where otherwise provided in this Act, all correspondence, documents, forms or other writings shall be in the English language, and in the case of the crew agreement, official log book and muster lists, in a prescribed form save that a foreign language version of any document may be appended to the English language version thereof.
- (2) All written signs displayed on board a Kenyan ship shall be in the English language with, if it is considered to be necessary by the master, a foreign language version appended thereto.

### **133. Crew's knowledge of English**

- (1) Where in the opinion of the Director-General the crew of a Kenyan ship consists of, or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English and the absence of adequate arrangements for transmitting orders in a language of which they have sufficient knowledge, the Director-General shall inform the master of his opinion and the ship, shall not proceed to sea until the Director-General is satisfied that the situation has been rectified.
- (2) If a ship goes to sea or attempts to proceed to sea in contravention of this section, both the owner and the master each commits an offence.

### **134. Discharge of seafarers**

- (1) The Cabinet Secretary may make regulations prescribing the procedure to be followed in connection with the discharge of seafarers from Kenyan ships.
- (2) Without prejudice to the generality of subsection (1), regulations under this section may make provisions—
  - (a) requiring notice of discharge of seafarers to be given at such time as may be specified in the regulations to the Registrar of Seafarers or proper officer at a place specified in or determined under the regulations;
  - (b) requiring such a discharge to be recorded, whether by entries in the crew agreement and continuous discharge certificate or otherwise, and requiring copies of any such entry to be given to the Registrar of Seafarers or proper officer or the Registrar of Ships;
  - (c) the form, validity and contents of the continuous discharge certificates referred to in paragraph (b).

- (3) Regulations under this section may provide that in such cases as may be specified in the regulations, or except in such cases as may be specified in or determined under the regulations, a seafarer shall not be discharged outside Kenya from a Kenyan ship without the consent of the proper officer.
- (4) Regulations under this section may make a contravention of any provision thereof an offence.

### **135. Seafarer left outside Kenya**

Regulations made under section 134 may apply any provision thereof, with such modifications as appear to the Cabinet Secretary to be appropriate, to cases where a seafarer employed in a Kenyan ship is left behind outside Kenya otherwise than on being discharged from the ship.

### *Wages*

### **136. Payment of seafarers' wages**

The master or owner of a Kenyan ship trading from and beyond Kenyan waters shall pay to each seafarer belonging to that ship his wages, if demanded, within two days after the arrival of the ship at the port where the crew is to be discharged or upon the seafarer's discharge, whichever first happens.

### **137. Account of seafarers' wages**

- (1) The master of every Kenyan ship shall, before paying off or discharging a seafarer, deliver at the time and in the manner provided by this Act a full and true account of the seafarer's wages and of all deductions to be made therefrom for any reasons whatsoever.
- (2) The account shall be delivered to the seafarer not less than twenty-four hours before his discharge or paying off.

### **138. Deductions from wages**

- (1) A deduction from the wages of a seafarer shall not be allowed unless it is included in the account delivered to the proper officer when a seafarer is left behind at a foreign port except in respect of a matter happening after the delivery.
- (2) The master shall, during the voyage, enter the various matters in respect of which the deductions are made in a book kept for that purpose, and shall if required produce the book at the time of the payment of wages and also upon the hearing before any competent authority of any complaint or question relating to that payment.

### **139. Settlement of wages**

- (1) When a seafarer is discharged, and the settlement of his wages completed, he shall sign a release, in a prescribed form, of all claims in respect of the past voyage or engagement; and the release shall be signed by the master or owner of the ship.
- (2) The release, so signed and attested, shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement.
- (3) The release shall be delivered to and retained by the owner for a period of seven years after expiry of the agreement and shall be produced on demand made therefor by the Registrar of Seafarers or other proper officer.

### **140. Registrar's decision as to wages**

Where a question, of whatever nature and whatever the amount in dispute, between a master or owner and any of his crew is raised before the Registrar of Seafarers and both parties agree in writing to submit the

same to him, the Registrar, shall hear and decide the question so submitted; and an award made by him on the submission shall be conclusive as to the rights of the parties; and a document purporting to be the submission of the award shall be admissible in evidence in the manner provided by this Act.

#### **141. Registrar to get documents**

- (1) In any proceedings under this Act before the Registrar of Seafarers relating to wages, claims or discharge of a seafarer, the Registrar may require the owner or his agent or the master or any mate or other member of the crew to produce any log books or other documents in his possession or power relating to a matter in question in the proceedings and may require the attendance of and may examine any of those persons who are then at or near the place on the matter, and may administer oaths.
- (2) In any proceedings under this Act before the Registrar of Seafarers relating to the wages, claims or disputes or discharge of seafarers, all travelling and other expenses incurred by the Registrar shall be met by the owner or master of the ship in dispute.

#### **142. Rate of exchange**

Where a seafarer has agreed with the master of a Kenyan ship for payment of his wages or any part thereof in a specific currency, any payment of or on account of his wages if made in any other currency than that stated in the agreement shall, notwithstanding anything in the agreement, be made at the rate of exchange for the amount stated in the agreement for the time being current at the place where the payment is made, and such rate of exchange shall be endorsed on the agreement by a proper officer at that place.

#### **143. Registrar power to decide issue of wages**

- (1) Where, before the Registrar of Seafarers or a proper officer, a question as to wages is raised between the master or owner of a ship and a seafarer, and the amount does not exceed one hundred thousand shillings, the Registrar or a proper officer may, on the application of either party, decide the question and the decision shall be final; but if the Registrar or a proper officer is of the opinion that the question is one which ought to be decided by a court, he may refuse to decide it.
- (2) Where any question, of whatever nature and whatever the amount in dispute, between a master or owner and any of his crew is raised before a shipping master, and both parties agree in writing to submit it to him, the shipping master shall hear and decide the question so submitted; and an award made by him on the submission shall be conclusive as to the rights of the parties, and a document purporting to be the submission or award shall be admissible as evidence thereof.

#### **144. Interest on wages where no crew agreement exists**

In any proceedings by the master of a ship, or person employed in a ship otherwise than under a crew agreement, for the recovery of any sum due to such person as wages, the Registrar of Seafarers, unless it appears to him that the delay in paying the sum was due to—

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act of default of the person claiming the amount; or
- (d) any other cause not being the wrongful act or default of the person liable to make the payment or their servants or agents,

may order the person liable to pay, in addition to the sum due, interest on it at the rate of twenty per cent per annum or such lower rate as the Registrar may specify, for the period beginning seven days after the sum became due and ending when the sum is paid.

**145. Allotment notes**

- (1) Subject to this section, a seafarer may, by means of an allotment note issued in accordance with regulations, allot a part of the wages to which he will become entitled in the course of his employment in a Kenyan ship.
- (2) The Cabinet Secretary may make regulations—
  - (a) relating to the limitations to which a seafarer's right to make an allotment are subject;
  - (b) prescribing the form of allotment notes;
  - (c) relating to the right of a person named in an allotment note to sue in his own name.

**146. Wages on termination of service**

- (1) Where the service of a seafarer terminates before the date contemplated in the agreement by reason of his being left on shore at a place abroad because of his unfitness or inability to proceed on the voyage, such seafarer shall be entitled to wages for the time served up to such termination but not for any further period.
- (2) Where the service of a seafarer terminates before the date contemplated in his agreement by reason of the loss or foundering of the ship on which he is employed, he shall be entitled to receive wages in respect of each day on which he is in fact unemployed during a period of two months from the date of termination of the service at the rate to which he was entitled at that date, except so far as he obtains other suitable employment.
- (3) Where a Kenyan ship is sold while outside Kenya or ceases to be a Kenyan ship and a seafarer's employment in the ship is thereby terminated before the date contemplated in the agreement under which he is so employed, then, unless it is otherwise provided in the agreement, he shall, subject to the following provisions of this section, be entitled to wages at the rate payable under the agreement at the date on which his employment is terminated for every day on which he is unemployed in the two months following that date.
- (4) A seafarer shall not be entitled to wages by virtue of subsection (1) or (2) for a day which he was unemployed, if it is shown that—
  - (a) the unemployment was not due to the wreck or loss of the ship or, as the case may be, the termination of his employment on the sale of the ship or its ceasing to be a Kenyan ship; or
  - (b) the seafarer was able to obtain suitable employment for that day but unreasonably refused or failed to take it.
- (5) This section shall apply to a master as it does to a seafarer.

**147. Protection of seafarer's rights and remedies**

- (1) Subject to subsection (3) a seafarer's lien on a ship, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of the seafarer's ship, and any right he may have or obtain in the nature of salvage shall not be capable of being renounced by any agreement.
- (2) Any stipulation in any agreement inconsistent with subsection (1) or any other provision of this Act shall be void.
- (3) Subsection (1) does not affect any term of an agreement made with the seafarers belonging to a ship which in accordance with the agreement, is to be employed on salvage service which then relates to the remuneration to be paid to them for salvage services rendered by that ship.

**148. Claim against seafarer's wages for maintenance**

- (1) Where, during a seafarer's employment in a ship expenses are incurred by a public officer for the benefit of any of his dependants and the expenses are of a kind specified in the regulations made and such further conditions, as may be so specified are satisfied, the public officer may by notice in writing require the persons employing the seafarer—
  - (a) to retain for a period specified in the notice such proportion of his net wages as may be so specified; and
  - (b) to give to the public officer notice in writing of the seafarer's discharge from the ship, and the persons employing the seafarer shall comply with the notice, subject to subsection (3), and give notice in writing of its contents to the seafarer.
- (2) For purposes of this section—
  - (a) the following persons, shall be taken to be a seafarer's dependants, that is to say, his spouse and any child for whom he is liable for purposes of any relevant law to maintain; and
  - (b) expenses incurred for the benefit of any person include in addition to any payments made to him or on his behalf, expenses incurred for providing him with accommodation or care or for exercising supervision over him, but no expenses shall be specified in the regulations unless they are such that a competent court has power under any law in force in Kenya to order the making of payments in respect thereof.
- (3) No more than the following proportion of a seafarer's net wages shall be retained under subsection (1) whether in pursuance of one or more notices—
  - (a) one-half, if the notice or notices relate to one dependant only;
  - (b) two-thirds, if the notice or notices relate to two or more dependants.
- (4) Where a public officer has served a notice under this section on the persons employing a seafarer, a competent court may, on the application of the officer, make an order for the payment to the officer of such sum, not exceeding the proportion of the seafarer's wages which those persons were required by virtue of this section to retain, as the court having regard to the expenses incurred by the officer and the seafarer's means, deems fit.
- (5) Any sums paid out of a seafarer's wages in pursuance of an order under this section shall be deemed to be paid to him in respect of his wages; and the service, on the persons who employed the seafarer, of such an order or of an order dismissing an application for such an order shall terminate the period for which they were required to retain the wages.
- (6) An application for an order under this section for the payment of any sum by, the persons who employed a seafarer shall be deemed, for the purposes of any proceedings, to be an application for an order against the seafarer; but the order, when served on those persons, shall have effect as an order against them and may be enforced accordingly.
- (7) Any notice or order under this section may be served by registered post.
- (8) The Cabinet Secretary may make regulations specifying—
  - (a) the expenses in respect of which a notice may be served by a public officer under subsection (1);
  - (b) any conditions that must be satisfied if such a notice is to be served;
  - (c) the period that may be specified in such a notice being a period beginning with the service of the notice and ending a specified number of days after the seafarer's discharge from his ship;
  - (d) the form of such a notice and the information to be contained therein;

- (e) the amounts to be deducted from a seafarers's wages in computing his net wages for the purposes of this section, and the amounts specified under this paragraph may include amounts allotted by allotment notes issued under section 145.

#### **149. Master's rights, etc., similar to seafarer's**

- (1) The master of a Kenyan ship, so far as circumstances permit, shall have the same rights, liens and remedies for the recovery of his wages as a seafarer has for his wages under this Act or any other law.
- (2) The master of a Kenyan ship, and every person lawfully acting as master of a ship by reason of the death or incapacity from illness of the master of the ship, so far as circumstances permit, has the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.
- (3) Where, in any proceedings regarding the claim of a master in respect of wages or of the disbursements or liabilities mentioned in subsection (2), any rights of set-off or counter-claim is set up, the Court may enter into and counter-adjudicate upon all questions and settle all accounts then arising or outstanding and unsettled between the parties to the proceedings and may direct payment of any balance found to be due.

#### **150. Wages not dependence on freight**

- (1) The right to wages shall not depend on the earning of freight, and every seafarer and apprentice who would be entitled to demand and recover any wages if the ship in which he has served has earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to demand and recover the same notwithstanding that the freight has not been earned; but in the event of wreck, or loss of the ship, proof that the seafarer has not exerted himself to the utmost to save the ship, cargo and stores, shall bar his claim for wages.
- (2) Where a seafarer or apprentice who would, but for death, be entitled by virtue of this section to demand and recover any wages, dies before wages are paid, the wages shall be paid and applied the same way as the wages of a seafarer who dies during a voyage.

#### **151. Refusal to work**

A seafarer shall not be entitled to wages for any time during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for him to begin work, or for any period during which he is lawfully imprisoned for any offence committed by him, unless the court hearing the case otherwise directs.

#### **152. Illness**

- (1) Where a seafarer is, by reason of illness, incapable of performing his duty, and it is proved that the illness is a sickness or infirmity wilfully concealed at the time of engagement, he shall not be entitled to wages for the period during which he is, by reason of the illness, incapable of performing his duty.
- (2) Subsection (1) does not affect the rights of any seafarer to any payment or other benefits to which he may be entitled under any law providing for compensation to injured or sick workers.

#### **153. Reimbursement of costs of procuring conviction**

When in any proceeding relating to a seafarer's wages it is shown that the seafarer has, in the course of the voyage, been convicted of an offence and punished by imprisonment or otherwise, the court hearing the case may direct any part of the wages due to the seafarer, not exceeding one month's wages, to be applied in reimbursing any costs properly incurred by the master in procuring the conviction and punishment.

**154. Improper discharge**

Where a seafarer who has signed an agreement is discharged otherwise than in accordance with the terms of the agreement—

- (a) before the commencement of the voyage; or
- (b) before one month's wages are earned,

without fault and without consent, he is entitled to receive from the master or owner, in addition to any wages he might have earned, due compensation for the damage caused to him by the discharge, not exceeding one month's wages, and he may recover that compensation as if it were wages duly earned.

**155. Protection of wages**

- (1) The following provisions apply to wages due or accruing to a seafarer—
  - (a) subject to section 145, wages are not subject to attachment by any court;
  - (b) an assignment or sale of wages before they are due does not bind the person making it;
  - (c) no power of attorney or authority for the receipt of wages is irrevocable;
  - (d) a payment of wages to a seafarer is valid in law notwithstanding that the wages have been assigned, attached or encumbered.
- (2) Nothing in subsection (1) affects the provisions of this Act with respect to allotment notes.
- (3) Nothing in this section applies to any disposition relating to the application of wages—
  - (a) in the payment of contributions to a fund declared by regulations to be a fund to which this section applies;
  - (b) in the payment of contributions in respect of the membership of a body declared by regulations to be a body to which this section applies.

**156. Leave and holidays**

- (1) Every person is entitled after twelve months of continuous service on a Kenyan ship, or for the same employer, to an annual leave with pay, or to a proportionate part of the annual leave with pay, the duration of which shall be—
  - (a) in the case of officers, not less than seventy two working days; and
  - (b) in the case of crew members, not less than forty eight working days.
- (2) For the purpose of calculating the time at which an annual leave is due—
  - (a) periods between consecutive crew agreements shall be included in the reckoning of continuous service referred to in subsection (1);
  - (b) short interruptions of service not due to the act or fault of the employee and not exceeding a total of six weeks in any twelve months do not break the continuity of the periods of service that precede and follow them; and
  - (c) continuity of service is not interrupted by any change in the management or ownership of the ships in which the person concerned has served.
- (3) The following shall not be contemplated in computing annual leave with pay—
  - (a) interruptions of service due to sickness or injury; and
  - (b) public holidays.

- (4) In addition to the entitlement under subsection (1), every member of the crew of a Kenyan ship is entitled to nine days annual leave with pay in lieu of public holidays; and if the length of continuous service is less than twelve months, then the annual leave with pay shall be prorated.

### **157. Seafarer suing for wages**

- (1) Subject to section 143, a seafarer or a person authorised on his behalf, may, as soon as any wages due to him become payable, sue for them in a court having jurisdiction in the place at which his service has terminated or at which he has been discharged, or at which any master or owner or other person upon whom the claim is made, resides.
- (2) A court, upon an application made to it for the purposes of proceedings under this section, may summon the master or owner or other person to appear before the court to answer the application.
- (3) Upon the appearances of the master or owner or other person, the court may examine upon oath the parties and their respective witnesses regarding the application and the amount of wages due, and may make such order for the payment of any wages found due as appears reasonable and just.
- (4) Where a master or owner or other person does not appear, the court, on due proof that the master or owner or other person was duly summoned, may examine on oath the applicant and his witnesses regarding the application and the amount of wages due, and may make such order for the payment of any wages found due as appears reasonable and just.
- (5) Where an order under this section for the payment of the wages is not complied with within twenty-four hours after the making thereof, the court may issue a warrant to levy the amount of the wages awarded to be due by distress and sale of the goods and chattels of the person on whom the order is made together with all the charges and expenses incurred in connection with the distress and levy and the enforcement of the order.
- (6) Where sufficient distress cannot be found the court may cause the amount of the wages, charges and expenses to be levied on the ship in respect of which the wages were earned or on the tackle and apparel thereof, save that if the ship is not within the jurisdiction of the court, no levy may be made on the ship but the court may cause the person upon whom the order for payment is made to be arrested and committed to prison for a term not exceeding three months.

### **158. Jurisdiction of court in recovery of wages**

The court shall hear and determine any action, suit or proceeding instituted by or on behalf of any seafarer or apprentice for the recovery of wages, where—

- (a) the owner of the ship is bankrupt;
- (b) the ship is under arrest or is sold by the authority of the court; or
- (c) a magistrate's court refers the claim to the court.

### **159. Rescission of contract by court**

- (1) Where proceedings are instituted in court in relation to a dispute between an owner or master of a ship and a seafarer, arising out of or incidental to their relationship as such, or is instituted for the purpose of this section, the court may, if, having regard to all the circumstances it deems it just to do so, rescind any contract between the owner or master and the seafarer, or any contract between the owner or master and seafarer, or any contract or articles of apprenticeship, upon such terms as the court deems just.
- (2) The jurisdiction of the court under subsection (1) is in addition to any other jurisdiction that the court can exercise independently of this section.

#### ***Property of Deceased Seafarer***

**160. Master to take charge of property upon death**

- (1) Where any seafarer belonging to a Kenyan ship dies during a voyage, the master of the ship shall take charge of any money or effects belonging to the deceased seafarer that are on board the ship.
- (2) The master shall enter in the official log book—
  - (a) a statement of the amount of the money and a description of the effects; and
  - (b) a statement of the wages due to the deceased, the amount of deductions, if any, to be made from the wages and the balance of the wages due.
- (3) The entry shall be signed by the master and attested by a mate or some other member of the crew.
- (4) The master, if he deems fit, may cause any of the effects of a deceased seafarer to be sold.
- (5) The master of the ship shall without undue delay furnish the Registrar of Seafarers with a statement of the property of the deceased seafarer.
- (6) The money, effects and balance of wages mentioned in subsections (1) and (2) and the proceeds of the sale mentioned in subsection (4) are in this Act referred to as “the property of the seafarer”.

**161. Delivery of deceased seafarer’s property**

- (1) Subject to subsection (2), the property of the seafarer shall be delivered, by the master of a ship by the most practicable means, to the personal representative of the deceased or, if there is no personal representative, to the Registrar of Seafarers or to the proper officer as the case may be, for disposal—
  - (a) in accordance with the law for determining the distribution or succession of personal property of deceased persons of the place in which the deceased was last resident; or
  - (b) in accordance with the order of a court having jurisdiction to determine the distribution of the property of the deceased.
- (2) A master may deduct from the property of the seafarer any expenses properly incurred in complying with subsection (1).
- (3) After complying with subsection (1), the master shall deliver a statement of account to the Registrar of Seafarers respecting the property of the seafarer.

**162. Forgery of documents and false evidence**

A person who, for purposes of obtaining, either for himself or for any other person any property of the seafarer, commits an offence if such person—

- (a) forges or fraudulently alters any document purporting to show or assist in showing any right to that property;
- (b) makes use of any such document that has been forged or fraudulently altered;
- (c) gives or assists in giving or procures to be given any false evidence knowing the same to be false;
- (d) makes any false representation knowing the same to be false; or
- (e) assists in procuring any false evidence or representation to be given or made knowing the same to be false.

***Safety, Health and Welfare of Seafarers***

**163. Obligation of ship owners as to seaworthiness**

- (1) In every contract of employment between the owner of a Kenyan ship and the master of, or any seafarer employed in, the ship there shall be implied an obligation that—
  - (a) the owner of the ship; and
  - (b) the master of the ship, and every agent charged with—
    - (i) the loading of the ship;
    - (ii) the preparing of the ship for sea; or
    - (iii) the sending of the ship to sea,shall use all reasonable means to ensure the seaworthiness of the ship for the voyage at the time when the voyage commences and to keep the ship in a seaworthy condition during the voyage.
- (2) The obligation imposed by subsection (1) applies notwithstanding any agreement to the contrary.

**164. Relief from liability for unseaworthiness**

Liability shall not attach on the owner of a ship under section 163(1) in respect of the ship being sent to sea in an un-seaworthy state where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

**165. Regulations on working conditions**

- (1) The Cabinet Secretary may make regulations with respect to—
  - (a) the crew accommodation to be provided in Kenyan ships; and
  - (b) living and working conditions of seafarers on board Kenyan ships.
- (2) Without prejudice to the generality of the foregoing, regulations made under this section may, in particular—
  - (a) prescribe the minimum space per person which must be provided by way of sleeping accommodation for seafarers and the maximum number of persons by whom a specified part of such sleeping accommodation may be used;
  - (b) regulate the position in the ship in which the crew accommodation or any part thereof may be located and the standards to be observed in the construction, equipment and furnishing of any such accommodation;
  - (c) require the submission to a surveyor of ships of plans and specifications of any works proposed to be carried out for the purpose of the provision or alteration of any such accommodation and authorise the surveyor to inspect any such works;
  - (d) provide for the maintenance and repair of any such accommodation and prohibit or restrict the use of any such accommodation for purposes other than those for which it is designed.
- (3) Regulations under this section may exempt ships of any description from any requirements of the regulations and the Director-General may grant other exemptions from any such requirements with respect to any ship.
- (4) Regulations under this section may require the master of a ship or any officer authorised by him for the purpose to carry out such inspections of the crew accommodation as may be prescribed.
- (5) Where the provisions of any regulations under this section are contravened in the case of a ship, the owner or master of such ship commits an offence and shall be liable upon conviction to a fine

not exceeding one hundred and fifty thousand shillings or to imprisonment for a term not exceeding nine months, and the ship, if in Kenya, may be detained.

- (6) In this section, “crew accommodation” includes sleeping rooms, mess rooms, sanitary accommodation, hospital accommodation, recreation accommodation, store rooms and catering accommodation provided for the use of seafarers, but does not include any accommodation which is also used by or provided for the use of passengers.

#### **166. Complaints regarding provisions and water**

- (1) Where three or more seafarers employed in a Kenyan ship consider that the provisions or water provided for the seafarers employed in that ship are not in accordance with safety regulations made under this Act, whether because of bad quality, unfitness for use or deficiency in quantity, they may complain to the master, who shall investigate the complaint.
- (2) Where the seafarers are dissatisfied with the action taken by the master as a result of his investigation or by his failure to take any action, they may state their dissatisfaction to him and their intention to complain to the Director-General or proper officer; and thereupon the master shall make adequate arrangements to enable the seafarers to do so as soon as the service of the ship permits.
- (3) The Director-General or proper officer to whom a complaint has been made under this section shall investigate the complaint and may examine the provisions or water or cause them to be examined.
- (4) If the master fails without reasonable excuse to comply with the provisions of subsection (2), he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and if he has been notified in writing by the person making an examination under subsection (3) that any provisions or water are found to be unfit for use or not of the quality required by the regulations, then—
  - (a) if they are not replaced within a reasonable time, the master or owner commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment unless he proves that the failure to replace them was not due to his neglect or default; or
  - (b) if the master, without reasonable excuse, permits them to be used, he commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

#### **167. Medical and other expenses during voyage**

- (1) Where a person, while employed in a Kenyan ship, receives outside Kenya any surgical or medical treatment or such dental or optical treatment, including the repair or replacement of any appliance, as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him.
- (2) Where a person dies while employed in a Kenyan ship and is buried or cremated outside Kenya, the expenses of his burial or cremation shall be borne by persons employing him.
- (3) The reference in subsection (2) to dying in a ship includes a reference to dying in a ship's boat.

#### **168. Occupational safety regulations**

- (1) The Cabinet Secretary may make regulations for securing as far as practicable, safe working and safe means of access for masters and seafarers employed in a Kenyan ship, and on the reporting of injuries sustained by them.

- (2) Without prejudice to the generality of foregoing, regulations made under this section may—
  - (a) require the maintenance, inspection and testing of any equipment and impose conditions on its use;
  - (b) require, prohibit, or regulate the use of protective clothing or equipment;
  - (c) limit the hours of employment of a seaman in any specified operation or in any specific circumstances;
  - (d) make provision for the discharge, by person appointed from among persons employed in a ship, of functions in connection with the arrangements to be made under the regulations.
- (3) In making regulations under this section, the Cabinet Secretary shall have due regard to the Seafarers' Code of the International Labour Organisation.

#### *Training, Certification and Safe Manning*

### **169. Applications of sections 170 to 174**

Sections 170 to 174 shall apply operating anywhere in the world and also to every ship registered under the law of a country outside Kenya to which the STCW Convention applies and which plies—

- (a) between places in Kenya; or
- (b) on a voyage which begins and ends at the same place in Kenya and on which the ship does not call at a place outside Kenya.

### **170. Manning regulations**

- (1) Subject to subsection (3), the Cabinet Secretary may make regulations, referred to in this Act as the "Training, Certification and Safe Manning Regulations"—
  - (a) requiring ships to which this section applies to carry such number of qualified officers of any description, qualified doctors and qualified cooks and such number of other seafarers or qualified seafarers of any description as may be specified in the regulations;
  - (b) prescribing or enabling the Cabinet Secretary to specify standards of competence to be attained and other conditions to be satisfied, subject to such exceptions as may be allowed by or under the regulations, by officers and other seafarers of any description in order to be qualified for the purposes of this section;
  - (c) prescribing medical fitness requirements for seafarers.
- (2) In making regulations under this section, the Cabinet Secretary shall have due regard to the STCW Convention.
- (3) The Cabinet Secretary shall not exercise his power to make regulations requiring ships to carry seafarers other than doctors and cooks except to the extent that it appears to him necessary or expedient in the interests of safety.
- (4) Regulations under this section may make different provisions for different descriptions of ship or for ships of the same description in different circumstances.
- (5) Without prejudice to the generality of subsection (1)(b), the conditions prescribed or specified under that paragraph may include conditions as to nationality, and regulations made for the purposes of that paragraph may make provision, or enable the Director-General to make provision, for—
  - (a) the manner in which the attainment of any standard or the satisfaction of any other condition is to be evidenced;

- (b) the conduct of any examinations, the conditions for admission to them and the appointment and remuneration of examiners;
  - (c) the issue, form and recording of certificates and other documents,
- and different provisions may be made or enabled to be made for different circumstances.
- (6) Where a person makes a statement which he knows to be false or recklessly makes a statement which is false in a material particular for the purpose of obtaining for himself or another person a certificate or other document which may be issued under this section, he commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.

#### **171. Exemption from manning regulations**

- (1) The Director-General may exempt any ship or description of ship from any requirements of regulations made under section 170.
- (2) An exemption given under this section may be confined to a particular period or to one or more particular voyages.

#### **172. Prohibition on under-manning**

- (1) Subject to section 171, if a ship to which this section applies goes to sea or attempts to go to sea without carrying such officers and other seafarers as it is required to carry under section 170, the owner or master commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (2) This section shall, in its application to ships which are not sea-going ships, have effect as if the words “goes to sea” or “attempts to go to sea” were substituted with the words “goes on a voyage or excursion or attempts to do so”, and the words “if in Kenya” were omitted.

#### **173. Production of documents on qualifications**

- (1) Any person serving or engaged to serve in any ship to which this section applies and holding any certificate or other document which is evidence that he is qualified for the purposes of section 170 shall on demand produce it to the Director-General, any surveyor of ships or proper officer and, if he is not himself the master, to the master of the ship.
- (2) Where, without reasonable excuse, a person fails to comply with subsection (1), he commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

#### **174. Crew’s knowledge of English**

- (1) Where, in the opinion of the Director-General or proper officer, the crew of a ship to which this section applies consists of or includes persons who may not understand orders given to them in the course of their duty because of their insufficient knowledge of English, and the absence of adequate arrangements for transmitting the orders in a language of which they have sufficient knowledge, then—
  - (a) if the Director-General or proper officer has informed the master of that opinion, the ship shall not go to sea; and
  - (b) if the ship is in Kenya, it may be detained.
- (2) Where a ship goes to sea or attempts to go to sea in contravention of this section, the owner or master thereof commits an offence and shall be liable, upon conviction, to a fine not exceeding one

hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

#### **175. Unqualified seafarers going to sea**

- (1) Where a person goes to sea as a qualified officer or seafarer of any description without being such a qualified officer or seafarer, he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (2) In this section, “qualified” means qualified for purposes of section 170.

#### **176. Certificates of competence**

- (1) The Director-General may issue and record documents certifying the attainment of any standard of competence relating to ships or their operation, notwithstanding that the standard is not among those prescribed or specified under section 170(1)(b), and the Cabinet Secretary may, in relation thereto, make regulations for purposes corresponding to those mentioned in section 170(5).
- (2) Where a person makes a statement which he knows to be false, or recklessly makes a statement which is false in a material particular, for purposes of obtaining for himself or another person a document which may be issued under this section, such a person commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

#### **177. Employment of children**

- (1) A child shall not be employed in any Kenyan ship except as permitted by regulations under this section.
- (2) The Cabinet Secretary may make regulations prescribing circumstances in which, and conditions subject to which, children may be employed in a ship in such capacities as may be specified.
- (3) Regulations made for purposes of this section may make different provisions for different employments and different descriptions of ship and any other different circumstances.
- (4) Where any person is employed in a ship in contravention of this section, or if any condition subject to which a person may be employed under, regulations made for the purposes of this section is not complied with, the owner or master commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

#### **178. Financial assistance**

- (1) The Cabinet Secretary may give any person, or body of persons of any description determined by him for the purposes of this section, financial assistance in respect of expenses incurred or to be incurred by any such person or body in connection with the training of officers and ratings for service in merchant ships, including expenses incurred or to be incurred by any such person in connection with his undergoing any such training.
- (2) Assistance under this section may be given by way of a grant or a loan or otherwise, and in giving any such assistance, the Cabinet Secretary may impose such conditions as he thinks fit, including conditions requiring a grant to be repaid in specified circumstances.
- (3) This section is without prejudice to any other power of the Cabinet Secretary to give financial assistance in connection with any such training as is mentioned in subsection (1).

#### ***Offences by Seafarers***

**179. Conduct endangering ships, persons, etc.**

- (1) This section applies to—
  - (a) the master of, or any seafarer employed in, a Kenyan ship; and
  - (b) the master of, or any seafarer employed in, a ship which—
    - (i) is a foreign ship; and
    - (ii) is in a port in Kenya or within Kenyan waters while proceeding to or from any such port.
- (2) Where a person, to whom this section applies, while on board a ship or in its immediate vicinity—
  - (a) does any act which causes or is likely to cause—
    - (i) the loss or destruction of or serious damage to the ship or its machinery, navigational equipment or safety equipment;
    - (ii) the loss or destruction of or serious damage to any other ship or any structure; or
    - (iii) the death of or serious injury to any person;
  - (b) omits to do anything required—
    - (i) to preserve the ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged;
    - (ii) to preserve any person on board the ship from death or serious injury; or
    - (iii) to prevent the ship from causing the loss or destruction of, or serious damage to, any other ship or any structure, or the death of or serious injury to any person not on board his ship,

and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he, subject to subsections (6) and (7), commits an offence.

- (3) The conditions referred to in subsection (2) are—
  - (a) that the act or omission was deliberate or amounted to a breach or neglect of duty; or
  - (b) that the master or seafarer in question was under the influence of drink or a drug at the time of the act or omission.
- (4) Where a person to whom this section applies—
  - (a) discharges any of his duties, or performs any other function in relation to the operation of a ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a); or
  - (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things,he, subject to subsections (6) and (7), commits an offence.
- (5) A person who commits an offence under this section shall be, liable upon conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding one hundred and fifty thousand shillings, or both.
- (6) In proceedings for an offence under this section, it shall be a defence to prove—
  - (a) in the case of an offence under subsection (2) where the act or omission alleged against the accused constituted a breach or neglect of duty, that the accused took all reasonable steps to discharge that duty;

- (b) in the case of an offence under subsection (2) that at the time of the act or omission alleged against the accused, he was under the influence of a drug taken by him for medical purposes and either that he took it on medical advice and complied with any directions given as part of that advice or that he had no reason to believe that the drug might have the influence it had;
  - (c) in the case of an offence under subsection (4), that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence;
  - (d) in the case of an offence under either of subsection (2) or (4)—
    - (i) that he could have avoided committing the offence only by disobeying a lawful command; or
    - (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or, as the case may be, the likelihood of its being caused, either could not reasonably have been foreseen by the accused or could not reasonably have been avoided by him.
- (7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) shall have effect as if subsection (2)(a)(i) and (b)(i) were omitted.
- (8) In this section—
- “breach or neglect of duty”, except in relation to a master, includes any disobedience to a lawful command;
- “duty” —
- (a) in relation to a master or seafarer, means any duty falling to be discharged by him in his capacity as such;
  - (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and
- “structure” means any fixed or movable structure, of whatever description, other than a ship.

### **180. Concerted disobedience and neglect of duty**

- (1) Where a seafarer employed in a Kenyan ship combines with other seafarers employed in that ship—
- (a) to disobey lawful commands which are required to be obeyed at a time while the ship is at sea;
  - (b) to neglect any duty which is required to be discharged at such a time;
  - (c) to impede, at such a time, the progress of a voyage or the navigation of the ship,
- he commits an offence.
- (2) A seafarer who commits an offence under subsection (1) shall be liable, upon conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding fifty thousand shillings, or both.
- (3) For purposes of this section, a ship shall be treated as being at sea at any time when it is not securely moored in a safe berth.

#### ***Disciplinary Regulations***

### 181. Disciplinary regulations

- (1) The Cabinet Secretary may make regulations under this section for purposes of maintaining discipline on board Kenyan ships; and in this section, “disciplinary body” means a body established or approved by the Cabinet Secretary under subsection (6).
- (2) Regulations may provide for the hearing on shore in Kenya, by a disciplinary body, of a complaint by the master or owner of a Kenyan ship, other than a fishing vessel, against a seafarer alleging that during his employment on board the ship, the seafarer contravened the regulations made under this section.
- (3) Regulations may enable a disciplinary body—
  - (a) to dismiss the complaint if it finds the allegation not proved; or
  - (b) if it finds the allegation proved—
    - (i) to warn the seafarer;
    - (ii) to reprimand the seafarer; or
    - (iii) to recommend to the Director-General that the seafarer shall, either for a period specified in the recommendation or permanently, cease to be entitled to a discharge book in pursuance of section 201 and shall be required to surrender any such discharge books which has been issued to him.
- (4) Regulations may—
  - (a) make provision for the establishment or approval for the purposes of this section of such number of bodies as the Cabinet Secretary thinks fit and with respect to the composition, jurisdiction and procedure of any such body;
  - (b) make provision for the payment, of such remuneration and allowances as the Cabinet Secretary may determine to any member of such a body;
  - (c) make different provisions for different circumstances and may contain such incidental and supplemental provisions as the Cabinet Secretary may consider appropriate.
- (5) Without prejudice to the generality of the preceding provisions, regulations may include provision for any proceedings to take place notwithstanding the absence of the seafarer to whom they relate.
- (6) Nothing in the regulations or done in pursuance of the regulations shall be construed as affecting any power to institute, prosecute, entertain or determine proceedings, including criminal proceedings, under any other enactment or at common law.

#### *Inquiries and Disqualifications of Seafarers*

### 182. Inquiry into fitness or conduct of officer

- (1) Where it appears to the Director-General that an officer—
  - (a) is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason;
  - (b) has been seriously negligent in the discharge of his duties;
  - (c) has failed to comply with the provisions of section 208,

the Director-General may cause an inquiry to be held by one or more persons appointed by him and, if he does so, may, if he thinks fit, suspend, pending the outcome of the inquiry, any certificate issued to the officer in pursuance of section 170 and require the officer to deliver it to him.

- (2) Where a certificate issued to an officer has been suspended under subsection (1) the suspension may, on the application of the officer, be terminated by the Court, and the decision of the Court on such an application shall be final.
- (3) An inquiry under this section shall be conducted in accordance with rules made under section 186(1) and those rules shall require the persons holding the inquiry to hold it with the assistance of one or more assessors.
- (4) A person holding an inquiry under this section into the fitness or conduct of an officer—
  - (a) may, if satisfied of any of the matters mentioned in subsection (1)(a) to (c), cancel or suspend any certificate issued to him under section 170 or censure him;
  - (b) may make such order with regard to the costs of the inquiry as he deems just; and
  - (c) shall make a report on the case to the Director-General,and if the certificate is cancelled or suspended the officer, unless he has delivered it to the Director-General in accordance with subsection (1), shall deliver it forthwith to the person holding the inquiry or to the Director-General.
- (5) Any costs which a person is ordered to pay under subsection (4)(b) may be recovered from him by the Director-General.

### **183. Disqualification of certificate holder**

- (1) Where it appears to the Director-General that a person who is the holder of a certificate to which this section applies is unfit to be the holder of such a certificate, whether by reason of incompetence or misconduct or for any other reason, the Director-General may give him notice in writing that he is considering the suspension or cancellation of the certificate.
- (2) The notice shall state the reasons why it appears to the Director-General that the person is unfit to be the holder of such a certificate and shall state that within a period specified in the notice, or such longer period as the Director-General may allow, he may make written or oral representations to the Director-General.
- (3) After considering any representations made in accordance with subsection (2), the Director-General shall decide whether or not to suspend or cancel the certificate and shall give the holder thereof a notice in writing of his decision.
- (4) Where the Director-General suspends or cancels the certificate, the notice shall state the date from which the cancellation is to take effect, or the date from which and the period for which the suspension is to take effect, and shall require the holder to deliver the certificate to the Director-General not later than the date so specified unless, before that date, the holder has required the case to be dealt with by an inquiry under section 184.
- (5) Where, before the date specified in the notice, the holder requires the case to be dealt with by such an inquiry, then, unless he withdraws the requirement, the suspension or cancellation shall not take effect except as ordered in pursuance of the inquiry.
- (6) The Cabinet Secretary may make regulations prescribing the procedure to be followed with respect to the making and consideration of representations in pursuance of this section, the form of any notice to be given under this section and the period to be specified in any such notice as the period within which any steps are to be taken.
- (7) This section applies to every certificate issued under section 176, and to any certificate issued under section 170, other than one certifying that a person is qualified as an officer.

**184. Inquiry pursuant to section 183**

- (1) Where a person has, before the date mentioned in section 183(4), required his case to be dealt with by an inquiry under this section, the Director-General shall cause an inquiry to be held by one or more persons appointed by him.
- (2) An inquiry under this section shall be conducted in accordance with rules made under section 186(1), and such an inquiry shall be held with the assistance of one or more assessors.
- (3) A person holding an inquiry under this section—
  - (a) may confirm the decision of the Director-General and cancel or suspend the certificate accordingly;
  - (b) may, where the decision was to cancel the certificate, suspend it instead;
  - (c) may, where the decision was to suspend the certificate, suspend it for a different period;
  - (d) may, instead of confirming the decision of the Director-General, censure the holder of the certificate or take no further action;
  - (e) may make such order with regard to the costs of the inquiry as they think just;
  - (f) shall make a report on the case to the Cabinet Secretary,and if the certificate is cancelled or suspended, it shall be delivered forthwith to the person holding the inquiry or to the Director-General.
- (4) Any costs which a person is ordered to pay under subsection (3)(e) may be recovered from him by the Director-General.

**185. Re-hearing and appeal from inquiry**

- (1) Where an inquiry has been held under section 182 or 184, the Cabinet Secretary may order the whole or part of the case to be reheard, and shall do so—
  - (a) if new and important evidence which could not be produced at the inquiry has been discovered; or
  - (b) if there appear to the Cabinet Secretary to be other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) An order under subsection (1) may provide for the rehearing to be done by the Court.
- (3) Where a person holding an inquiry has decided to cancel or suspend the certificate of any person, or has found such person at fault, then, if no application for an order under subsection (1) has been made or such an application has been refused, that person or any other person who, having an interest in the inquiry, has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

**186. Rules for conduct of inquiry**

- (1) The Cabinet Secretary may make rules for the conduct of inquiries under sections 182 and 184, and for conduct of re-hearings and appeals under section 185.
- (2) Without prejudice to the generality of subsection (1), rules made under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.
- (3) Rules on re-hearings by the Court under section 185, or of appeals to the Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a re-hearing or hear such an appeal with the assistance of one or more assessors.

**187. Failure to deliver cancelled or suspended certificate**

Where a person fails to deliver a certificate as required under section 182, 183 or 184, he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings or to imprisonment for a term not exceeding nine months or to both such fine and imprisonment.

**188. Re-issuing of certificate**

Where a certificate has been cancelled or suspended under section 182, 183, 184, or 185, the Director-General, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

**189. Summoning witness to inquiry**

- (1) A person holding an inquiry under section 182 or 184 may—
  - (a) by summons, require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
  - (b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.
- (2) Where, on the failure of a person to attend such an inquiry in answer to a summons under this section—
  - (a) the person holding the inquiry is satisfied by evidence on oath that—
    - (i) the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry;
    - (ii) he has been duly served with the summons; and
    - (iii) a reasonable sum has been paid or tendered to him for costs and expenses; and
  - (b) it appears to him that there is no just excuse for the failure,

he may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.

**190. Refusal to give evidence at inquiry**

- (1) Where any person attending or summoned before an inquiry in accordance with section 189 refuses, without lawful excuse, to be sworn or give evidence, or to produce any document, the person holding the inquiry may—
  - (a) commit him to custody until the end of such period, not exceeding one month, as may be specified in the warrant or until he gives evidence or produces the document, whichever occurs first; or
  - (b) impose on him a fine not exceeding twenty five thousand shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
- (2) A fine imposed under subsection (1)(b) shall be treated, for purposes of its collection, enforcement and remission, as having been imposed by the Court, and the person holding the inquiry shall, as soon as practicable after imposing the fine, give particulars of it to the Registrar of Court.

***Civil Liability of Seafarers***

**191. Liability for absence without leave**

- (1) This section shall apply to a seafarer employed in a Kenyan ship who is absent from the ship at a time when he is required under his contract of employment to be on board.
- (2) Where a seafarer proves that his absence from a ship was due to an accident or mistake or some other cause beyond his control, and that he took all reasonable precautions to avoid being absent, his absence shall not be treated as a breach of contract.
- (3) Where such seafarer is unable to prove the matters set out in subsection (2)—
  - (a) if no special damages are claimed as a result of his absence, his liability shall be two thousand shillings;
  - (b) if special damages are claimed as a result of such absence, his liability shall not be more than ten thousand shillings.

**192. Liability for smuggling**

Where a seafarer employed in a Kenyan ship is found in civil proceedings before a court in Kenya to have committed an act of smuggling, whether within or outside Kenya, he shall be liable to make good any loss or expense that the act has caused to any other person.

**193. Liability for fines under immigration laws**

- (1) This section shall apply where, at a time when a Kenyan ship is in the internal waters or territorial seas of a foreign country, a seafarer employed in the ship is absent without leave and present in that country in contravention of that country's laws.
- (2) Where, by reason of the contravention mentioned in subsection (1), a penalty is incurred under the laws of a foreign country by the persons employing the seafarer, the penalty shall be treated as being attributable to the seafarer's absence without leave and may, subject to the provisions of section 121, be recovered from him as special damages for breach of contract.
- (3) Where, by reason of such contravention, a penalty is incurred under those laws by any other person the amount whereof does not exceed ten thousand shillings, or, if the amount exceeds ten thousand shillings, then an amount of ten thousand shillings may be recovered by him from the seafarer.

***Relief, Repatriation and Costs*****194. Seafarer left behind or shipwrecked**

- (1) Where—
  - (a) a person employed as a seafarer in a Kenyan ship is left behind in a foreign country or is taken to such a country on being shipwrecked; or
  - (b) a person who became so employed under an agreement entered into in a foreign country is left behind in Kenya or is taken to Kenya on being shipwrecked,

the person who last employed him as a seafarer shall make such provision for his return, and for his relief and maintenance until his return, and such other provisions as may be required by in such regulations as may be made by the Cabinet Secretary under this section.

- (2) The provisions to be so made may include the repayment of expenses incurred in bringing a shipwrecked seafarer ashore, maintaining him until he is brought ashore, and the payment of expenses of burial or cremation of a seafarer who dies before he can be returned.

- (3) The Cabinet Secretary may make regulations—
  - (a) providing for the manner in which wages due to any seafarer left behind or taken to a foreign country as mentioned in subsection (1), and any property of his left on board a ship, are to be dealt with;
  - (b) requiring the Registrar of Seafarers or proper officer to make such provision as may be prescribed.
- (4) Without prejudice to the generality of the foregoing, regulations made under this section may make provision for—
  - (a) determining the place to which a seafarer is to be returned;
  - (b) requiring the master of any Kenyan ship to convey a person to a place determined in accordance with the regulations and for enabling the Director-General or proper officer to give the master directions for that purpose;
  - (c) the making of payments in respect of the conveyance of a seafarer in accordance with the regulations;
  - (d) the keeping of records and the rendering of accounts.
- (5) Regulations made under this section may make a contravention of any provision thereof an offence.
- (6) This section applies to a seafarer left behind on being discharged in accordance with section 125, whether or not at the time he is left behind the ship is still a Kenyan ship.

#### **195. Limit of employer's liability under section 194**

Where a seafarer left behind in a foreign country or taken to Kenya, in accordance with section 194(1), remain there after the expiry of a period of three months from the time he was left behind in such country or taken to Kenya, the person who last employed him as a seafarer shall not be liable to make provision for his return or for any matter arising after the end of that period, unless they have, before the end of that period, been under an obligation imposed on them by regulations under section 194 to make provision with respect to him.

#### **196. Recovery of expenses from employer**

Where expenses are incurred in respect of any matter for which an employer of a seafarer is required to make provision in accordance with section 194, then—

- (a) if the expenses are incurred by the Cabinet Secretary, or are incurred by the government of a foreign country, and repaid to the employer on behalf of the Government, the Cabinet Secretary may recover them from the employer;
- (b) if the expenses are incurred by the seafarer, he may recover them from the employer unless the employer prove either that, under the terms of his employment, they were to be borne by the seafarer, or that the seafarer would not have been left behind but for his own wrongful act or neglect.

#### **197. Recovery of expenses from seafarer**

Where, in the case of a seafarer, expenses are incurred by the Cabinet Secretary or by the government of a foreign country and repaid to them on behalf of the Government—

- (a) in respect of any matter for which, but for section 195, the seafarer's last employers would have been required to make provision under section 194; or
- (b) in respect of any matter for which provision is required to be made under section 194(4)(b),

the Cabinet Secretary may recover them from the seafarer or, if the seafarer has died, from his personal representative.

### *Documentation*

#### **198. Official and other log books**

- (1) Except as may be provided by regulations made under this section, an official log book in a form prescribed by the Director-General shall be kept in every Kenyan ship and shall be in English.
- (2) The Cabinet Secretary may make regulations prescribing the particulars to be entered in an official log book, the person by whom such entries are to be entered, signed or witnessed, and the procedure to be followed in the making of such entries and in their amendment or cancellation.
- (3) The regulations may require the production or delivery of an official log book to such persons, in such circumstances and within such times as may be specified therein.
- (4) Regulations made under this section may exempt ships of any description from any requirements thereof, either generally or in such circumstances as may be specified therein.
- (5) Regulations made under this section may make a contravention of any provision thereof an offence.
- (6) All Kenyan ships shall, in addition to the official log book, carry on board a deck log book and an engine room log book, in which shall be recorded particulars relating to the deck watch and the engine room watch, respectively.
- (7) Subject to subsection (8), entries in the deck log book and engine room log book shall be made in English, except where all persons making entries in those log books have a common language other than English, in which case the entries may be made in that common language.
- (8) The Director-General may require a log book, or an extract thereof, written in a language other than English, to be translated officially into English.
- (9) All log books referred to in this section shall be admissible in evidence.
- (10) A person who, intentionally, destroys, mutilates or renders illegible an entry in any log book commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

#### **199. Crew list**

- (1) Except as may be provided by regulations made under this section, the master of every Kenyan ship shall make and maintain a list of the crew, containing such particulars as may be prescribed.
- (2) The Cabinet Secretary may make regulations—
  - (a) specifying the particulars to be entered in a list of the crew;
  - (b) limiting the time for which a list of the crew may remain in force;
  - (c) providing for the maintenance by such persons and either in such place as may be specified in the regulations or, if it is so specified, in the ship, of a copy or copies of each list of a crew and for the notification to such persons of any changes therein;
  - (d) for the production of a list of the crew to such persons, in such circumstances and within such time as may be specified in the regulations;
  - (e) for the delivery to the Director-General, proper officer or the Registrar of Ships, in such circumstances as may be specified in the regulations, of a list of the crew or a copy thereof maintained under the regulations and for the notification to him of any changes in such a list.

- (3) Regulations under this section may enable a list of the crew to be contained in the same document as a crew agreement and may treat any particulars entered in the crew agreement as forming part of the particulars entered in the list.
- (4) Regulations under this section may exempt from the requirements thereof such descriptions of ship as may be specified in the regulations and may make different provisions for different circumstances.
- (5) Regulations under this section may make a contravention of any provision thereof an offence.

## 200. Seafarer's identity document

- (1) The Cabinet Secretary may make regulations—
  - (a) for the issue to Kenyan seafarers of cards (in this section referred to as “Kenyan seafarer’s identity document”) in such form and containing such particulars with respect to the holders thereof and such other particulars as may be prescribed by the regulations, and for requiring Kenyan seafarers to apply for such cards;
  - (b) for requiring the holders of Kenyan seafarer’s identity document to produce them to such persons and in such circumstances as may be prescribed by the regulations;
  - (c) for the surrender of Kenyan seafarer’s identity document in such circumstances as may be prescribed by the regulations;
  - (d) for any incidental or supplementary matters for which the Cabinet Secretary thinks it expedient for the purposes of the regulations to provide,

and any provision having effect by virtue of paragraph (a) may be so framed as to apply to all Kenyan seafarers or any description of them, and to have effect subject to any exemptions for which provision may be made by the regulations.

- (2) Regulations made under this section may make a contravention of any provision thereof an offence.
- (3) A person who makes a statement which he knows to be false, or recklessly makes a statement which is false in a material particular, for purposes of obtaining for himself or another person a Kenyan seafarer’s identity document, commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

## 201. Discharge books

- (1) The Cabinet Secretary may make regulations—
  - (a) for the issue to persons who are, or have been, employed in Kenyan ships of discharge books in such form and containing such particulars with respect to the holders thereof, and such other particulars as may be prescribed, and for requiring such persons to apply for such discharge books;
  - (b) for requiring the holders of discharge books to produce them to such persons and in such circumstances as may be prescribed;
  - (c) for the surrender of discharge books in such circumstances as may be prescribed;
  - (d) for any incidental or supplementary matters for which the Cabinet Secretary deems it expedient to provide,

and any provision having effect by virtue of paragraph (a) may be so framed as to apply to all such persons as are mentioned in that paragraph, or any description of such persons, and as to have effect subject to any exemptions for which provision may be made by the regulations.

- (2) Regulations under this section may provide for—
- (a) a person to cease to be entitled to a discharge book in consequence of a recommendation made by a disciplinary body by virtue of regulations made under section 181(3); and
  - (b) the re-issue of discharge books which have been surrendered in consequence of such a recommendation.
- (3) Regulations made under this section may make a contravention of any provision thereof an offence.
- (4) A person who, in Kenya or elsewhere—
- (a) obtains employment as a seafarer on board a Kenyan ship, and does so when he is disentitled to a discharge book by virtue of regulations made under subsection (2)(a); or
  - (b) employs as a seafarer a person who he knows or has reason to suspect is disentitled as aforesaid,
- commits an offence and shall be liable upon conviction, to imprisonment for a term not exceeding one year, or to a fine not exceeding one hundred thousand shillings, or both.

## 202. Handing over of documents by master

- (1) Where a person ceases to be a master of a Kenyan ship during a voyage, he shall deliver to his successor documents relating to the ship or its crew which are in his custody.
- (2) Where, without reasonable excuse, the master of such ship fails to comply with subsection (1), he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

## Part VIII – SAFETY OF NAVIGATION AND PREVENTION OF COLLISION

### *Collision, Distress and Safety*

## 203. Collision Regulations

The Cabinet Secretary may make regulations, referred to in this Act as “Collision Regulations”—

- (a) for the prevention of collisions at sea;
- (b) respecting the lights to be carried and exhibited;
- (c) respecting the steering and sailing rules to be observed by ships,

and in making such regulations he shall have regard to any international convention or treaty for the time being in force for the prevention of collisions at sea.

## 204. Ships to comply with Collision Regulations

- (1) Every owner and master of a Kenyan ship shall comply with the Collision Regulations, and shall not carry or exhibit any other lights or use any fog signals other than such as may be prescribed.
- (2) Where an infringement of the Collision Regulations is caused by the wilful default of the master or owner of a ship, such a master or owner commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding five hundred thousand shillings, or both.
- (3) Subsections (1) and (2) shall apply to owners and pilots of seaplanes on the surface of water as they apply to owners and masters of ships.

## 205. Foreign ships in Kenyan waters

The Collision Regulations shall apply to all foreign ships and seaplanes in Kenyan waters, and in any case before the Court in Kenya concerning a breach of the Collision Regulations arising in Kenyan waters, foreign ships and seaplanes shall be treated as if they were Kenyan ships and seaplanes registered in Kenya.

## 206. Liability for collision damage

- (1) Liability for collision damage, including damage to vessels, their cargoes, the effects or other property of the crew, passengers or other persons on board, or to third parties, shall be apportioned according to the degree of fault of each ship involved in a collision.
- (2) Where it is not possible to determine the degree of fault of each vessel, or if it appears that the faults are equal, liability shall be apportioned equally.
- (3) There shall be no presumption of fault against a ship, for contravening the Collision Regulations, without proof of fault or negligence.
- (4) Where collision is accidental or caused by *force majeure*, or if the cause is left in doubt, damages shall be borne by those who have suffered them, notwithstanding that the vessels, or any one of them, may have been at anchor, or was otherwise made fast, at the time of the collision.
- (5) Where collision is caused by the fault of one of the vessels, liability to make good the damages shall attach to the vessel which has committed the fault.
- (6) In respect of damages occasioned by death or personal injuries, the vessels in fault shall be jointly and severally liable to third parties, without prejudice, however, to the right of the vessel which has paid a larger part than that which, in accordance with the provisions of subsections (1) and (2), she ought ultimately to bear, to obtain a contribution from the other vessel or vessels at fault.
- (7) Collision liability shall attach in accordance with this section in cases where the collision may be caused by the fault of a pilot whether or not the pilot is carried by compulsion of law.
- (8) The right of action for the recovery of damages resulting from a collision is not conditional upon the entering of a protest or the fulfilment of any other special formality.
- (9) Where no collision has actually taken place, liability for damage to the vessels involved in the incident, or to goods or persons on board the vessels, resulting from the execution or non-execution of a manoeuvre or a contravention of the Collision Regulations, shall be determined in accordance with this section.

## 207. Inspection to enforce compliance with Collision Regulations

A surveyor or inspector may inspect a ship of any nationality in a port in Kenya to determine whether the ship is properly provided with lights and shapes and the means of making sound signals as required by the Collision Regulations; and if the surveyor or inspector finds that the ship is not so provided, he shall specify in writing the action required to rectify the deficiency and shall detain the ship until such deficiency is rectified to his satisfaction.

## 208. Duty to render assistance following collision

- (1) In every case of collision between ships, the master of each ship shall, if and so far as he can do so without damage to his own ship, crew and passengers, if any—
  - (a) render to the other ship, the master, crew and passengers, if any, such assistance as may be practicable and as may be necessary to save them from any danger occasioned by the collision, and stand by the other ship until he has ascertained that such ship has no need for further assistance;

- (b) give the master of the other ship the name and port of registry of his ship, and the names of the ports from which his ship sailed and to which his ship is bound.
- (2) Subsection (1) shall apply to masters of Kenyan ships, and to masters of foreign ships when in Kenyan waters.
- (3) The failure of the master of a ship to comply with this section shall not raise any presumption of law that the collision was caused by his wrongful act, neglect, or default.

## 209. Offence

A master of a ship commits an offence if, without reasonable cause—

- (a) fails to comply with section 208(1)(a), and shall be liable, upon conviction thereof, to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred and fifty thousand shillings, or both;
- (b) fails to comply with section 208(1)(b), and shall be liable, upon conviction thereof, to imprisonment for a term not exceeding six months, or to a fine not exceeding eighty thousand shillings, or both,

and in either case, if he is a certificated officer, an inquiry into his conduct may be held, and his certificate cancelled or suspended.

## 210. Notification of hazards to navigation

- (1) The master of any Kenyan ship, upon encountering any of the dangers to navigation specified in subsection (2), shall send information accordingly by any means of communication at his disposal to the appropriate shore based authorities, and such information shall be repeated to ships in the vicinity as practicable.
- (2) The dangers to navigation referred to in subsection (1) are—
  - (a) dangerous ice;
  - (b) dangerous derelict;
  - (c) tropical storm;
  - (d) any other direct danger to navigation.
- (3) Where a master fails to comply with this section, he commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding one hundred thousand shillings, or both.
- (4) It shall be a defence for any person charged under this section to show that he took all reasonable precautions to avoid the commission of the offence.
- (5) For purposes of this section—

“tropical storm” means a hurricane, typhoon, cyclone or other storm of a similar nature, and a master of a ship shall be deemed to have encountered a tropical storm if he has reason to believe that there is such a storm in the vicinity.

## 211. Precaution in event of danger to navigation

- (1) The master of a Kenyan ship, when ice is reported on or near his course, shall, at night, either proceed at a safe speed adapted to the prevailing circumstances or change course so as to keep amply clear of the ice reported and of the area of danger.
- (2) The master of a ship who fails to comply with this section commits an offence and shall be liable, upon conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred and fifty thousand shillings, or both.

**212. Duty to assist ships in distress**

- (1) The master of a Kenyan ship, on receiving at sea a signal from any source that a ship or aircraft or a survival craft is in distress, shall proceed with all speed to the assistance of the persons in distress, informing them if possible that he is doing so, and if—
  - (a) he is unable to do so; or
  - (b) in the special circumstances of the case he considers it unreasonable or unnecessary to proceed to their assistance,he shall enter in the log book of the ship the reason for failing to proceed to the assistance of the persons in distress.
- (2) The master of a ship shall be released from the duty imposed by subsection (1) as soon as he is informed of the requisition of one or more ships, other than his own, under section 213 and that the requisition is being complied with by the ship or ships requisitioned.

**213. Right to requisition ship when in distress**

- (1) The master of a ship in distress, after consultation, so far as may be possible, with the masters of the ships which answer his call for assistance, has the right to requisition one or more of those ships as he considers best able to render assistance, and it shall be the duty of the masters of the ships requisitioned to comply with the requisition by proceeding with all speed to the assistance of the persons in distress.
- (2) The master of a ship shall be released from the duty imposed by section 212(1) and, if his ship has been requisitioned, from the duty imposed by subsection (1) of this section, if he is informed by the persons in distress or by the master of another ship which has reached such persons that assistance is no longer required.

**214. Duty to assist persons in danger at sea**

The master of a ship shall, so far as he can do so without serious danger to his own ship and persons thereon, render assistance to any person in danger of being lost at sea.

**215. Application of sections 212, 213 and 214 to masters of foreign ships**

- (1) The duties imposed on the master of ship by sections 212, 213 and 214 shall apply to the masters of Kenyan ships and to the masters of foreign ships when in Kenyan waters.
- (2) Where a master fails to comply with sections 212, 213 and 214 he commits an offence for each such failure, and upon conviction shall be liable, for each such offence, to a fine not exceeding one hundred and fifty thousand shillings, or imprisonment for a term not exceeding six months, or both.
- (3) Compliance by a master with sections 212, 213 and 214 shall not affect his right, or the right of any other person to salvage.

**216. Regulations for signal of distress**

- (1) The Cabinet Secretary may make regulations relating to signals of distress and urgency and the signals prescribed by the regulations shall be deemed to be signals of distress and urgency.
- (2) Where a master of a ship uses or displays, or causes or permits any person under his authority to use or display—
  - (a) any signal except in circumstances and for the purposes prescribed; or

- (b) any signal that shall be liable to be mistaken for any prescribed signal,

he commits an offence and shall be liable, upon conviction, to a fine not exceeding sixty thousand shillings, or imprisonment for a term not exceeding six months, or both, and, in addition, shall be liable to pay compensation for any labour undertaken, risk incurred or loss sustained in consequence of the signal having been supposed to be a signal of distress or urgency; and such compensation may, without prejudice to any other remedy, be recovered in the same manner in which salvage is recoverable.

- (3) Where the master who contravenes subsection (2) is a certificated officer under this Act, he shall be subjected to an inquiry into his conduct as provided in section 182.

## 217. Reports of ship accidents

- (1) When a ship—

- (a) has sustained or caused any accident occasioning loss of life or any serious injury to any person; or
- (b) has sustained any material damage affecting her seaworthiness or her efficiency, either in her hull or in any part of her machinery,

the owner or master thereof shall, within twenty-four hour, after the happening of the accident or causing of the damage, or as soon as possible thereafter, transmit to a proper officer if the ship is in a foreign port, or otherwise to the Director-General, a report of the accident or damage.

- (2) Every report of accident or damage to a ship made under subsection (1) shall be signed by the owner or master of the ship, and shall state—

- (a) the name of the ship, the port to which the ship belongs, the official number, if any, of the ship and the place where the ship is located;
- (b) the circumstances in which the accident or damage occurred; and
- (c) the probable cause of the accident or damage.

- (3) Where the owner or managing owner, or if there is no owner or managing owner resident in Kenya, the representative person of the owner or the agent of any ship to which this section applies, has reason to believe that the ship has sustained or caused any such accident or received any such damage as is mentioned in subsection (1), he shall satisfy himself that the accident or damage has been reported to the Director-General by the master; and, where any such owner, managing owner, representative person or agent has reason to believe that the accident or damage has not been so reported, he shall as soon as possible, send to the Director-General notice in writing stating the name of the ship, its official number, and its port of registry or the port to which it belongs, stating to the best of his knowledge and belief, the nature and extent of the accident or damage, the probable cause thereof and the location of the ship.

- (4) The master, owner, managing owner, representative person or agent who fails, without reasonable cause, to comply with this section commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and thirty thousand shillings, or to imprisonment for a term not exceeding eight months, or to both such fine and imprisonment.

- (5) This section applies to all Kenyan ships and to all foreign ships carrying passengers between places in Kenyan waters.

## 218. Apprehended loss of ship

- (1) Where the managing owner or agent of any Kenyan ship has reason, owing to the non-appearance of the ship or to any other circumstance, to believe that the ship has been lost, he shall cause a

reasonable search to be made for the ship and shall, as soon as may be reasonable, send to the Director-General a notice in writing signed by him and stating—

- (a) the name of the ship, the port to which the ship belongs and the official number, if any, of the ship; and
  - (b) a report of the loss of the ship and the circumstances and probable cause of such loss.
- (2) Any managing owner or agent of a ship who fails, without reasonable cause, to comply with this section within a reasonable period from the time when he has reason to believe that the ship has been lost, commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

### **219. Notices to mariners and navigational warnings**

- (1) The Director-General shall take appropriate steps to advise the seafaring community and the public of any developing or existing situations which may adversely affect maritime safety.
- (2) The advice under subsection (1) may take the form of notices to mariners, and navigational warnings may be issued and communicated by any means as the circumstances may warrant.
- (3) The Director-General may require the assistance of any person in the communication of such information.

#### *Aids to Navigation, Charts and Publications*

### **220. Interpretation and application**

For the purposes of this section and sections 221 to 227, “aids to navigation” and “aids” means all lighthouses, buoys, beacons, radio aids, or any other light, signal or mark established to aid marine navigation and includes all buildings, moorings and other works associated therewith.

### **221. Establishment and management of aids**

- (1) There shall be established in Kenya such navigational aids as are necessary to facilitate safe navigation of ships within the waters of Kenya.
- (2) Privately owned navigational aids shall be established and maintained in accordance with the provisions of this Act.

### **222. Nautical publications, charts, etc.**

- (1) No navigational aid shall be established—
  - (a) without the prior written consent of the Director-General, or any other person authorised by him for the purpose; and
  - (b) unless it conforms to such specifications as may be prescribed.
- (2) No navigational aid shall be discontinued or have its lighting characteristics or any other distinguishing feature altered, without the prior written consent of the Director-General or any other person authorised by him for the purpose.
- (3) The Cabinet Secretary may, by notice in the *Gazette*, cause a list of navigational aids to be published and updated as necessary.

### 223. Functions of the Director-General

The Director-General shall exercise general supervision over all navigational aids and in particular shall—

- (a) be responsible for the establishment and maintenance of all navigational aids established by the Authority and such other government owned navigational aids as may be under the control of the Authority;
- (b) ensure that all other navigational aids are established in compliance with the prescribed conditions and specifications and are maintained in proper working order; and
- (c) bring to the attention of the public information on changes to or deficiencies in any navigational aid.

### 224. Offences

A person who—

- (a) contravenes section 221 or 222;
- (b) wilfully or negligently damages, destroys or allows a ship to foul an aid;
- (c) wilfully or negligently does anything which causes the view of an aid to be obstructed in such a manner as to lessen its efficiency;
- (d) wilfully, negligently or without lawful authority does anything which interferes with an aid so as to hinder the effective use of the aid;
- (e) trespasses on or, without lawful excuse, is found in or on—
  - (i) an aid; or
  - (ii) on any land upon which an aid is situated;
- (f) fails to notify the Director-General as soon as practicable after an aid is damaged, destroyed or fouled,

commits an offence and, in addition to the expenses of making good any damage so occasioned, shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

### 225. Detention of ships

Where a ship damages, destroys or fouls an aid, the ship may be detained until the cost of repairing or replacing the aid or rendering the aid effective again is paid.

### 226. Fire or lights detrimental to navigation

- (1) No person shall show a light, including light from a fire, in such a place or manner as to mislead ships navigating in the coastal areas of Kenya.
- (2) Any person who fails to comply with subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (3) The Director-General may cause to be extinguished any false or unauthorised lights, and for this purpose the Director-General or any person authorised by him may enter the place where the light is situated and forthwith extinguish the same without causing unnecessary damage.

**227. Regulations on navigational aids**

The Cabinet Secretary may by regulations prescribe—

- (a) the system of lighting and other characteristics, marks and features of navigational aids, and in doing so shall have due regard to the International Association of Lighthouse Authorities (IALA) Harmonised Buoyage “System B”, or any other international system of buoyage which may replace it; and
- (b) the penalties for any contravention of such regulations.

**228. Ship’s navigation equipment and nautical publications**

- (1) The Cabinet Secretary may make regulations specifying such navigation equipment, nautical publications or charts, directions or information as appear to him to be necessary or expedient for the safe operation of ships.
- (2) Regulations made pursuant to this section may require Kenyan ships or such descriptions of Kenyan ships as may be specified in the regulations, to carry and use, either at all times or on such voyages as may be specified in the regulations, the navigation equipment, charts, copies of sailing directions or information so specified.
- (3) Where a ship goes to sea or attempts to go to sea without carrying the navigation equipment, charts, copies of sailing directions or information which it may be required to carry according to the regulations made under this section, the master and owner shall each commit an offence and shall be liable upon conviction to a fine not exceeding fifty thousand shillings.

**Part IX – SAFETY OF LIFE AT SEA*****General*****229. Interpretation**

In this Part—

“cargo ship” means any ship that is not—

- (a) a passenger ship;
- (b) a ship of war;
- (c) a fishing vessel; or
- (d) a pleasure vessel;

“Cargo Ship Safety Certificate”, “Cargo Ship Safety Construction Certificate”, “Cargo Ship Safety Equipment Certificate”, “Cargo Ship Safety Radio Certificate” and “Passenger Ship Safety Certificate” mean the certificates of those names issued pursuant to section 241;

“certificate” means a certificate issued in accordance with the Safety Convention;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“international voyage” means a voyage between a port in one country and a port in another country where at least one of the ports is a Safety Convention country;

“Passenger Certificate” and “Kenya Cargo Ship Safety Certificate” mean the certificates of those names issued pursuant to section 242;

“radio installation” means any radio installation provided on board a ship or in life saving appliances, in compliance with the relevant regulations;

“radio-navigational equipment” means the equipment required by the relevant regulations;

“Safety Convention” means the International Convention for the Safety of Life at Sea, (SOLAS) 1974 and its Protocols of 1978 and 1988;

“Safety Convention Certificate” means a certificate that is required to be issued to a Safety Convention ship that complies with the relevant provisions of the Safety Convention and includes a Safety Certificate, Safety Construction Certificate, Safety Equipment Certificate, Safety Radio Certificate, and any such certificate that is limited, modified or restricted by an Exemption Certificate;

“Safety Convention Country” means a country the Government of which has accepted the Safety Convention and which has not denounced that convention, or a territory of such country to which the convention extends and remains extended;

“Safety Convention Ship” means a ship that is—

- (a) of a kind which the Safety Convention applies; and
- (b) registered in a country the Government of which is a party to the Safety Convention;

“short international voyage” means an international voyage—

- (a) in the course of which a ship is not more than two-hundred nautical miles from a port or place in which the passenger and crew could be placed in safety; or
- (b) which does not exceed six-hundred nautical miles in length between the last port of call and the final destination, no account being taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could reasonably have prevented or forestalled;

“surveyor” includes any person or organisation, duly authorised by the Director-General to act as a surveyor for the purpose of surveying ships and issuing Safety Convention certificates;

“tanker” means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature and its age shall be determined from the year of build as indicated on its certificate of registry; and

“tons” means gross tonnage and a reference to tons in relation to a ship having alternative gross tonnages is a reference to the larger of those two tonnages.

### **230. Application of Safety Convention and exceptions**

- (1) Subject to subsection (2), the Safety Convention, including all its related instructions, shall, unless excepted by this Act, apply to all Kenyan ships and all other ships engaged on international voyages while they are in Kenyan waters.
- (2) Unless expressly provided otherwise, the Safety Convention shall not apply to—
  - (a) ships of war and troop ships;
  - (b) cargo ships of less than five hundred tons;
  - (c) ships not propelled by mechanical means;
  - (d) wooden ships of traditional build;
  - (e) pleasure vessels not engaged in trade; and
  - (f) fishing vessels.

- (3) Except as expressly provided in this Act or in Regulations made thereunder, nothing in the Safety Convention shall apply to Kenyan ships solely navigating the Great Lakes of North America and the River St. Lawrence as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and on the north side of Anticosti Island, the 63rd meridian.
- (4) Notwithstanding that any provision of this Part or any regulations made hereunder is expressed to apply to ships that are not Kenyan ships while they are within any port in Kenya, such provision shall not apply to a ship that would not be within any such port but for such stress of weather or any other circumstances that neither the master nor the owner nor the charterer, if any, of the ship could have prevented or forestalled.
- (5) This Part applies to Kenyan ships wherever they may be and to other ships whilst they are in Kenyan waters, but not to fishing vessels or pleasure vessels.

### **231. Exemptions**

- (1) The Director-General may exempt any ship or class of ships from any safety requirements imposed by or under this Act either absolutely or subject to such conditions as he deems fit.
- (2) Without prejudice to subsection (1), where a ship not normally engaged on international voyages is required to undertake a single international voyage, the Director-General, if he is of the opinion that the ship complies with safety requirements imposed by or under this Act, may exempt the ship while engaged on that voyage.
- (3) Without prejudice to subsection (1), any ship which embodies features of a novel kind may be exempted from any requirements imposed by or under this Act relating to safety construction, life-saving appliances and radio communications, the application of which might seriously impede research into the development of such features and their incorporation in ships engaged in international voyages:

Provided that such ships shall comply with safety requirements which, in the opinion of the Director-General are adequate for the service for which it is intended and are such as to ensure the overall safety of the ship.

- (4) Where any such exemption as is referred to in subsection (3) above is granted, the Director-General shall communicate to the Organization particulars of the exemptions and the reasons therefor.
- (5) The Director-General may, if he considers that the sheltered nature and conditions of the voyage are such as to render the application of any specific requirements relating to safety construction, life-saving appliances and radio communications unreasonable or unnecessary, exempt from those requirements individual Kenyan ships, or classes of ships which, in the course of their voyage, do not proceed more than twenty nautical miles from the nearest land.

### **232. Regulations relating to safety at sea**

- (1) The Cabinet Secretary may make such regulations as may appear to him to be necessary and expedient—
  - (a) to give effect to the Safety Convention and its related instruments;
  - (b) to provide generally for safety at sea, which may prescribe the requirements for the hull, equipment and machinery of Safety Convention ships and their survey and inspection.
- (2) For the purpose of giving effect to the provisions of Chapter VIII of the Annex to the Safety Convention, the Cabinet Secretary may make such regulations as he considers appropriate with respect to ships provided with nuclear power plants.

**233. Regulations on cargo ship safety requirements and survey**

- (1) The Cabinet Secretary may make regulations prescribing requirements for the hull, equipment and machinery of cargo ships to which this section applies and requiring any Kenyan ship to be surveyed to such an extent, in such a manner and at such intervals as may be prescribed.
- (2) Regulations made under this section may include requirements as appear to the Cabinet Secretary to be necessary to implement the provisions of the Safety Convention in relation to the hull, equipment and machinery of a cargo ship.
- (3) This section applies to—
  - (a) Kenyan cargo ships of not less than five hundred tons not engaged in international voyages;
  - (b) Kenyan cargo ships of such lower tonnage and of such description as the Cabinet Secretary may specify; and
  - (c) foreign cargo ships of less than five hundred tons while they are within Kenyan waters and while they are not exempted under this Act.

**234. Regulations on small ship's safety requirements and survey**

The Cabinet Secretary may make regulations prescribing requirements for the hull, equipment and machinery of small ships and requiring such ships to be surveyed to such an extent, in such a manner and at such intervals as may be prescribed as well as specifying the examinations required for boat operators and engineers and the appointment of surveyors.

***Surveys and Certification*****235. Duties of a surveyor**

- (1) Surveyors appointed pursuant to section 407 shall, as and when required by or under this Act, carry out surveys of—
  - (a) the hull and machinery of ships;
  - (b) the equipment of ships, including her tackle, and appurtenances;
  - (c) the life-saving, fire-fighting and other safety equipment of ships;
  - (d) the radiotelegraphy and radiotelephony installations of ships; and
  - (e) the stowage and manner of loading of ships' cargoes and the stowage of dangerous goods.
- (2) The survey and inspection of ships, so far as regards the enforcement of this Part, shall be carried out by surveyors appointed under section 409 or, subject to such conditions as the Director-General may impose, by any corporation or society for the survey and classification of ships authorised by the Director-General.

**236. Surveyor's power of inspection**

- (1) A surveyor may at all reasonable times inspect any ship for the purpose of ensuring compliance with the provisions of this Act and regulations made thereunder.
- (2) Where the surveyor finds that provisions of this Act or regulations made thereunder have not been complied with, he shall give a written notice to the owner or master of the ship stating in what respect there is deficiency and what action, in his opinion, is required to rectify such deficiency.
- (3) Every notice so given shall be communicated in a manner directed by the Director-General to the port authority of any port at which the ship may seek a clearance, and such clearance shall not be granted and the ship may be detained.

- (4) Where the surveyor considers such ship unsafe, or, if a passenger ship, unfit to carry passengers, or the machinery or equipment is defective in any way so as to expose persons on board to serious danger, he shall detain that ship.
- (5) A surveyor may detain any ship in respect of which any of the provisions of this Act have not been complied with, if in his opinion such detention is warranted in the circumstances.
- (6) Where a surveyor visits any ship in exercise of his powers under this section, he may ask the owner or his agent, the master or chief engineer, or any other person on board and in charge or appearing to be in charge of the ship, any questions concerning the ship as he deems fit and every such person shall fully and truthfully answer every such question.
- (7) A surveyor may reasonably require of the owner or his agent, the master or chief engineer or any other person on board or in charge, or appearing to be in charge of the ship, that the machinery of the ship be activated or dismantled so that the surveyor may satisfy himself as to its condition, and every person of whom such a request is made, capable of so doing, shall comply with the requirement.
- (8) A person who contravenes subsection (6) or (7) commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

### **237. Surveyor's report to Director-General**

A surveyor shall, upon inspecting a ship, and if satisfied that he can with propriety do so, forward a report to the Director-General which shall contain a statement showing—

- (a) that the hull and machinery are sufficient for the service intended and in good condition;
- (b) that the hull and machinery are constructed, arranged and fitted in accordance with any regulations made under this Part;
- (c) that the safety equipment and radio installations required under this Part are on board and in good condition;
- (d) that the master, mates and engineers are persons duly certificated as required under this Act and that the crew is sufficient and efficient;
- (e) the class of voyage on which the ship is fit to ply and the time, if less than one year, for which the hull, equipment and machinery will be sufficient;
- (f) if the ship is a passenger ship, the number of passengers which she may carry; and
- (g) the steam pressure that may be carried on the boilers.

### **238. Record of inspections and certificates**

A surveyor shall keep a record of the inspections he makes and certificates he issues in such form and with such particulars respecting them as the Director-General may direct, and shall furnish copies thereof and any other information pertaining to the duties of his office which the Director-General may require.

### **239. Compliance by owner and master**

- (1) The owner and master of every ship to which this section applies shall ensure that—
  - (a) the condition of the ship, including its structure, machinery and equipment, is maintained so as to comply with the relevant provisions of this Part applicable to the ship;
  - (b) after any survey required by this Part has been completed, no material change is made to the structure, machinery and equipment of the ship which was subject to the survey without the approval of a surveyor, except by direct replacement;

- (c) whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of the ship, including its structure, machinery and equipment—
  - (i) it is reported at the earliest opportunity to a surveyor, or a proper officer; and
  - (ii) if a Kenyan ship is in such a case in a port outside Kenya it is also reported to the appropriate authorities of the country in which the port is situated.
- (2) Whenever an accident or defect is reported to a surveyor or to a proper officer under subsection (1)(c)(i), the surveyor or proper officer, as the case may be, shall cause investigations to be initiated to determine whether a survey is necessary and shall, in that event, require such a survey to be carried out.
- (3) Subsections (1) and (2) apply to—
  - (a) Kenyan ships; and
  - (b) except as regards subsection (1)(a), other ships which have been surveyed pursuant to this Part.
- (4) All Kenyan ships, all other ships while in Kenyan waters and all companies in relation to ships referred to in this subsection shall comply with the ISM Code.
- (5) For the purposes of subsection (4), the “ISM Code” means the International Safety Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the Organization, and “Company” has the same meaning as in the ISM Code.

#### **240. Procedure where ship, etc., is deficient**

- (1) In any case where a surveyor determines that the condition of a ship to which this section applies, including its structure, machinery and equipment, does not correspond substantially with the particulars on one or more of the certificates referred to in this Part, or is such that the ship is not fit to proceed to sea without danger to the ship or persons on board, the surveyor shall advise the owner or master of the corrective action which in his opinion is required, and shall notify the Director-General accordingly.
- (2) Where such corrective action is not taken within a reasonable period as a surveyor may specify, the surveyor, shall, at the end of that time, immediately notify the Director-General who may, on receipt of such notification, suspend the validity of the particular certificate issued to the ship and give notice of any such suspension to the owner, and to the surveyor, who in turn shall notify the master.
- (3) This section applies only to Kenyan ships and other ships which have been surveyed pursuant to this Part.

#### **241. Issue of certificate to ships engaged in international voyages**

- (1) When a survey or surveys to meet the requirements set out in this Part and regulations made under section 232 are satisfactorily completed the Director-General, or any other person authorised by him, shall issue—
  - (a) in the case of a passenger ship engaged on international voyages, a Passenger Ship Safety Certificate, unless the ship is only engaged on short international voyages when a Short International Voyage Passenger Ship Safety Certificate shall be issued;
  - (b) in the case of a cargo ship of three hundred tons or over engaged on international voyages, a Cargo Ship Safety Radio Certificate;
  - (c) in the case of a cargo ship of five hundred tons or over engaged on international voyages, a Cargo Ship Safety Equipment Certificate; or

- (d) in the case of a cargo ship of five hundred tons or over engaged on international voyages, a Cargo Ship Safety Construction Certificate.
- (2) A Cargo Ship Safety Certificate may be issued as an alternative to the certificates referred to in subsection (1)(b), (c) and (d).
- (3) Whenever in this Part reference is made to a Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, or a Cargo Ship Safety Radio Certificate, it shall apply to a Cargo Ship Safety Certificate where it is used as an alternative to these certificates.

#### **242. Issue of certificate to ships not engaged in international voyages**

When a survey to meet the requirements set out in this Part or in regulations made under section 232 is satisfactorily completed the Director-General shall issue—

- (a) in the case of a Kenyan passenger ship not engaged on international voyages, a Passenger Certificate appropriate to its Class; or
- (b) in the case of a Kenyan cargo ship of five hundred tons or over not engaged on international voyages, a Kenyan Cargo Ship Safety Certificate.

#### **243. Form of certificate**

- (1) A Passenger Ship Safety Certificate, Cargo Ship Safety Certificate, Cargo Ship Safety Radio Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Construction Certificate and Exemption Certificates shall be in the prescribed form.
- (2) A Passenger Certificate and a Kenya Cargo Ship Safety Certificate, shall be in such form as may be prescribed by the Cabinet Secretary and a Passenger Certificate shall indicate compliance with the provisions of this Act and state—
  - (a) the limits, if any, beyond which the ship is not fit to ply;
  - (b) the number of passengers which the ship is fit to carry;
  - (c) any condition with which the ship has to comply.

#### **244. Duration and validity of certificates**

- (1) The duration of certificates issued under section 241 shall be as follows—
  - (a) a Passenger Ship Safety Certificate and a Short International Voyage Passenger Ship Safety Certificate shall be valid for a period not exceeding twelve months;
  - (b) a Cargo Ship Safety Radio Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Construction Certificate or a Cargo Ship Safety Certificate shall be valid for a period not exceeding five years.
- (2) The duration of certificates issued under section 242 shall be as follows—
  - (a) a Passenger Certificate shall be valid for a period not exceeding twelve months;
  - (b) a Kenya Cargo Ship Safety Certificate shall be valid for a period not exceeding five years.
- (3) A certificate shall cease to be valid—
  - (a) if its period of validity has been exceeded and the certificate has not been extended when permitted by section 246;
  - (b) if annual, intermediate or periodical surveys have not been carried out in accordance with this Part and the certificate has not been endorsed; or
  - (c) upon the transfer of a ship to the flag of another State.

#### 245. Issue and duration of exemption certificates

- (1) When an exemption is granted to a ship in accordance with the relevant provisions applicable to the ship, a certificate called an Exemption Certificate shall be issued in addition to any certificate issued under section 241.
- (2) An Exemption Certificate shall be issued for a period of validity that is not longer than the period of validity of the certificate to which it refers.
- (3) An Exemption Certificate shall be subject to the same extension and other provisions as the certificates to which it refers.

#### 246. Extension of certificates

- (1) Where a Kenyan ship, at the time when a certificate issued under section 241(1) or (2) expires, is not in a port in Kenya or the port in which it is to be surveyed, the Director-General may extend the period of validity of the certificate, but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to a port in Kenya or the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so:

Provided that a certificate shall not be extended for a period longer than three months, and a ship to which the extension is granted shall not, on its arrival in a port in Kenya or the port in which it is to be surveyed, be entitled by virtue of the extension to leave that port or Kenya without having obtained a new certificate.

- (2) The Director-General may extend a certificate issued under section 241(1) or (2), which has not been extended under subsection (1), for a grace period of up to one month from the date of expiry stated on it.
- (3) In the case of a Kenyan ship in respect of which a Passenger Ship Safety Certificate or a short international voyage Passenger Ship Safety Certificate is in force, and the total number of persons on board for a particular voyage is less than the number for which the ship's life-saving appliances provide, the Director-General may, at the request of the master of the ship, issue a memorandum that states the total number of persons on board for that voyage and the modifications that may be made with persons on board for that voyage, and sets out the details of the modifications that may be made with respect to life-saving appliances stated on the certificate.
- (4) The memorandum referred to in subsection (3) shall be attached to the certificate during the particular voyage and shall be returned to the Director-General at the completion of the voyage.
- (5) In the case of a ship that has transferred from the registry of the Government of another country to Kenyan registry, the Director-General may, subject to such survey requirements that may be considered to be necessary, issue one or more of the certificates prescribed by sections 241 and 242 for a period to be determined by the Director-General, but for not longer than the period of validity of the certificate or certificates issued by or on behalf of the Government of that other country if satisfied that—
  - (a) the ship has already been subjected to satisfactory initial, periodical, intermediate, annual and additional surveys, as appropriate;
  - (b) the certificate issued by or on behalf of the Government of that country would have remained valid had the registry of the ship not been changed;
  - (c) the condition of the ship, including its structure, machinery and equipment, have been maintained so as to comply with the relevant regulations applicable to the ship;
  - (d) after any of the surveys referred to in sub-paragraph (a) have been completed, no material change has been made to the ship, including its structure, machinery and equipment, subject to such surveys, without the approval of the Administration of that other State or the Director-General except by direct replacement.

**247. Issue and endorsement of certificates by another Government**

The Director-General may request, through a proper officer or otherwise, the Government of a country to which the Safety Convention applies to survey a ship and, if satisfied that the requirements of the Convention are complied with, to issue or authorise the issue to the ship the certificates referred to in section 246, and a certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Director-General.

**248. Application of Safety Convention to non-Kenyan ships**

- (1) The Director-General may, at the request of a Government of a country to which the Safety Convention applies, survey a ship registered in that country and, if satisfied that the requirements of the Convention are complied with, and that a survey has been satisfactorily completed in accordance with this Part, issue to the ship one or more of the certificates referred to in section 241 and, where appropriate, endorse such certificates in accordance with the requirements of the Convention, and a certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that Government and not by the Director-General.
- (2) Where a memorandum, issued by or under the authority of the Government concerned, is attached to a valid Passenger Ship Safety Certificate or a valid Short International Voyage Passenger Ship Safety Certificate, in respect of a ship to which the Safety Convention applies, which modifies the certificate in respect of the persons that may be carried for a particular voyage, the certificate shall have effect for the purpose of the voyage as if it was modified in accordance with the memorandum.
- (3) A surveyor may go on board a ship to which the Safety Convention applies for the purpose of verifying that there is in force a certificate or certificates required by this Part, that the hull, machinery and equipment correspond substantially with the particulars shown on the certificate or certificates and that the provisions of section 251 are being complied with.

**249. Survey of non-Kenyan ship**

- (1) When a survey of a ship which is not a Kenyan ship, to meet the requirements set out in this Part, is completed in accordance with this Part, the Director-General shall issue—
  - (a) in the case of a passenger ship not engaged on international voyages, a Passenger Certificate appropriate to its Class; or
  - (b) in the case of a cargo ship of five hundred tons or over not engaged on international voyages, a Cargo Ship Safety Certificate.
- (2) Certificates issued under this section shall be subject to the requirements of this Part as though they were issued under section 242.

**250. Cancellation of certificate**

- (1) The Director-General may cancel a certificate issued to a Kenyan ship where he has reason to believe that—
  - (a) the certificate was fraudulently issued;
  - (b) the certificate was altered without permission;
  - (c) the certificate was issued on false or erroneous information; or
  - (d) since any survey required by this Part, the structure, equipment or machinery has sustained damage or is otherwise deficient.
- (2) The Director-General may require that a certificate issued to a Kenyan ship which has expired or has been cancelled be surrendered.

- (3) Any person who—
- (a) intentionally alters a certificate referred to in this Part;
  - (b) intentionally makes a false certificate referred to in this Part;
  - (c) in connection with any survey required by this Part, knowingly or recklessly furnishes false information;
  - (d) with intent to deceive, uses, lends, or allows to be used by another, a certificate referred to in this Part; or
  - (e) fails to surrender a certificate required to be surrendered under subsection (2),
- commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.

### 251. Availability of certificates

The owner and master of every ship issued with a certificate in accordance with this Part shall ensure that it is readily available on board for examination at all times.

### 252. Prohibition on proceeding to sea

- (1) A Kenyan ship shall not proceed to sea unless it has been surveyed and there is in force—
- (a) in the case of a passenger ship engaged on international voyages, a Passenger Ship Safety Certificate, or, if the ship is only engaged on short international voyages, a Short International Voyage Passenger Ship Safety Certificate;
  - (b) in the case of a cargo ship of three hundred tons or over engaged on international voyages, a Cargo Ship Safety Radio Certificate;
  - (c) in the case of a cargo ship of five hundred tons or over engaged on international voyages, a Cargo Ship Safety Equipment Certificate and a Cargo Ship Safety Construction Certificate; or
  - (d) in the case of a cargo ship of five hundred tons or over engaged on international voyages, a Cargo Ship Safety Certificate.
- (2) No ship registered in a country to which the Safety Convention applies shall proceed to sea from a port in Kenya unless there is in force such certificates that would be required under the Safety Convention if the ship was a Kenyan ship, and the extension provisions in section 246 shall apply to such certificates as if the ship was a Kenyan ship and the Government of the country in which the ship is registered is substituted for the Director-General.
- (3) No cargo ship of five hundred tons and over not engaged on international voyages shall proceed to sea from a port in Kenya unless it has been surveyed and there is in force a Kenyan Cargo Ship Safety Certificate.
- (4) Subject to regulations made under section 234, no cargo ship of less than five hundred tons shall proceed to sea from a port in Kenya unless it has been surveyed and there is in force a Kenya Cargo Ship Safety Certificate.
- (5) No ship registered in a country to which the Safety Convention does not apply shall proceed to sea from a port in Kenya unless the ship possesses documents which shows that either the ship has been surveyed for compliance with the relevant regulations applicable to the ship as though it was a Kenyan ship or it has been surveyed and is in compliance with the relevant regulations applicable to the ship.

- (6) Where a certificate is issued subject to conditions, or specifies sea areas in which the ship is certified to operate, the owner and master shall ensure that all conditions are complied with, or, as the case may be, that the ship only operates in the specified sea areas.
- (7) The master of every ship shall produce to a port authority from whom a clearance for the ship is demanded for an international voyage the certificates or documentation referred to in this section, and a clearance shall not be granted and the ship may be detained until those certificates are produced.

### **253. Prohibition on proceeding on a voyage**

- (1) Subject to regulations made under section 234, a passenger ship engaged on a voyage which is not an international voyage shall not proceed on a voyage or excursion unless it has been surveyed and there is in force a Passenger Certificate applicable to that voyage or excursion.
- (2) Where a certificate is issued subject to conditions, the ship shall not proceed on a voyage or excursion unless all the conditions are complied with.

### **254. Limit on number of passengers on ship**

The owner and master of a passenger ship shall ensure that there is not on board a greater number of passengers than that stated on the ship's Passenger Ship Safety Certificate or Passenger Certificate.

### **255. Offences**

- (1) Where a ship to which this Part applies proceeds or attempts to proceed to sea or on a voyage or excursion without complying with the regulations made under sections 232 to 234, the owner and master of the ship shall each commit an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.
- (2) Any contravention of section 239(1), section 252(1) to (6) or section 253 is an offence by both the owner and master, and each commits an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (3) Where a ship proceeds to sea without section 251 being complied with, the owner and master shall each commit an offence and shall be liable upon conviction to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (4) Any contravention of section 252(7) is an offence by the master and is punishable upon conviction by a fine not exceeding seventy five thousand shillings, or to imprisonment for a term not exceeding five months, or to both such fine and imprisonment.
- (5) Any contravention of section 254 shall be an offence by both the owner and master and each shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (6) It shall be a defence for a person charged with an offence under this Part to prove that he took all reasonable steps to ensure that the Part was complied with.

### **256. Detention of a ship**

In any case where a ship does not comply with the requirements of this Part, the ship shall be liable to be detained.

## 257. Arbitration

- (1) Should an owner, or any other person making application for a survey required under this Act be dissatisfied with the outcome of the survey because the issue of a certificate has been refused or for any other reason, that person may serve notice, within twenty-one days of the completion of the survey, on the person responsible for issuing the particular certificate under section 241 or 242, that the matter be referred to a single arbitrator appointed by agreement between the parties, or in the event that there is no agreement to an arbitrator appointed by the Cabinet Secretary.
- (2) A person shall not be qualified for appointment as an arbitrator under this section unless such person—
  - (a) holds a certificate of competency as Master without limitation or as a Chief Engineer without limitation, or a person holding a certificate equivalent to any such certificate;
  - (b) is a naval architect;
  - (c) is an advocate of the High Court of Kenya with at least ten years experience in shipping law; or
  - (d) possess experience of the shipping industry.
- (3) In connection with his functions under this section, an arbitrator shall have the powers of inspection conferred by the relevant provisions of Part XVIII.

### *Miscellaneous*

## 258. Inspection of ships holding Safety Convention certificates

- (1) Where a valid Safety Convention certificate is produced in respect of a foreign Safety Convention ship, it shall be accepted *prima facie* and the ship shall be exempted from surveys or inspection under this Part, unless there are clear grounds for believing that the condition of the ship or of its equipment does not correspond substantially with the particulars of the certificate, or that the ship and its equipment are not in compliance with regulations made under this Act respecting the maintenance of conditions of the ships and their equipment after survey.
- (2) Where a certificate is not acceptable due to the circumstances referred to in subsection (1), or if a certificate has expired or ceased to be valid, the ship shall not be granted clearance and shall be detained until it can proceed to sea or to the appropriate repair yard without causing danger to the ship or persons on board, and the following persons shall be notified in writing of the circumstances—
  - (a) the local consular officer of the ship's flag State or, in his absence, the nearest diplomatic representative of the ship's flag State; and
  - (b) nominated surveyors or recognized organisations responsible for the issue of the certificate referred to in subsection (1).
- (3) Where any ship is unduly detained or delayed in accordance with subsection (2), it shall be entitled to compensation for any loss or damage suffered as a direct result of such undue detention or delay.

## 259. Ship's stability information

- (1) Every Kenyan passenger ship, regardless of size, and every Kenyan cargo ship having twenty five metres net tonnage, shall carry on board such information about the ship's stability as may be prescribed.
- (2) The information, a copy of which shall be sent to the Director-General, shall be based on the determination of the ship's stability by means of an inclining test of the ship, but the Director-

General may allow the information to be based on a similar determination of the stability of a sister ship.

- (3) Where any ship proceeds or attempts to proceed to sea without having on board the information required under subsections (1) and (2), the owner and master commits an offence and each shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

## 260. Regulations on local safety certificates

- (1) The Cabinet Secretary may make regulations prescribing safety requirements and providing for the issue of local certificates in respect of—
  - (a) fishing vessels;
  - (b) pleasure vessels; or
  - (c) such other classes of vessels as may be specified.
- (2) In making regulations respecting fishing vessels, the Cabinet Secretary shall have due regard to the Torremollinos Convention for the Safety of Fishing Vessels, 1977.

## Part X – LOAD LINES

### *General*

## 261. Interpretation

- (1) In this Part, unless the context otherwise requires—
  - “alteration” includes deterioration;
  - “clearance” includes transire;
  - “Convention country” and “contracting Government” have the meanings given to them by section 290;
  - “deck-line” means such a mark as is referred to in section 263(2)(c);
  - “load lines” means such lines as are referred to in section 263(2)(d);
  - “Load Lines Convention” means the International Convention on Load Lines, 1966, and its Protocol of 1988;
  - “non-Kenyan ship” means a ship which is not registered in Kenya;
  - “post-1966 Convention ship” means a ship whose keel is laid, or which is at a similar stage of construction, on or after the material date;
  - “pre-1966 Convention ship” means a ship which is not a post-1966 Convention ship; and
  - “valid Convention certificate” has the same meaning given to it by section 273(5).
- (2) For the purposes of the definitions of pre-1966 and post-1966 Convention ships, the material date—
  - (a) in relation to a ship which is registered in or flies the flag of a Convention country other than Kenya, is the date as from which it is declared under section 290 that the government of that country has accepted or acceded to the Load Lines Convention or that it is a territory to which that Convention extends; and
  - (b) in relation to any other ship, is 21st July, 1968.

- (3) In this Part, subject to subsection (4), “international voyage” means a voyage between—
  - (a) a port in Kenya and a port outside Kenya; or
  - (b) a port in a Convention country (other than Kenya) and a port in any other county or territory (whether or not a Convention country) which is outside Kenya.
- (4) In determining, for the purposes of subsection (3), what are the ports between which a voyage is, no account shall be taken of any deviation made by a ship from its intended voyage which is due solely to stress of weather or any other circumstances which neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled, and for the purposes of that subsection any territory for whose international relations a Government is separately responsible shall be taken to be a separate territory.
- (5) Any reference in this Part to the gross tonnage of a ship shall be construed as a reference to the tonnage of the ship as ascertained in accordance with the tonnage regulations; and, where in accordance with those regulations alternative tonnages are assigned to a ship, the gross tonnage of the ship shall, for the purposes of this Part, be taken to be the larger of those tonnages.
- (6) For the purposes of this Part, the length of a ship shall be ascertained in accordance with such regulations as may be made by the Cabinet Secretary under this Part.
- (7) Any reference in this Part to any provision of the Load Lines Convention shall, in relation to any time after that provision has been amended in pursuance of Article 29 of that Convention, be construed as a reference to that provision as so amended.

## 262. Application of Part

This Part applies to all ships except—

- (a) ships of war;
- (b) ships solely engaged in fishing; and
- (c) pleasure vessels not engaged in trade.

## 263. Regulations

- (1) The Cabinet Secretary may make regulations in accordance with the following provisions of this Part, and in making such regulations, the Cabinet Secretary shall have regard in particular to the Load Lines Convention.
- (2) Regulations made under this section may make provision for—
  - (a) the surveying, and inspection of ships to which this Part applies;
  - (b) determining freeboards to be assigned from time to time to such ships;
  - (c) determining, in relation to any such ship, the deck which is to be taken to be the freeboard deck of the ship, and for requiring the position of that deck to be indicated on each side of the ship by a mark of a description as may be prescribed by the regulations; and
  - (d) determining, by reference to that mark and the freeboards for the time being assigned to any such ship, the positions in which each side of the ship is to be marked with lines of a description as may be prescribed by the regulations, indicating the various maximum depths to which the ship may be loaded in circumstances as may be prescribed by the regulations.
- (3) Regulations made under this section may make provisions—
  - (a) specifying such requirements in respect of the hulls, superstructures, fittings and appliances of ships to which this Part applies as may appear to the Cabinet Secretary to be relevant to the assignment of freeboards to such ships;

- (b) whereby, at the time when freeboards are assigned to a ship in accordance with such regulations, such particulars relating to those requirements as may be determined in accordance with the regulations are to be recorded in such manner as may be so determined; and
  - (c) for determining by reference to those requirements and that record whether, at any time after freeboards have been so assigned to a ship and while they continue to be so assigned, the ship is for the purposes of this Part to be taken to comply, or not to comply, with the conditions of assignment.
- (4) Regulations may also include provisions requiring such information relating to the stability of any ship to which freeboards are assigned thereunder, and such information relating to the loading and ballasting of any such ship, as may be determined in accordance with the regulations, to be provided for the guidance of the master of the ship in such manner as may be so determined.
- (5) In relation to any matter authorised or required by this Part to be prescribed by regulations, those regulations may make different provisions by reference to (or to any combination of) any of the following—
- (a) different descriptions of ships;
  - (b) different areas;
  - (c) different seasons of the year; and
  - (d) any other different circumstances.

#### *Kenyan Ships*

### **264. Compliance with Load Lines Regulations**

- (1) Subject to any exemption granted by or under this Part, no Kenyan ship to which this Part applies shall proceed or attempt to proceed to sea unless—
- (a) the ship has been surveyed in accordance with such regulations as may be made under section 263;
  - (b) the ship is marked with a deck-line and with load lines in accordance with such regulations;
  - (c) the ship complies with the conditions of assignment; and
  - (d) the information as may be provided for in accordance with section 263(4) is provided for the guidance of the master of the ship in the manner determined in accordance with the regulations.
- (2) Where any ship proceeds or attempts to proceed to sea in contravention of subsection (1), the owner or master of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
- (3) Any ship which, in contravention of subsection (1), attempts to proceed to sea without being surveyed and marked as mentioned in subsection (1)(a) and (b) may be detained until it has been so surveyed and marked.
- (4) Any such ship as is mentioned in subsection (1) which does not comply with the conditions of assignment shall be deemed to be unsafe for the purposes of Part XII.

## 265. Submersion of load lines by Kenyan ships

- (1) Where a Kenyan ship to which this Part applies is marked with load lines, the ship shall not be so loaded that—
  - (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or
  - (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.
- (2) Where any ship is loaded in contravention of subsection (1), the owner and master of the ship each, subject to subsection (5), commit an offence and shall be liable, upon conviction, each to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment and to such additional fine, not exceeding an amount calculated in accordance with subsection (3), as the court thinks fit to impose, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention.
- (3) Any additional fine imposed under subsection (2) shall not exceed fifty thousand shillings for each complete centimetre by which—
  - (a) in a case falling within subsection (1)(a), the appropriate load line on each side of the ship was submerged; or
  - (b) in a case falling within subsection (1)(b), the appropriate load line on each side of the ship would have been submerged as therein mentioned.
- (4) Where the master of a ship takes the ship to sea when it is loaded in contravention of subsection (1), or, if any other person, having reason to believe that the ship is so loaded, sends or is party to sending the ship to sea when it is loaded in contravention of that subsection, then without prejudice to any fine to which he may be liable in respect of an offence under subsection (2), he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (5) Where a person is charged with an offence under subsection (2), it shall be a defence to prove that the contravention was due solely to deviation or delay, and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.
- (6) Without prejudice to any proceedings under the preceding provisions of this section, any ship which is loaded in contravention of subsection (1) may be detained until it ceases to be so loaded.
- (7) For the purposes of the application of this section to a ship in any circumstances prescribed by regulations made under section 263(2)(d), “the appropriate load line” means the load line which, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.

## 266. Offences in relation to marks

Where a Kenyan ship to which this Part applies is marked in accordance with any requirements as to marking imposed by or under this Part, then if—

- (a) the owner or master of the ship fails without reasonable excuse to keep the ship so marked; or
- (b) any person conceals, removes, alters, defaces or obliterates, or causes or permits any person under his control to conceal, remove, alter, deface or obliterate, any mark with which the ship is so

marked, except where he does so under the authority of a person empowered under the load line regulations to authorise him for that purpose,

he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

### **267. Issue of load line certificates**

- (1) Where a Kenyan ship to which this Part applies has been surveyed and marked in accordance with regulations made under section 263, the appropriate certificate shall be issued to the owner of the ship upon his application.
- (2) For the purposes of this section the appropriate certificate—
  - (a) in the case of a pre-1966 Convention ship of not less than 150 gross tonnage, and in the case of a post-1966 Convention ship of not less than 24 meters in length, is the International Load Line Certificate, 1966; and
  - (b) in the case of any other ship, is the Kenya Load Line Certificate.
- (3) Subject to subsection (4), any certificate required by subsection (1) to be issued shall be—
  - (a) issued by the Director-General or by a person authorised for that purpose by the Director-General; and
  - (b) in such form, and shall be issued in such manner, as may be prescribed by regulations made under section 263.
- (4) The Director-General may request a contracting Government to issue an International Load Line Certificate in respect of any ship to which this Part applies, which is a Kenyan ship falling within subsection (2)(a), and the provisions of this Part shall have effect in relation to such a certificate so issued, which contains a statement that it has been issued at the request of the Government of Kenya, as they have effect in relation to an International Load Line Certificate issued by the Director-General.

### **268. Effect of load line certificate**

Where a certificate, issued in pursuance of section 266 and for the time being in force, is produced in respect of the ship to which the certificate relates—

- (a) the ship shall be deemed to have been surveyed in accordance with regulations made under section 263;
- (b) if lines are marked on the ship corresponding in number and description to the deck-line and load lines as required by the regulations made under section 263, and the positions of those lines so marked correspond to the positions of the deck-line and load lines so specified in the certificate, the ship shall be deemed to be marked as required by those regulations.

### **269. Duration, endorsement and cancellation of load line certificates**

- (1) Regulations made under section 263 shall make provision for determining the period during which any certificate issued under section 267 is to remain in force, including provisions—
  - (a) enabling the period for which any such certificate is originally issued to be extended within such limits and in such circumstances as may be prescribed by the regulations; and
  - (b) for cancelling any such certificate in such circumstances as may be so prescribed.
- (2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to—
  - (a) periodical inspections of the ship in accordance with regulations made under section 263;

- (b) any extension of the period for which the certificate was issued, as may be prescribed by the regulations.

#### **270. Prohibition on proceeding to sea without load line certificate**

- (1) Subject to any exemption conferred by or under this Part, no Kenyan ship to which this Part applies shall proceed or attempt to proceed to sea unless the appropriate certificate is in force in respect of the ship.
- (2) Before any such ship proceeds to sea, the master of the ship shall produce the appropriate certificate to the port officer from whom a clearance for the ship is demanded, and a clearance shall not be granted, and the ship may be detained, until the appropriate certificate is so produced.
- (3) Where any ship proceeds or attempts to proceed to sea in contravention of this section, the master of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.
- (4) In this section, "appropriate certificate" means the certificate which is the appropriate certificate for the purposes of section 267.

#### **271. Publication of load line certificate and entry of particulars in official log book**

- (1) Where a certificate is issued in respect of a ship under section 267, the owner of the ship shall, forthwith on receipt of the certificate, cause it to be framed and posted up in some conspicuous place on board the ship, and shall cause it to be kept so framed and posted up and legible so long as the certificate remains in force and the ship is in use.
- (2) Before any Kenyan ship to which this Part applies leaves any dock, wharf, harbour or other place for the purpose of proceeding to sea, the master of the ship shall cause a notice to be posted up in some conspicuous place on board the ship, which shall be in such form and containing such particulars relating to the depth to which the ship is for the time being loaded as may be specified in regulations made by the Cabinet Secretary under this Part.
- (3) Where a notice required by subsection (2) has been posted up, the master of the ship shall cause it to be kept posted up and legible until the ship arrives at some other dock, wharf, harbour or place.
- (4) Where the owner or master of a ship fails to comply with any requirement of this section, each commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

#### **272. Inspection of ships**

A surveyor may inspect any Kenyan ship to which this Part applies for the purpose of verifying that the provisions of this Part have been complied with in respect of the ship.

##### *Non-Kenyan Ships*

#### **273. Valid Convention certificates**

- (1) This section applies to any non-Kenyan ship to which this Part applies which is—
  - (a) registered in a convention country, or, not being registered in any such country or elsewhere, flies the flag of a convention country; and
  - (b) either a pre-1966 convention ship of not less than 150 gross tonnage, or a post-1966 convention ship of not less than 24 meters in length.

- (2) The Director-General may, at the request of the Government of a country as referred to in subsection (1), issue in respect of a ship referred to in subsection (1), a certificate in such form as may be prescribed by regulations made under section 263, if the Director-General is satisfied that he could properly issue a certificate in respect of the ship under section 267(1) if the ship were a Kenyan ship.
- (3) Regulations made under section 263 may make such provision as appears to the Cabinet Secretary to be appropriate for ensuring that certificates which are issued as International Load Line Certificates, 1966 in respect of ships to which this section applies, and are so issued by Governments other than the Government of Kenya, shall be recognised for the purposes of this Part in such circumstances as may be prescribed by the regulations.
- (4) Certificates issued as mentioned in subsection (2) or (3) shall be included among the certificates called "International Load Line Certificates".
- (5) In this Part, "valid Convention certificate" means a certificate which either—
  - (a) has been issued under subsection (2) and is for the time being in force; or
  - (b) having been issued as mentioned in subsection (3), is produced in circumstances in which it is required by regulations made under section 263 to be recognised for the purposes of this Part.

#### **274. Compliance with regulations by non-Kenyan ships**

- (1) Subject to subsection (2), and to any exemption conferred by or under this Part, no non-Kenyan ship to which this Part applies shall proceed or attempt to proceed to sea from any port in Kenya unless the—
  - (a) ship has been surveyed in accordance with regulations made under section 263;
  - (b) ship is marked with a deck-line and with load lines in accordance with those regulations;
  - (c) ship complies with the conditions of assignment; and
  - (d) information required by those regulations to be provided as mentioned in section 263(4) is provided for the guidance of the master of the ship in the manner determined in accordance with the regulations.
- (2) Subsection (1) does not apply to a ship in respect of which a valid convention certificate is produced.
- (3) Where any ship proceeds or attempts to proceed to sea in contravention of the preceding provisions of this section, the owner or master of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
- (4) Any ship which in contravention of this section attempts to proceed to sea without being surveyed and marked as mentioned in subsection (1)(a) and (b) may be detained until it has been so surveyed and marked.
- (5) Where any such ship as is mentioned in subsection (1), not being a ship in respect of which a valid Convention certificate is produced, does not comply with the conditions of assignment it shall be deemed to be unsafe for the purposes of Part XII.

#### **275. Submersion of load lines for non-Kenyan ships**

- (1) Where a non-Kenyan ship to which this Part applies is within any port in Kenya, and is marked with load lines, the ship shall not be so loaded that—
  - (a) if the ship is in salt water and has no list, the appropriate load line on each side of the ship is submerged; or

- (b) in any other case, the appropriate load line on each side of the ship would be submerged if the ship were in salt water and had no list.
- (2) Section 265 (2), (3), (5) and (6) shall have effect for the purposes of this section as if any references in those subsections to section 265(1) were a reference to subsection (1), or, as the case may be, to the corresponding provision of subsection (1) of this section, subject however to subsection (3).
- (3) In the case of a ship to which section 273 applies, the ship shall not be detained, and no proceedings shall be brought by virtue of subsection (2), unless the ship has been inspected by a surveyor in pursuance of section 278.
- (4) In relation to a ship in respect of which a valid convention certificate is produced, “load line” in subsection (1) means a line marked on the ship in the position of a load line specified in that certificate, and for the purposes of the application of the relevant provisions to such a ship in any circumstances for which a particular load line is specified in the certificate, the “appropriate load line” means the load line which, in accordance with the certificate, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.
- (5) Where a valid convention certificate is not produced in respect of a ship, then, for the purposes of the application of the relevant provisions to that ship in any circumstances as may be prescribed by regulations made in accordance with section 263(2)(d), “the appropriate load line” means the load line which, in accordance with those regulations, indicates the maximum depth to which the ship may be loaded in salt water in those circumstances.
- (6) For purposes of subsections (4) and (5), “the relevant provisions” means the provisions of subsection (1) and any provisions of section 265 as applied by subsection (2).

#### **276. Kenya load line certificates**

- (1) Where a non-Kenyan ship to which this Part applies has been surveyed and marked in accordance with regulations made under section 263, then on the application of the owner of the ship, a Kenya Load Line Certificate may be issued to him by the Director-General or by a person authorised for the purpose by the Director-General.
- (2) Subject to subsection (3), sections 268 and 269 shall have effect in relation to a certificate issued under subsection (1) as they have effect in relation to a certificate issued under section 267.
- (3) Any certificate issued under subsection (1) in respect of a ship to which section 273 applies shall be valid only so long as the ship is not plying on international voyages, and shall be cancelled by the Director-General if he has reason to believe that the ship is plying on international voyages.

#### **277. Production of certificate to ports officer**

- (1) Subject to any exemption conferred by or under this Part, before a non-Kenyan ship to which this Part applies proceeds to sea from any port in Kenya, the master of the ship shall produce the appropriate certificate to the port officer from whom a clearance for the ship is demanded, and a clearance shall not be granted, and the ship may be detained until the appropriate certificate is so produced.
- (2) For the purposes of this section the appropriate certificate—
  - (a) in the case of a ship to which section 273 applies, where a clearance for the ship is demanded in respect of an international voyage, is a valid convention certificate;
  - (b) in the case of any such ship, where a clearance for the ship is demanded in respect of any other voyage, is either a valid Convention certificate or a Kenyan Load Line Certificate for the time being in force in respect of the ship; and
  - (c) in any other case, is a Kenya Load Line Certificate for the time being in force in respect of the ship.

**278. Inspection**

- (1) Subject to the following provisions of this section, a surveyor may inspect any non-Kenyan ship to which this Part applies while the ship is within any port in Kenya.
- (2) Any such surveyor may go on board any ship to which section 273 applies, while the ship is within any port in Kenya, for the purpose of demanding production of any International Load Line Certificate or Kenya Load Line Certificate for the time being in force in respect of the ship.
- (3) Where on any such demand a valid convention certificate is produced to the surveyor in respect of the ship, the powers of the surveyor under subsection (1) shall be limited to seeing that—
  - (a) the ship is not loaded beyond the limits allowed by the certificate;
  - (b) lines are marked on the ship in the positions of the load lines specified in the certificate;
  - (c) no material alterations have taken place in the hull or superstructures of the ship which affect the position in which any of those lines ought to be marked; and
  - (d) the fittings and appliances for the protection of openings, the guard rails, the free ports and the means of access to the crew's quarters have been maintained on the ship in as effective a condition as they were in when the certificate was issued.
- (4) Where on an inspection of a ship under this section the ship is found to have been so materially altered in respect of the matters referred to in subsection (3)(c) or (d) that the ship is manifestly unfit to proceed to sea without danger to human life, it shall be deemed to be unsafe for the purposes of Part XII.
- (5) Where a ship is detained under the provisions of this Act as applied by subsection (4), the Director-General shall order the ship to be released as soon as he is satisfied that the ship is fit to proceed to sea without danger to human life.

***Exemptions*****279. Power to make exemption orders**

- (1) Where in the opinion of the Director-General the sheltered nature and conditions of international voyages—
  - (a) between near neighbouring ports in Kenya and in another convention country; or
  - (b) between near neighbouring ports in any two or more countries outside Kenya,make it unreasonable or impracticable to apply the provisions of this Part to ships plying on such voyages, and the Director-General is satisfied that the Government of the other country, or, as the case may be, of each of the other countries, concurs in that opinion, the Director-General may, by order specifying those ports, direct that ships plying on international voyages between those ports, or any class of such ships specified in the order, shall be exempt from the provisions of this Part.
- (2) The Director-General may, by order, direct that any ship engaged solely in local trade, or any class of such ships specified in the order, shall be exempt from the provisions of this Part while not carrying cargo, or, if the order so provides, shall be exempt from the provisions of this Part whether carrying cargo or not.
- (3) Any order under this section may be made subject to such conditions as the Director-General thinks fit; and, where any such order is made subject to conditions, the exemption conferred by that order shall not have effect in relation to a ship unless the ship complies with those conditions.

**280. Further powers to exempt ship**

- (1) In this section any reference to exempting a ship is a reference to exempting the ship either from—
  - (a) all the provisions of this Part and of regulations made thereunder; or
  - (b) such of those provisions as are specified in the instrument conferring the exemption.
- (2) On the application of the owner of a Kenyan ship to which this Part applies which is either a pre-1966 convention ship of not less than 150 gross tonnage or a post-1966 convention ship of not less than 24 meters in length, the Director-General may exempt the ship if in his opinion the ship embodies features of a novel kind such that, if the ship had to comply with all the requirements of this Part and the regulations made thereunder, the development of those features and their incorporation in ships engaged on international voyages might be seriously impeded.
- (3) On the application of the owner of a Kenyan ship to which this Part applies which is either—
  - (a) a pre-1966 convention ship of less than one hundred and fifty gross tonnage or a post-1966 convention ship of less than twenty-four meters in length; or
  - (b) a ship, not falling within paragraph (a), which does not ply on international voyages, the Director-General may exempt the ship.
- (4) Without prejudice to subsection (3), where a Kenyan ship to which this Part applies which is either a pre-1966 convention ship of not less than one hundred and fifty gross tonnage or a post-1966 convention ship of not less than twenty-four meters in length, does not normally ply on international voyages but is, in exceptional circumstances, required to undertake a single international voyage, the Director-General, on the application of the owner of the ship, specifying the international voyage in question, may exempt the ship while engaged on that voyage.
- (5) Any exemption conferred under this section may be conferred subject to such conditions as the Director-General thinks fit, and, where any such exemption is conferred subject to conditions the exemption shall not have effect unless those conditions are complied with.

**281. Issue of exemption certificates**

- (1) Where the Director-General exempts a ship under section 280, the Director-General shall issue the appropriate certificate to the owner of the ship.
- (2) For the purposes of this section, the appropriate certificate, where the—
  - (a) exemption is conferred under section 280(2) or (4), is an International Load Line Exemption Certificate; and
  - (b) certificate is conferred under subsection (3) of that section, is a Kenyan Load Line Exemption Certificate.
- (3) Any certificate issued under this section shall be in such form, and shall be issued in such a manner, as may be prescribed by regulations made under this Part.

**282. Duration, endorsement, etc., of certificates**

- (1) Regulations made under section 263 may make provision for determining the period during which any exemption conferred under section 280, or any certificate issued under section 281, is to remain in force, including provisions—
  - (a) enabling the period for which any exemption or certificate is originally conferred or issued to be extended within such limits and in such circumstances as may be prescribed by the regulations; and

- (b) for terminating any such exemption, and for cancelling any such certificate, in such circumstances as may be so prescribed.
- (2) While any such certificate is in force in respect of a ship, there shall be endorsed on the certificate such information relating to—
  - (a) periodical inspections of the ship, in accordance with regulations made under section 263;
  - (b) any extension of the period for which the certificate was issued, as may be prescribed by the regulations.

### **283. Load Lines Convention certificates**

- (1) Regulations made under section 263 may make such provision as appears to the Cabinet Secretary to be appropriate for ensuring that exemption certificates which, in accordance with the Load Lines Convention, are issued in respect of ships to which section 273 applies, and are so issued by governments other than the Government of Kenya, shall in such circumstances as may be prescribed by the regulations, have the like effect for the purposes of this Part as if they were valid convention certificates.
- (2) The exemption certificates issued in accordance with subsection (1) shall be the International Load Line Exemption Certificate.

#### *Subdivision Load Lines and Deck Cargo*

### **284. Subdivision load lines**

- (1) Where in pursuance of safety regulations a Kenyan passenger ship to which this Part applies is marked with subdivision load lines, and the lowest of those lines is lower than the line which, apart from this subsection, would be the appropriate load line for the purposes of section 265, that section shall have effect as if that subdivision load line were the appropriate load line for the purposes of that section.
- (2) Where in pursuance of safety regulations a non-Kenyan passenger ship to which this Part applies is marked with subdivision load lines, and the lowest of those load lines is lower than the line which, apart from this subsection, would be the appropriate load line for the purposes of section 275, that section shall have effect as if that subdivision load line were the appropriate load line for the purposes of that section.

### **285. Deck cargo**

- (1) The Cabinet Secretary may make regulations, in this section referred to as “the Deck Cargo Regulations”, prescribing requirements to be complied with where cargo is carried in any uncovered space on the deck of a ship to which this Part applies, and different requirements may be prescribed in relation to different descriptions of ships, different descriptions of cargo, different voyages or classes of voyages, different seasons of the year or any other different circumstances.
- (2) Where regulations made under section 263 provide, either generally or in particular cases or classes of cases, for assigning special freeboards to ships which are to have effect only where a cargo of timber is so carried, then, without prejudice to the generality of subsection (1), the Deck Cargo Regulations may prescribe special requirements to be complied with in circumstances where any such special freeboard has effect.
- (3) In prescribing any such special requirements as are mentioned in subsection (2) above, the Cabinet Secretary shall have regard in particular to the provisions of Chapter IV of the Load Lines Convention.
- (4) Where any provisions of the Deck Cargo Regulations are contravened—
  - (a) in the case of a Kenyan ship; or

- (b) in the case of any other ship while the ship is within any port in Kenya, the master of the ship, subject to subsection (5), commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.
- (5) Where a person is charged with an offence under subsection (4), it shall be a defence to prove that the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.
- (6) For purposes of securing compliance with the Deck Cargo Regulations, any person authorised for the purpose by the Director-General may inspect any ship to which this Part applies which is carrying cargo in any uncovered space on its deck.

### *Miscellaneous*

#### **286. Notice of proceedings to consular officer**

- (1) Where any non-Kenyan ship is detained under this Part, and where any proceedings are taken under this Part against the master or owner of any such ship, notice shall forthwith be served on the consular officer for the country to which the ship belongs or nearest to the port where the ship is for the time being.
- (2) A notice under this section shall specify the grounds on which the ship has been detained or the proceedings have been taken.

#### **287. Surrender of certificates**

- (1) The Director-General may require any certificate issued under this Part, which has expired or been cancelled, to be surrendered as he directs.
- (2) Where any owner or master of a ship fails without reasonable excuse to comply with a requirement under subsection (1), he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

#### **288. Penalty for false statement, etc**

Where any person intentionally makes, assists in making or procures to be made, a false or fraudulent certificate which can be issued under this Part, he commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

#### **289. Admissibility of certificates**

Any certificate issued under this Part shall be admissible in evidence.

#### **290. Convention countries**

In this Part, “convention country” means a country or territory which is either—

- (a) a country the government of which has been declared under this paragraph to have accepted or acceded to the Load Lines Convention, and has not been so declared to have denounced that convention; or
- (b) a territory to which it has been so declared that the Load Lines Convention extends, not being a territory to which it has been so declared that that convention has ceased to extend,

and “contracting Government” means any such Government as is referred to in paragraph (a).

## 291. Orders, rules and regulations

Any order, rules or regulations made under this Part may contain such transitional or other incidental and supplementary provisions as may appear to the Cabinet Secretary to be appropriate.

## Part XI – CARRIAGE OF BULK CARGOES AND DANGEROUS CARGOES

### *General*

## 292. Application

- (1) Unless expressly provided otherwise, this Part applies to all ships to which the Safety Convention applies and to cargo ships of less than 500 gross tonnage.
- (2) The provisions of this Part respecting carriage of dangerous goods in packaged form or in solid form in bulk do not apply to ships' stores and equipment, including ships' distress signals.
- (3) The provisions of this Part and any regulations made under section 297 respecting dangerous goods shall apply to all Kenyan ships and to all foreign ships while loading or discharging cargo or fuel, or embarking or disembarking passengers at any place in Kenya as they apply to Kenyan ships.

## 293. Interpretation

In this Part, "grain" includes wheat, maize, corn, oats, rye, barley, rice, pulses, seeds and processed forms thereof, whose behaviour is similar to that of grain in its natural state.

### *Carriage of Grains and other Bulk Cargoes*

## 294. Regulations

The Cabinet Secretary may make regulations relating to the safe carriage and stowage of—

- (a) bulk cargoes having due regard to the Code of Safe Practice for Bulk Cargoes issued by the Organisation and amendments thereto or replacements thereof; and
- (b) grain in compliance with the Safety Convention.

## 295. Carriage of grain

- (1) Where grain is loaded on board any Kenyan ship, or is loaded within any port in Kenya on board any ship, all necessary and reasonable precautions shall be taken to prevent the grain from shifting, and if such precautions are not taken, the owner or the master of the ship, or any agent of the owner who was charged with the loading, or with sending the ship to sea laden with the grain, commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment and the ship shall be deemed for the purposes of Part XII to be unsafe by reason of improper loading.
- (2) Where any ship, having been loaded with grain outside Kenya without the taking of all necessary and reasonable precautions to prevent the grain from shifting, enters any port in Kenya so laden, the owner or master of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment, and the ship shall be deemed for the purposes of Part XII to be unsafe by reason of improper loading.
- (3) No offence is committed under subsection (2) where the ship would not have entered any such port but for stress of weather or any other circumstance that neither the master nor the owner nor the charterer, if any, could have prevented or forestalled.

- (4) For the purpose of ensuring the observance of this section, a surveyor may go on board any Kenyan ship, or any foreign ship which is in any port of Kenya, and inspect any grain loaded in the ship and the manner in which it is stowed.

## 296. Notice by grain ship

On the arrival at a port in Kenya from a port outside Kenya of any ship carrying a cargo of grain, the master shall cause to be delivered to the Director-General, a notice stating—

- (a) the draught of water and freeboard of the ship after the loading of her cargo was completed at the final port of loading; and
- (b) the following particulars of the grain carried—
  - (i) the kind of grain and the quantity thereof, stated in cubic feet, quarters, bushels, tons weight or equivalent measurement of quantity thereof;
  - (ii) the mode in which the grain is stowed; and
  - (iii) the precautions taken to prevent the grain from shifting,

and if the master fails to deliver any notice required by this subsection, or if in any such notice he makes any statement that he knows to be false in a material particular, or recklessly makes any statement that is false in a material particular, he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

### *Dangerous Goods*

## 297. Regulations

- (1) The Cabinet Secretary may, by regulations, prescribe which goods, articles or materials to be carried in a ship are dangerous goods in accordance with the Safety Convention in relation to the carriage of dangerous goods, and such regulations shall incorporate by reference, the International Maritime Dangerous Goods (IMDG) Code of the Organization.
- (2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) may prescribe the—
  - (a) method of packing and stowing such goods;
  - (b) quantity of such goods which may be carried in any ship;
  - (c) place or places within a ship in which they may be carried;
  - (d) marking that is to be placed on any package or container in which goods may be placed for shipment; and
  - (e) precautions to be taken with respect to the carriage of such goods and the powers of inspection to determine compliance with the provisions of the regulations.

## 298. Carriage and marking of dangerous goods

- (1) No person shall send by or carry in a Kenyan ship, except in accordance with this Part and regulations made pursuant to section 297, any dangerous goods.
- (2) No person shall send by or carry in a Kenyan ship any dangerous goods without first distinctly marking their nature on the outside of the outermost package containing the same, in accordance with such regulations as the Cabinet Secretary may make, and without first giving written notice of the nature of such goods and of the name and address of the sender thereof to the master or owner of the ship.

**299. Offences relating to dangerous goods**

- (1) Any person who contravenes any of the provisions of this Part with respect to dangerous goods, including regulations made under section 297, commits an offence and shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.
- (2) Where a contravention involves the marking, packing, stowing or quantity of dangerous goods within a ship, that ship shall be deemed, for the purposes of Part XII, to be unsafe by reason of improper loading.

**300. Rejection and disposal of dangerous goods**

- (1) The master or owner of any ship may refuse to take on board any package or parcel that he suspects might contain any dangerous goods and may require the package to be opened to ascertain its nature.
- (2) When any dangerous goods, or any goods that, in the opinion of the master or owner of the ship, are dangerous goods, have been sent on board any ship without the marking or the written notice described in section 298, the master or owner of the ship may cause the goods, together with any package or container thereof, to be thrown overboard, and neither the master nor the owner of the ship shall be subject to civil or criminal liability in any court in respect of such action.

**301. Forfeiture of dangerous goods**

- (1) Where any dangerous goods have been sent by or carried in any ship in a manner that would constitute an offence under this Part, the court may order the goods, and any packaging or container thereof, to be forfeited.
- (2) A court may exercise the powers conferred by subsection (1) notwithstanding that—
  - (a) the owner of the goods concerned has not committed any offence in respect of the goods, or is not before the court, or has had no notice of the proceedings; and
  - (b) there is no evidence to show to whom the goods belong,

but the court may, in its discretion, require such notice as it may direct, to be given to the owner or shipper of the goods before they are forfeited.

**Part XII – UNSAFE SHIPS****302. Detention of unsafe ships**

- (1) Where the Director-General has reason to believe that any ship, being in any port in Kenya, is an unsafe ship, that is to say, is by reason of any of the matters mentioned in subsection (2) unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which it is intended, such ship shall be liable to be detained.
- (2) The matters referred to in subsection (1) are—
  - (a) the condition, or the unsuitability for its purpose, of—
    - (i) the ship or its machinery or equipment; or
    - (ii) any part of the ship or its machinery or equipment;
  - (b) under manning;
  - (c) overloading or unsafe or improper loading; or

(d) any other matter relevant to the safety of the ship,

and the reference in that subsection to proceeding to sea shall, in a case where the service for which the ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.

### 303. Compensation and security for compensation

- (1) Subject to subsection (2), where a ship is detained under the provisions of this Act or any regulations made under this Act and the owner of the ship proves to the satisfaction of the Director-General that there was no reasonable cause for the detention of the ship, the Government may pay compensation to the owner of the ship for any loss or damage sustained by the owner by reason of such detention.
- (2) In determining whether to pay such compensation and the amount thereof, the Government shall have regard to the provisions of any international agreement signed on behalf of the Government.
- (3) Subject to subsection (4), where a complaint is made to the Cabinet Secretary or the Director-General that a Kenyan ship is unsafe, or otherwise does not comply with the provisions of this Act or any regulations made under this Act, the Cabinet Secretary may, if he deems fit, require the complainant to give security to the satisfaction of the Cabinet Secretary for any compensation which may become payable by the Government pursuant to subsection (1).
- (4) The security referred to in subsection (3) shall not be required where the complaint is made by one fourth, being not less than three, of the seafarers belonging to the ship, and is not in the opinion of the Director-General frivolous or vexatious.
- (5) Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government decides to pay compensation to the owner of the ship pursuant to subsection (1), the complainant shall be liable to pay to the Government all such compensation as the Government may pay under subsection (1) in respect of the detention of the ship.

### 304. Liability of owner and master

- (1) Where a ship which is—
  - (a) in a port in Kenya; or
  - (b) a Kenyan ship and is in any other port,is unsafe, then, subject to subsections (4) and (5), the master and the owner of the ship each commits an offence.
- (2) Where, at the time when a ship is unsafe, any responsibilities of the owner with respect to the matters relevant to its safety have been assumed, whether wholly or in part, by any person or persons other than the owner, and have been so assumed by that person or, as the case may be, by each of those persons either—
  - (a) directly, under the terms of a charter party or management agreement made with the owner; or
  - (b) indirectly, under the terms of a series of charter parties or management agreements,the reference to the owner in subsection (1) shall be construed as a reference to that other person or, as the case may be, to each of those other persons.
- (3) A person who commits an offence under this section shall be liable, upon conviction, to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding six months, or both.

- (4) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence—
- (a) appropriate arrangements had been made to ensure that before the ship went to sea, it was made fit to do so without serious danger to human life by reason of the matters relevant to its safety which are specified in the charge; or
  - (b) it was reasonable for such arrangements not to have been made.
- (5) It shall also be a defence in proceedings for an offence under this section to prove that—
- (a) under the terms of one or more charter parties or management agreements entered into by the accused, the relevant responsibilities, namely—
    - (i) where the accused is the owner, his responsibilities with respect to the matters relevant to the ship's safety; or
    - (ii) where the accused shall be liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection,had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and
  - (b) in all the circumstances of the case, the accused had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a),
- and, in determining whether the accused had done so, regard shall be had in particular to the matters mentioned in subsection (6).
- (6) The matters mentioned in subsection (5) are—
- (a) whether prior to the time of the alleged offence the accused was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
  - (b) the extent to which the accused was or was not able, under the terms of any such charter party or management agreement as is mentioned in subsection (5)(a) to—
    - (i) terminate it; or
    - (ii) intervene in the management of the ship,in the event of any such deficiency, and whether it was reasonable for the accused to place himself in that position.
- (7) In this section—
- “management agreement”, in relation to a ship, means any agreement (other than a charter party, or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person); and
- “relevant responsibilities” shall be construed in accordance with subsection (5).
- (8) References in this section to responsibilities being assumed by a person under the terms of a charter party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter party or management agreement providing for them to be assumed by some other person.

**305. Use of unsafe vessels**

- (1) Where any person uses or causes or permits to be used in navigation any lighter, barge or like vessel when, because of—
  - (a) the defective condition of its hull or equipment;
  - (b) overloading or improper loading; or
  - (c) under manning,it is so unsafe that human life is thereby endangered, he commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
- (2) This section does not affect the liability of the owners of any lighter, barge or like vessel in respect of loss of life or personal injury caused to any person carried in the vessel.

**306. Liability of owner for unsafe operation of ship**

- (1) It shall be the duty of the owners of a ship to which this section applies to take all reasonable steps to ensure that the ship is operated in a safe manner.
- (2) This section applies to—
  - (a) any Kenyan ship; and
  - (b) any ship which is—
    - (i) registered under the law of, or flies the flag of, any country other than Kenya; and
    - (ii) within Kenyan waters while proceeding to or from a port in Kenya,unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.
- (3) Where the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he commits an offence and shall be liable, upon conviction, to a fine not exceeding three hundred thousand shillings, or imprisonment for a term not exceeding six months, or both.
- (4) Where any such ship is chartered by demise, or is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 304, any reference to the owner of the ship in subsection (1) or (3) shall be construed as including a reference—
  - (a) to the charterer under the charter by demise;
  - (b) to any such manager as mentioned in this subsection; or
  - (c) if the ship is both chartered and managed as mentioned in this subsection, to both the charterer and any such manager,

and accordingly the reference in subsection (1) to the taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

## Part XIII – VESSELS OPERATING IN INLAND WATERS

### 307. Regulations

- (1) The Cabinet Secretary may make regulations in respect of vessels operating in inland waters including near coastal voyages.
- (2) Without prejudice to the generality of the foregoing, regulations made under subsection (1) shall have regard to—
  - (a) safety of navigation;
  - (b) safety of such vessels;
  - (c) passenger list;
  - (d) cargo that may be carried and the method of storing the cargo;
  - (e) the safety equipment to be carried aboard such vessels;
  - (f) sanitary requirements, ventilation, lighting access, shelter, screens, cooking and toilet facilities for deck and unberthed passengers;
  - (g) fees to be charged for any licences;
  - (h) qualifications of seaman on board such vessels;
  - (i) maintenance of good order on board such vessels;
  - (j) penalty for damaging navigational aid;
  - (k) notification by master of a sunken vessel to the Authority;
  - (l) lights to be carried and exhibited and the steering and sailing rules to be observed;
  - (m) duties of masters of vessels carrying explosives and dangerous cargoes;
  - (n) licensing, supervision and regulation of boats and boatmen plying for hire and for securing the orderly conduct of such boatmen;
  - (o) surveys and inspection;
  - (p) issue of safety certificates;
  - (q) provision of evidence of financial responsibility or security against risks of damage to third parties;
  - (r) number of passengers to be carried on such vessels;
  - (s) safe manning scale for such vessels;
  - (t) crew lists; and
  - (u) any other matter that the Cabinet Secretary may deem fit to enhance the safety and security for vessels plying the inland water as well as preserve the aquatic environment.
- (3) In making the regulations referred to in this section, the Cabinet Secretary shall take into consideration regional agreements that may have been concluded and adopted by Kenya in that respect.

## Part XIV – WRECK AND SALVAGE

### *Receivers of Wreck*

### 308. Superintendence of Director-General

The Director-General shall have the general superintendence of all matters relating to wreck and may, by notice in the *Gazette*, appoint any person to be a receiver of wreck in any district and to perform the duties of a receiver under this Part.

### 309. Fees and expenses of receiver

- (1) The receiver shall be repaid the expenses properly incurred by him in the performance of his duties and also the fees as the Cabinet Secretary may, by regulations, establish.
- (2) The receiver shall, in addition to all other rights and remedies for the recovery of expenses and fees, have the same rights and remedies in respect thereof that a salvor has in respect of salvage due to him and may, if the property in respect of which any such expenses and fees are due is not under arrest in any court, seize or detain the property until the expenses and fees are paid, or until security is given for them to his satisfaction.

### 310. Duties of receiver

- (1) When a vessel is wrecked, stranded or in distress at a place on or near the coast of Kenya, the receiver shall, upon being made acquainted with the stranding or distress forthwith proceed to the place, and upon his arrival there, he shall take the command of all persons present and assign such duties and give such directions to each person as he deems fit for the preservation of the vessel and of the lives of the persons belonging to the vessel, hereinafter referred to as ship-wrecked persons, and of the cargo and apparel of the vessel.
- (2) If any person disobeys the directions of the receiver, such a person commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, but the receiver shall not interfere between the master and crew of the vessel in reference to the management of the vessel, unless he is asked to do so by the master.

### 311. Powers of receiver

- (1) The receiver may, with a view to the preservation of the shipwrecked persons or of the vessel, cargo or wreck—
  - (a) require such persons, as he deems necessary, to assist him;
  - (b) require the master or other person having the charge of any vessel near at hand to give such aid with his men or vessel as is in his power; and
  - (c) demand the use of any machinery or vehicles or equipment that is obtainable.
- (2) The receiver may cause to be arrested and kept in custody, until he can be conveniently taken before a court to be dealt with according to law, any person who plunders, creates disorder or obstructs the preservation of a vessel wrecked, stranded or in distress on or near the coast of Kenya, and may use reasonable force for the suppression of plundering, disorder or obstruction, and may command all persons in the vicinity to assist him.

### 312. Passage over adjoining land

- (1) Whenever a vessel is stranded, wrecked or in distress, any person may, for the purpose of rendering assistance to the vessel or of saving the lives of the shipwrecked persons or of saving the cargo or apparel of the vessel, pass and repass, with or without vehicles and equipment, over any adjoining lands without being subject to interruption by the owner or occupier, unless there is some public road equally convenient, and also deposit on those lands any cargo or other things recovered from the vessel, but those persons shall not do any more damage than is reasonably necessary.

- (2) Any damage sustained by the owner or occupier in consequence of the exercise of the rights conferred by this section shall be a charge on the vessel, cargo or articles in respect of or by which the damage is occasioned, and the amount payable in respect of the damage shall, in case of dispute, be determined, and shall in default of payment be recoverable, in the same manner as the amount of salvage is under this Part determined or recoverable.
- (3) If the owner or occupier of any property hinders or obstructs any person exercising the rights conferred by subsection (1), he commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

### **313. Immunity of receiver**

Where a receiver or a person acting under his order is engaged in the execution of the duties imposed on the receiver by this Part, and some other person resists the receiver or person and is killed, maimed or hurt by reason of his resistance, no action, suit or prosecution against the receiver or person shall be maintainable by or on behalf of the person killed, maimed or hurt, unless the receiver or person has used more force than was, in the circumstances, reasonably necessary.

### **314. Obstruction of receiver**

Any person who impedes or obstructs a receiver or a person acting under his orders in the execution of his duty commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year, or both.

#### *Dealing with Wreck*

### **315. Duty of person taking possession of wreck**

- (1) Whenever a person takes possession of a wreck in Kenya, he shall as soon as possible deliver the wreck to the receiver, but the receiver may dispense with delivery in the case of any wreck upon such condition as he deems fit.
- (2) This section shall apply to a wreck found derelict at sea outside Kenya and brought into Kenya.
- (3) If any person who has taken possession of a wreck fails without reasonable cause to comply with this section, he commits an offence and upon conviction, shall be liable to a fine not exceeding double the value of the wreck and to forfeit any claim or right to salvage with relation to the wreck.

### **316. Concealment of wreck**

- (1) Where a receiver suspects or receives information that a wreck is secreted or in the possession of some person who is not its owner or that a wreck is otherwise improperly dealt with, he may apply to a magistrate for a search warrant and that magistrate shall have power to grant the warrant, and the receiver, by virtue of the warrant may enter any house or other place wherever situated and also any vessel and search for, seize and detain any wreck there found.
- (2) If the seizure of a wreck is made in consequence of information given by a person to the receiver, the informer shall be entitled, by way of salvage, to such sum as the receiver may allow under instructions from the Director-General.

### **317. Notice of wreck**

Where a receiver takes possession of a wreck and does not know who owns it, he shall, within forty eight hours, cause to be posted in the customs house nearest to the place where the wreck was found or was seized by or delivered to him a description of the wreck and of any mark by which it is distinguished, and shall transmit a similar description to the Director-General, who may give such publicity to the description as he deems fit.

**318. Claiming of wreck by owner**

- (1) Where a wreck is in the possession of the receiver, and its owner establishes his claim to the wreck to the satisfaction of the receiver within six months from the time the wreck came into the possession of the receiver, the owner shall, upon paying the customs duty, if any, and the salvage fees and expenses due, be entitled to have the wreck or the proceeds of sale of the wreck delivered up to him or his agent.
- (2) Where any such wreck is proved to the satisfaction of the receiver to belong to a foreign owner, any consular officer in Kenya of the country to which the owner of the wreck belongs shall, in the absence of the owner or his agent, be deemed to be the agent of the owner so far as relates to the custody and disposal of the wreck.

**319. Sale of wreck by receiver**

Where a wreck is in the possession of a receiver, and it is, in his opinion, to the advantage of all parties to sell wreck, or the wreck consists of goods of a dangerous or perishable nature, the receiver may immediately sell the wreck, and the proceeds of sale, after levying customs duty, if any, and defraying the expenses of the sale, shall be held by the receiver for the same purposes and subject to the same claims, rights and liabilities as if the wreck had remained unsold.

**320. Sale of unclaimed wreck**

Where a wreck is in the possession of a receiver and no owner establishes a claim to it within six months after it came into his possession, the receiver may sell the wreck and pay the proceeds of sale to the Government after—

- (a) deducting from the proceeds the expenses of the sale, any customs duty payable and any other expenses incurred by him; and
- (b) paying to the salvors out of the proceeds such amount of salvage as the Director-General may determine.

**321. Discharge of receiver**

Upon delivering a wreck to the owner or paying him the proceeds of sale in pursuance of this Part, the receiver shall be discharged from all liability in respect thereof, but the delivery shall not prejudice or affect any question which may be raised by third parties concerning the wreck.

***Removal of Wreck*****322. Removal of wreck in port**

- (1) Where a vessel is sunk, stranded or abandoned in any port under the control of the port authority or in or near any approach thereto, in such manner as in the opinion of the port authority, to be, or to be likely to become, an obstruction or danger to navigation, or threat to the environment the port authority may—
  - (a) take possession of and raise, remove or destroy the whole or any part of the vessel;
  - (b) light or buoy the vessel or part until it is raised, removed or destroyed;
  - (c) sell, in such manner as he deems fit, the vessel or part when so raised or removed, and also any other property recovered in the exercise of his powers under this section, and out of the proceeds of the sale reimburse himself for the expenses incurred by him in relation thereto under this section, and shall hold the surplus, if any, of the proceeds on deposit for paying to the person establishing his right to it:

Provided that such deposit shall be forfeited unless such person makes his claim within one year of the sale; or

- (d) if the expenses connected with the raising, removal or destruction of the vessel exceed the value of any property recovered, the excess shall be a debt due to the port authority from the person who was the owner of the vessel at the time when the vessel was sunk, stranded or abandoned.
- (2) Where a vessel is run aground or stranded in a port under the control of the port authority or in or near the approaches thereto, and it appears expedient to the port authority to take charge of the operation of refloating the vessel, he may appoint an officer to direct the operation, and the officer shall be authorised to do all things which in his opinion are necessary to refloat the vessel, and the master and all person present belonging to the ship shall obey the directions of the officer and render him such assistance as he may require.

### **323. Removal of wreck on coast**

Where a vessel is sunk, stranded or abandoned on the coast, or on, or near, any rock, shoal or bank in Kenya or any adjacent seas, the Director-General shall, if in his opinion the vessel is or is likely to become an obstruction or danger to navigation, have the same powers in relation to it as are by this Part conferred upon the port authority.

### ***Salvage***

### **324. Non-application to platforms and drilling units**

Sections 326 to 359 shall not apply to fixed or floating platforms or to mobile off-shore drilling units which such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources.

### **325. Non-application to foreign state-owned vessels**

- (1) Sections 326 to 359 shall not apply to warships or other non-commercial vessels owned or operated by a foreign State and entitled at the time of salvage operations, to sovereign immunity under generally recognised principles of international law, unless that State has decided to apply the Salvage Convention to such ships or vessels.
- (2) For the purposes of any proceedings under this Act, a certificate signed by the Secretary General of the Organization, setting out a State's decision to apply the Salvage Convention to ships and vessels referred to in subsection (1), and the terms and conditions of such application, shall be *prima facie* evidence of the facts stated therein.

### **326. Life salvage**

- (1) Where services are rendered—
  - (a) wholly or in part in Kenyan waters in saving life from any vessel; or
  - (b) outside Kenyan waters, in saving life from any Kenyan vessel,the owner of the vessel, cargo or equipment saved shall pay the salvor a reasonable amount of salvage to be determined in the manner set out in this Part.
- (2) Salvage in respect of the preservation of life, when payable by the owners of a vessel, shall have priority over all other claims for salvage.
- (3) Under no circumstances shall salvage be due from a person whose life has been saved.

**327. Salvage of cargo**

- (1) Where any vessel is wrecked, stranded or in distress in Kenyan waters, or on the shores of Kenya, and services are rendered by any person—
  - (a) assisting the vessel or saving the cargo or equipment of the vessel or any part thereof;
  - (b) other than the receiver in saving any wreck,the owner of the vessel, cargo, equipment or wreck shall pay to the salvor a reasonable amount of salvage, to be determined in the manner set out in this Part.
- (2) A salvor of human life, who has participated in services rendered in the event of a maritime casualty giving rise to salvage, shall be entitled to a fair share of the remuneration awarded to the salvor for salvaging the vessel or other property or preventing or minimising damage to the environment.

**328. Services excluded from salvage**

Nothing in this Part shall entitle any person to salvage remuneration—

- (a) in respect of salvage services rendered contrary to any express and reasonable prohibition of such services on the part of the vessel or aircraft or by the owner of property to which such services are rendered;
- (b) in respect of services rendered by a tug to, or in respect of, the vessel or aircraft which she is towing or the cargo thereof, except where such services are of an exceptional character such as are outside the scope of the contract of towage;
- (c) if he has caused the distress giving rise to the salvage, either intentionally or through negligence;
- (d) if and to such extent as it appears that he has concealed or unlawfully disposed of any property salvaged.

**329. Conditions for salvage remuneration**

- (1) Except as otherwise provided in section 326, no remuneration shall be due under this Act if the salvage operations had no useful result.
- (2) A salvor shall be entitled to remuneration under this Part notwithstanding that the vessel performing the salvage operation and the vessel, cargo or other property salvaged belong to the same owner.

**330. Salvage contracts**

- (1) Sections 326 to 359 shall apply to any salvage operation unless a contract expressly or by implication provides otherwise.
- (2) The master of a Kenyan vessel shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel, and the master and the owner of a Kenyan vessel shall have the authority to conclude contracts on behalf of the owner of property on board the vessel.
- (3) Nothing in this section shall affect the application of section 331 or the duties to prevent or minimise damage to the environment provided in paragraph (b) of section 332 and paragraph (b) of section 333.

### 331. Annulment or modification of contracts

Any contract relating to salvage or any terms thereof may be annulled or modified by the court, where it appears to the court that the—

- (a) contract had been entered into under undue influence or the influence of danger and its terms are inequitable; or
- (b) payment under the contract is too large or too small for the services actually rendered.

### 332. Duties of salvor

The salvor shall owe a duty to the owner of the vessel or other property in danger to—

- (a) carry out the salvage operation with due care;
- (b) exercise due care to prevent or minimise damage to the environment in performing the duty specified in paragraph (a);
- (c) seek assistance from other salvors whenever the circumstances reasonably so require; and
- (d) accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or the owner of other property in danger, provided that the amount of his reward shall not be prejudiced where he proves that such a request was unreasonable.

### 333. Duties of owner and master

The owner and master of the vessel or the owner of other property in danger shall owe a duty to the salvor—

- (a) to cooperate fully with him during the course of the salvage operations;
- (b) in performing the duty specified in paragraph (a), to exercise due care to prevent or minimise damage to the environment; and
- (c) when the vessel or other property has been brought to a place of safety, to accept redelivery when reasonably requested to do so by the salvor.

### 334. Powers of Director-General

- (1) The Director-General may—
  - (a) give directions in relation to any salvage operation; and
  - (b) take measures in accordance with generally recognised principles of international law to protect the environment from pollution following a maritime casualty or acts relating to such casualty which may reasonably be expected to result in harmful consequences.
- (2) The Director-General shall, in giving directions and taking measures under subsection (1), take into account the need for co-operation between salvors, other interested parties and the public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.
- (3) Any public officer or other person acting under directions as referred to in this section shall be under a duty to exercise due care in preventing or minimising damage to the environment.
- (4) Any public authority or an officer thereof who is reasonably within the vicinity of a vessel or person in distress or danger of being lost at sea shall render assistance to save the vessel and life by co-operating in—
  - (a) the procurement and provision of facilities to salvors;

- (b) the admittance to the port of vessels in distress;
- (c) ensuring the efficient and successful performance of the salvage operation for the purpose of salvaging life or property; and
- (d) preventing or minimising damage to the environment.

### **335. Criteria for fixing salvage rewards**

Salvage rewards shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are listed—

- (a) the salvaged value of the vessel and other property;
- (b) the skill and efforts of the salvors in preventing or minimising damage to the environment;
- (c) the measure of success achieved by the salvor;
- (d) the nature and degree of the danger;
- (e) the skill and efforts of the salvors in salvaging the vessel, other property and life;
- (f) the time used and the expenses and losses incurred by the salvors;
- (g) the risk of liability and other risks run by the salvors or their equipment;
- (h) the promptness of the services rendered;
- (i) the availability and use of vessels or other equipment intended for salvage operations; and
- (j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

### **336. Responsibility for payment of award**

- (1) Payment of a reward fixed in accordance with section 335 shall be made by all of the owners of the vessel and other property interests in proportion to their respective salvaged values.
- (2) For expediency, the ship owner shall pay the reward on behalf of all interests referred to in subsection (1) subject to his retaining the right to be reimbursed by these other interests.
- (3) The ship owner who makes the payment under subsection (2) may require the other interests to provide security not exceeding the values of their respective salvaged interests until he has been fully reimbursed.

### **337. Quantum of reward**

The salvage award, excluding any interest and recoverable legal costs that may be payable thereon, shall not exceed the salvaged value of the vessel and other property salvaged.

### **338. Special compensation**

- (1) Where a salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment, and has failed to earn a reward under this Part equivalent at least to the special compensation assessable under subsection (2), he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as defined in subsection (3).
- (2) Where, in the circumstances set out in subsection (1), the salvor by his salvage operations has prevented or minimised damage to the environment, the special compensation payable by the owner to the salvor under subsection (1) may be increased up to a maximum of thirty per cent of the expenses incurred by the salvor, and the Court or person determining the award may, where it or he deems it fair and just, increase such special compensation further, bearing in mind the criteria set

out in section 335, but in no event shall the total increase be more than one hundred per cent of the expenses incurred by the salvor.

- (3) For the purposes of subsections (1) and (2), “salvor’s expenses” means the out of pocket expenses reasonably incurred by the salvor in the salvage operation, and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in section 335(h), (i) and (j).
- (4) The total special compensation assessable under this section shall be paid only if and to the extent that such compensation is greater than any reward recoverable under section 335.
- (5) Where the salvor, in carrying out the salvage operations, has acted negligently and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or a part of any special compensation payable under this section.
- (6) Nothing in this section shall affect any right of recourse available to the owner of the vessel.

### **339. Services rendered under existing contract**

No payment is due under this Part unless the services rendered exceed what can be reasonably considered as due performance of a contract entered into before the danger giving rise to the salvage operations arose.

### **340. Apportionment between salvors**

- (1) The apportionment between salvors of a reward fixed under section 335 shall be made on the basis of the criteria listed in that section.
- (2) The apportionment between the owner, master and other persons in the service of each salving vessel shall be determined by the law of the state in which such vessel is registered.
- (3) Where the salvage referred to in subsection (1) has not been carried out from a vessel, the apportionment shall be determined by the law governing the contract between the salvor and his servant, and in the absence of formal contract, the court or person determining the apportionment and disbursement shall apply general principles of law and equity according to the merits of the cases in order to reach a just and equitable decision.

### **341. Salvor’s misconduct**

A salvor may be deprived of the whole or part of the payment due to him under this Part to the extent that the salvage operation has become necessary or more difficult because of fault or neglect on his part, or if the salvor has been guilty of fraud or other dishonest conduct.

### **342. Maritime lien**

Nothing in this Part shall affect a salvor’s maritime lien under any law of Kenya, provided however that the salvor may not enforce his maritime lien when reasonable security for his claim, including interest and costs, has been tendered or provided.

### **343. Duty to provide security**

- (1) A person liable for a payment under this Part shall, upon the request of the salvor, give security to the satisfaction of the salvor for the claim, including interest and costs of the salvor.
- (2) Without prejudice to subsection (1), the owner of the salvaged vessel shall take all reasonable steps to ensure that the owner of the cargo provides security to the satisfaction of such owner of the vessel or of the salvor for the claims against them, including interest and costs, before the cargo is released.

- (3) The salvaged vessel and property shall not, without the consent of the salvor, be removed from the port or place at which they first arrive after the completion of the salvage operation, until security to the satisfaction of the salvor has been put up for the salvor's claim against the relevant vessel or property.
- (4) In the event of any dispute between the salvor and a person liable for a payment under this Part, or between the owner of the vessel and the owner of the cargo referred to in subsection (2), relating to the security to be provided under this section, the court or tribunal having jurisdiction over the salvors' claim may, upon the application of any such party in that behalf, decide the amount and the terms of such security.

#### **344. Interim payment**

- (1) The court or person adjudicating the claim of the salvor may, upon the application of the salvor, make an interim order for payment to the salvor of such amount as the Court or person may deem fair and just, and on such terms, including terms as to security where appropriate, as may be fair and just in the circumstances of the case.
- (2) In the event of any interim payment under subsection (1), the security provided under section 343 shall be reduced accordingly.

#### **345. Non-detention, etc., of State-owned cargo**

Non-commercial cargo owned by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognised principles of international law, shall not be subject to seizure, arrest or detention by any legal process, or to any *in rem* proceedings, without the express consent of the State owner of such cargo.

#### **346. Non-detention, etc., of humanitarian cargo**

No humanitarian cargo donated by a State shall be subject to seizure, arrest or detention, where such State has agreed to pay for salvage service rendered in respect of such humanitarian cargo.

#### **347. Determination of salvage dispute**

- (1) Disputes as to the amounts of salvage, whether rendered within or outside Kenya arising between the salvor and the owners of any vessel, cargo, apparel or wreck shall, if not settled by agreement, arbitration or otherwise, be determined in accordance with subsection (2).
- (2) Subject to subsection (1), disputes as to salvage shall be determined by the Court, but if the claimant does not recover in the Court more than one million shillings, he shall not be entitled to recover any costs, charges or expenses incurred by him in the prosecution of his claim unless the Court certifies that the case is a fit one to be tried by the Court.
- (3) A dispute relating to salvage may be determined on the application either of the salvor or of the owner of the property salvaged, or of their respective agents.
- (4) The Court or the arbitrators to whom a dispute as to salvage is referred for determination may, for the purpose of determining any such dispute, call to their assistance, as an assessor, any person knowledgeable in maritime affairs, and there shall be paid as part of the costs of the proceedings to every such assessor in respect of his services such sum as may be prescribed.

#### **348. Appeal**

Where a dispute relating to salvage has been determined by the Court or by arbitration, any party aggrieved by the decision may appeal therefrom, in like manner as in the case of any other judgement.

**349. Valuation of salvaged property**

- (1) Where any dispute relating to salvage arises, the receiver may, on the application of either party, appoint a valuer to value the property, and when the valuation has been made, shall give copies thereof to both parties.
- (2) A copy of the valuation purporting to be signed by the valuer and certified as a true copy by the receiver, shall be admissible as evidence in any subsequent proceedings.
- (3) Such fee as the Director-General may direct shall be paid in respect of any valuation made under this section by the person applying for such valuation.

**350. Detention of property**

- (1) Where salvage is due to any person under this Part, the receiver shall, where the salvage is due in respect of—
  - (a) services rendered in assisting any vessel or in saving life therefrom or in saving the cargo or equipment thereof, detain the vessel or cargo or equipment; and
  - (b) the saving of any wreck, and the wreck is not sold as unclaimed under this Part, detain the wreck.
- (2) Subject to subsection (3), the receiver shall detain the vessel and the cargo and equipment or the wreck, as the case may be, until payment is made for salvage or process is issued for the arrest or detention of the property by the court.
- (3) The receiver may release any property detained under subsection (2) where security is given to his satisfaction, or, where the claim for salvage exceeds one million shillings, and any question is raised as to the sufficiency of the security to the satisfaction of the court.
- (4) Any security given for salvage in pursuance of this section to an amount exceeding one million shillings may be enforced by the court in the same manner as if bail had been granted in that court.

**351. Sale of detained property**

- (1) The receiver may sell any detained property if the persons liable to pay the salvage in respect of which the property is detained are aware of the detention, in the following circumstances—
  - (a) where the amount is not disputed and payment of the amount due is not made within twenty days after it has become due;
  - (b) where the amount is disputed but no appeal lies from the decision of the first court to which the dispute was referred, and payment is not made within twenty days after the decision of the court;
  - (c) where the amount is disputed and an appeal lies from the decision of the first court to which the dispute is referred, and within thirty days after the decision of the first court, neither payment of the sum due is made nor proceedings are commenced for an appeal.
- (2) The proceeds of sale of detained property shall, after payment of the expenses of the sale, be applied by the receiver in payment of the expenses, fees and salvage, and any excess shall be paid to the owners of the property, or any other persons entitled to it or in the absence of any such owners or person, into the Treasury.
- (3) In this section, “detained property” means property detained by the receiver under section 350.

**352. Apportionment of salvage by the receiver**

- (1) Where the aggregate amount of salvage payable in respect of salvage services rendered in Kenya has been finally determined either by the court in the manner provided by this Part or by agreement,

and does not exceed one million shillings, but a dispute arises as to the apportionment thereof among several claimants, the person liable to pay such amount may apply to the receiver for leave to pay it to him.

- (2) The receiver shall, if he deems fit, receive the amount referred to in subsection (1) and if he does, he shall give to the person paying it, a certificate stating the amount paid and the services in respect of which it is paid.
- (3) A certificate granted under subsection (2) shall be a full discharge and indemnity to the person by whom the amount was paid and to his vessel, cargo, equipment and effects, against the claims of all persons in respect of the services mentioned in the certificate.
- (4) The receiver shall promptly distribute any amount received by him under this section among the persons entitled thereto, on such evidence and in such shares and proportions as he deems fit, and may retain any money which appears to him to be payable to any person who is absent.
- (5) Any decision by the Receiver under subsection (4) shall be made on the basis of the criteria set out in section 335.
- (6) A distribution of any amount made by the receiver in pursuance of this section shall be final and conclusive as against all persons claiming to be entitled to any portion of the amount distributed.

### **353. Apportionment of salvage by Court**

- (1) Whenever the aggregate amount of salvage payable in respect of salvage services rendered in Kenya has been finally determined and exceeds one million shillings, or whenever the aggregate amount of salvage payable in respect of salvage services rendered outside Kenya has been finally determined, but in either case any delay or dispute arises as to the apportionment thereof, the Court may—
  - (a) cause such amount to be apportioned among the persons entitled thereto in such manner as it thinks just, and may for that purpose, if it deems fit, appoint any person to carry that apportionment into effect;
  - (b) compel any person in whose hands or under whose control the amount may be to distribute such amount or to bring it into court to be dealt with as the court directs, and for the purposes aforesaid issue such process as it thinks fit.
- (2) Any decision of the court under this section shall be made on the basis of the criteria set out in section 335.

### **354. Salvor's right to interest**

A salvor shall be entitled to be paid interest on any payment due to him under this Part, and the amount of such interest shall be at the discretion of the court or person adjudicating the case.

### **355. Application to the Government**

- (1) Where civil salvage services are rendered by or on behalf of the Government, or with the aid of Government property, the Government shall, subject to any regulations made under this section, be entitled to claim salvage in respect of those services to the same extent, and shall have the same rights and remedies as any other salvor.
- (2) Subject to the provisions of any law for the time being in force relating to proceedings against the Government, and of any regulations made under this section, the provisions of this Part, except and to such extent as may be prescribed, shall apply in relation to salvage services rendered in assisting any ship of the Government, or in saving life therefrom, or in saving any cargo or equipment belonging to the Government, in the same manner as if the ship, cargo or equipment belonged to a private person.

**356. Regulations**

The Cabinet Secretary may make regulations providing for the application or modification of the provisions of this Part to ships referred to in section 355(2), and in relation to the services referred to in section 355(1).

**357. Time limit for salvage proceedings**

- (1) No action shall be instituted in respect of any salvage services unless proceedings therein are commenced within two years after the date on which the salvage operations were terminated; but the court may extend any such period to such extent and on such conditions as it considers fit.
- (2) An action for indemnity by a person liable under this Part may be instituted within two years after the date of termination of the salvage operations, but the court may extend the limitation period to such extent and on such conditions as it considers fit.

**358. Fixing of reward and assessment of compensation**

In fixing a reward under sections 335, 336 and 337, and assessing special compensation under section 338, the court or arbitrator is under no duty to fix a reward under sections 335, 336 and 337, up to the maximum salved value of the vessel and other property before assessing the special compensation to be paid under section 338.

**359. Payment for life salvage**

- (1) This section applies where—
  - (a) services are rendered wholly or in part in Kenyan waters in saving life from a vessel of any nationality or elsewhere in saving life from any Kenyan ship; and
  - (b) either the—
    - (i) vessel and other property are destroyed; or
    - (ii) sum to which the salvor is entitled under section 327(2) is less than a reasonable amount for the services rendered in saving life.
- (2) Where this section applies, the Cabinet Secretary may pay to the salvor such sum or, as the case may be, such additional sum as he deems fit in respect of the services rendered in saving life.

**Part XV – PASSENGER SHIPS, CONTROL AND RETURNS ON PERSONS ON SHIPS***Passenger Ships***360. Regulations**

- (1) The Cabinet Secretary may make regulations—
  - (a) respecting accommodation, facilities and provisions on board passenger ships which carry passengers from a port in Kenya;
  - (b) requiring the preparation and furnishing of particulars as to all passengers to or from a port in Kenya;
  - (c) regulating the number of passengers which a ship may carry from a port in Kenya, whether or not the ship is a passenger ship; and
  - (d) prescribing the terms and conditions upon which ships may carry passengers between ports in Kenya.

- (2) In making regulations pursuant to subsection (1), the Cabinet Secretary shall have due regard to the International Convention on the Carriage of Passengers and their luggage on Board Ships, 1974.
- (3) The Cabinet Secretary may waive or vary the Regulations referred to in subsection (1) in respect of their application to licensed Kenyan passenger ships operating solely within Kenyan waters.

### 361. Offences

- (1) A person commits an offence if, in relation to a ship to which this section applies, he does any of the following things—
  - (a) if, being drunk or disorderly, he has been on that account refused admission to the ship by the owner or any person in his employment, and, after having the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship;
  - (b) if, being drunk or disorderly on board the ship, he is requested by the owner or any person in his employment to leave the ship at any place in Kenya at which he can conveniently do so, and, after having the amount of his fare (if he has paid it) returned or tendered to him, does not comply with the request;
  - (c) if, on board the ship, after warning by the master or other officer thereof, he molests or continues to molest or harass any passenger;
  - (d) if, after having been refused admission to the ship by the owner or any person in his employment on account of the ship being full, and having had the amount of his fare (if he has paid it) returned or tendered to him, he nevertheless persists in attempting to enter the ship;
  - (e) if, having gone on board the ship at any place, and being requested, on account of the ship being full, by the owner or any person in his employment to leave the ship before it has left that place, and having had the amount of his fare (if he has paid it) returned or tendered to him, he does not comply with that request;
  - (f) if, on arriving in the ship at a place to which he has paid his fare he knowingly and intentionally refuses or neglects to leave the ship; and
  - (g) if, on board the ship he fails, when requested by the master or other officer thereof, either to pay his fare or show such ticket or other receipt, if any, showing the payment of his fare, as is usually given to persons travelling by and paying their fare for the ship,

but his liability in respect of any such offence shall not prejudice the recovery of any fare payable by him.

- (2) A person commits an offence if, on board any ship to which this section applies, he intentionally does or causes to be done anything in such a manner as to—
  - (a) obstruct or damage any part of the machinery or equipment of the ship; or
  - (b) obstruct, impede, molest or harass the crew, or any of them, in the navigation or management of the ship, or otherwise in the execution of their duty on or about the ship.
- (3) The master or other officer of any ship to which this section applies, and all persons called by him to his assistance, may, without any warrant, detain any person who commits any offence under subsection (1) or (2) whose name and address are unknown to the master or officer, and deliver that person to a police officer.
- (4) A person who commits an offence under subsection (1) or (2) shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding four months, or to both such fine and imprisonment.

- (5) Where any person commits an offence under subsection (1) or (2) and on the application of the master of the ship, or any other person in the employment of the owner thereof, refuses to give his name and address, or gives a false name or address, that person shall be liable, upon conviction, to a fine not exceeding thirty thousand shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.
- (6) This section applies to a ship for which there is in force a Passenger Ship Safety Certificate or a Passenger Certificate, issued under or recognised by this Act.

### **362. Exclusion of drunk persons**

The master of any passenger ship may refuse to receive on board any person who by reason of drunkenness or otherwise is in such a state, or conducts himself in such a manner, as to cause annoyance or injury to passengers on board, and if any such person is on board, may put him on shore at any convenient place.

### **363. Stowaways**

- (1) Any person who, without the consent of the master or of any other person authorised to give it, goes to sea or attempts to go to sea in a Kenyan ship, commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or a term of imprisonment not exceeding one year, or both.
- (2) Nothing in section 433 shall be taken to limit the jurisdiction of any court in Kenya to deal with an offence under this section which has been committed in a country outside Kenya by a person who is not a Kenyan citizen.

### **364. Unauthorised presence on board**

Where a Kenyan ship, or a ship registered in any other country, is in a port in Kenya, and a person who is neither in the service of the Government of Kenya nor authorised by law to do so—

- (a) goes on board the ship without the consent of the master or of any other persons authorised to give it; or
- (b) remains on board the ship after being requested to leave by the master, a police officer, an officer authorised by the Director-General, an officer of the port authority or an officer of the customs service,

he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings, or imprisonment to a term not exceeding six months, or to both such fine and imprisonment.

### **365. Master's power of arrest**

The master of any Kenyan ship may cause any person on board the ship to be put under restraint if and for so long as it appears to him necessary or expedient in the interest of safety or for the preservation of good order or discipline on board the ship.

### **366. Offences relating to safety**

- (1) Where a person goes to sea in a ship without the consent of the master or of any other person authorised to give it, or is conveyed in a ship in pursuance of section 194(4)(b), sections 179 and 180 shall apply as if he were a seafarer employed in the ship.
- (2) Where a person, without the consent of the master or any other person authorised to give it, is on board a ship while it is on a voyage or excursion, or is conveyed in a ship in pursuance of section 194(4)(b), section 179 shall apply as if he were a seafarer employed in the ship.

### 367. Passenger returns

- (1) The master of every ship, whether or not a Kenyan ship, which carries any passenger to a place in Kenya from any place out of Kenya, or from any place in Kenya to any place out of Kenya, shall furnish to such person and in such manner as the Director-General directs, a return giving the total number of any passengers so carried, distinguishing, if so directed by the Director-General, the total number of any class of passengers so carried, and giving, if the Director-General so directs, such particulars with respect to passengers as may be for the time being required by the Director-General.
- (2) Every passenger shall furnish the master of the ship with any information required by him for the purpose of the return.
- (3) Where—
  - (a) the master of a ship fails to make a return as required by this section, or makes a false return; or
  - (b) any passenger refuses to give any information required by the master of the ship for the purpose of the return required by this section, or, for that purpose, gives to the master information which he knows to be false or recklessly gives to him information which is false,the master or, as the case may be, the passenger, commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment in the case of failure or refusal, and five hundred thousand shillings or imprisonment for a term not exceeding three years, or to both such fine and imprisonment in the case of a false return or false information.

### 368. Returns of births and deaths

- (1) The Cabinet Secretary may make regulations under the following provisions of this section in relation to births and deaths in the circumstances specified in those provisions.
- (2) Regulations under this section may require the master of any Kenyan ship to make a return to the Registrar of Seafarers or proper officer of the—
  - (a) birth or death of any person occurring in the ship; and
  - (b) death of any person employed in the ship, wherever occurring outside Kenya,and to notify any such death to such person (if any) as the deceased may have named to him as his next of kin.
- (3) Regulations under this section may require the master of any ship not registered in Kenya which calls at a port in Kenya in the course of or at the end of a voyage to make a return to the Director-General of any birth or death of a Kenyan citizen which has occurred in the ship during the voyage.
- (4) Regulations under this section may require the Director-General to record such information as may be specified in the regulations about such a death as is referred to in subsection (2) in a case where—
  - (a) it appears to him that the master of the ship cannot perform his duty under that subsection because he has himself died or is incapacitated or missing; and
  - (b) any of the circumstances specified in subsection (5) exist.
- (5) The circumstances mentioned in subsection (4)(b) are that the—
  - (a) death in question has been the subject of—
    - (i) an inquest held by a court; or

- (ii) an inquiry held in accordance with section 425 and the findings of the inquiry include a finding that the death occurred;
  - (b) deceased's body has been the subject of a post-mortem examination and in consequence the Attorney-General is satisfied that an inquest is unnecessary.
- (6) Regulations under this section may require the Director-General to send a certified copy of any return or record made thereunder to the Registrar of Births and Deaths.
- (7) The Registrar of Births and Deaths to whom any such certified copies are sent—
  - (a) shall record the information contained therein in the marine register; and
  - (b) may record in the marine register such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register,

and the law relating to the registration of births and deaths in Kenya shall have effect as if the marine register were a register of births (other than stillbirths) or deaths or certified copies of entries in such a register had been transmitted to the Registrar of Births and Deaths in accordance with that law.
- (8) Regulations under this section may make a contravention of any provision thereof an offence punishable, upon conviction, with a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.
- (9) Regulations under this section may contain provisions authorising the registration of the following births and deaths occurring outside Kenya, in circumstances where no return is required to be made under the preceding provisions of this section—
  - (a) any birth or death of a Kenyan citizen which occurs in a ship not registered in Kenya;
  - (b) any death of any such citizen who has been employed in a ship not registered in Kenya which occurs elsewhere than in the ship; and
  - (c) any death of a person who has been employed in a Kenyan ship which occurs elsewhere than in the ship.
- (10) References in this section to deaths occurring in a ship include references to deaths occurring in a ship's boat.

## Part XVI – MARITIME SECURITY

### 369. Interpretation

- (1) In this Part—
 

“armed robbery against ships” means any unlawful act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, directed against persons or property on board such a ship, within territorial waters or waters under Kenya's jurisdiction;

“piracy” means—

  - (a) any act of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed—
    - (i) against another ship or aircraft, or against persons or property on board such ship or aircraft; or
    - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any voluntary act of participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

(c) any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b);

“pirate ship or aircraft” means a ship or aircraft under the dominant control of persons who—

(a) intend to use such ship or aircraft for piracy; or

(b) have used such ship or aircraft for piracy, so long as it remains under the control of those persons;

“private ship” and “private aircraft” mean a ship or aircraft that is not owned by the Government or held by a person on behalf of, or for the benefit of, the Government; and

“UNCLOS” means the United Nations Convention on the Law of the Sea, 1982.

- (2) Piracy committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft is assimilated to piracy committed by a private ship or aircraft.
- (3) This Part applies to aircraft only when they are on the high seas, that is to say, in those parts of the sea to which Part VII of UNCLOS is applicable, in accordance with Article 86 of UNCLOS.

### *Offences against Safety of Ships*

#### **370. Hijacking and destroying of ships**

- (1) Subject to subsection (5), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it commits the offence of hijacking a ship.
- (2) Subject to subsection (5), a person commits an offence if he unlawfully and intentionally—
- (a) destroys a ship;
- (b) damages a ship or its cargo so as to endanger, or to be likely to endanger, the safe navigation of the ship;
- (c) commits, on board a ship, an act of violence which is likely to endanger the safe navigation of the ship; or
- (d) places or causes to be placed on a ship any device or substance which is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation.
- (3) Nothing in subsection (2)(d) is to be construed as limiting the circumstances in which the commission of any act may constitute—
- (a) an offence under subsection (2)(a), (b) or (c); or
- (b) attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting, or being of and part in, the commission of such an offence.
- (4) Subject to subsection (5), subsections (1) and (2) shall apply—
- (a) whether the ship referred to in those subsections is in Kenya or elsewhere;
- (b) whether any such act as is mentioned in those subsections is committed in Kenya or elsewhere; and
- (c) whatever the nationality of the person committing the act.

- (5) Subsections (1) and (2) shall not apply in relation to any warship or any other ship used as a naval auxiliary or in customs or police service, or any act committed in relation to such a warship or such other ship unless the—
- (a) person seizing or exercising control of the ship under subsection (1), or committing the act under subsection (2), as the case may be, is a Kenyan citizen;
  - (b) act is committed in Kenya; or
  - (c) ship is used in the customs service of Kenya or in the service of the police force in Kenya.
- (6) A person who commits an offence under this section shall be liable, upon conviction, to imprisonment for life.
- (7) In this section—
- “act of violence” means any act done—
- (a) in Kenya which constitutes the offence of murder, attempted murder, manslaughter, or assault; or
  - (b) outside Kenya which, if done in Kenya would constitute such an offence as is mentioned in paragraph (a); and
- “unlawfully”—
- (a) in relation to the commission of an act in Kenya, means so as (apart from this Part) to constitute an offence under the law of Kenya; and
  - (b) in relation to the commission of an act outside Kenya, means that the commission of the act would (apart from this Part) have been an offence under the law of Kenya if it had been committed in Kenya.

### **371. Offences of piracy and armed robbery**

Any person who—

- (a) commits any act of piracy;
- (b) in territorial waters, commits any act of armed robbery against ships,

shall be liable, upon conviction, to imprisonment for life.

### **372. Endangering safe navigation, threats, etc.**

- (1) Subject to subsection (8), it is an offence for any person unlawfully or intentionally to—
- (a) destroy or damage any property to which this subsection applies; or
  - (b) interfere with the operation of any such property,
- where the destruction, damage or interference is likely to endanger the safe navigation of any ship.
- (2) Subsection (1) applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.
- (3) Subject to subsection (8), it is an offence for any person intentionally to communicate that which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or

included the communication of information, and that he communicated the information in good faith in performance of those duties.

- (5) A person commits an offence if—
  - (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do in relation to any ship an act which is an offence by virtue of section 372(2)(a), (b) or (c); and
  - (b) the making of that threat is likely to endanger the safe navigation of the ship.
- (6) Subject to subsection (8), a person commits an offence if—
  - (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of subsection (1); and
  - (b) the making of that threat is likely to endanger the safe navigation of any ship.
- (7) Except as provided by subsection (8), subsections (1), (3), (5) and (6) applies whether any such act as is mentioned in those subsections is committed in Kenya or elsewhere and whatever the nationality of the person committing the act.
- (8) For the purposes of subsections (1), (3) and (6)(b), any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in customs or police service is to be disregarded unless the—
  - (a) person committing the act is a Kenyan citizen;
  - (b) act is committed in Kenya.

### **373. Delivery by master**

- (1) This section shall have effect for the purposes of any proceedings before the Court.
- (2) Where the master of a ship, wherever that ship may be, and whatever the State (if any) in which it may be registered, has reasonable grounds to believe that any person on board the ship has—
  - (a) committed any offence under section 370 or 372;
  - (b) attempted to commit such an offence; or
  - (c) aided, abetted, counselled, procured or incited, or been at and part in, the commission of such an offence,in relation to any ship other than a warship or other ship used as a naval auxiliary or in customs or police service, he may deliver that person to an appropriate officer in Kenya or any other Convention country.
- (3) Where the master of a ship intends to deliver any person in Kenya or any other Convention country in accordance with subsection (2), he shall notify an appropriate officer in that country—
  - (a) of his intention to deliver that person to an appropriate officer in that country; and
  - (b) of his reasons for intending to do so.
- (4) Notification under subsection (3) shall be given—
  - (a) before the ship in question has entered the territorial sea of the country concerned; or
  - (b) if in the circumstances it is not reasonably practicable to comply with paragraph (a), as soon as reasonably practicable after the ship has entered that territorial sea.

- (5) Where the master of a ship delivers any person to an appropriate officer in any country under subsection (2), the master shall—
- (a) make to an appropriate officer in that country such oral or written statements relating to the alleged offence as that officer may reasonably require; and
  - (b) deliver to an appropriate officer in that country such other evidence relating to the alleged offence as in the master's possession.
- (6) The master of a ship who, without reasonable excuse, fails to comply with subsection (3) or (5) commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (7) It is a defence for a master of a ship charged with an offence under subsection (6), of failing to comply with subsection (3), to show that he believed, on reasonable grounds, that the giving of the notification required by subsection (3) would endanger the safety of the ship and, except where the country concerned is Kenya, that either he—
- (a) notified some other competent authority in the country concerned within the time required by subsection (4); or
  - (b) believed on reasonable grounds that the giving of notification to any competent authority in that country would endanger the safety of the ship.
- (8) In this section—
- “appropriate officer” means—
- (a) in relation to Kenya, a police officer or immigration officer; and
  - (b) in relation to any other Convention country, an officer having functions corresponding to the functions, in Kenya, either of a police officer or of an immigration officer; and

“Convention country” means a country in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which was signed in Rome on 10th March, 1988, is for the time being in force, and the Cabinet Secretary may, by Order, certify that any country specified in the Order is for the time being a Convention country, and any such Order for the time being in force shall be conclusive evidence that the country in question is for the time being a Convention country or, where a country being a party to the Convention has not been issued with a certificate from the Director-General, shall be conclusive evidence that the country in question is for the time being a Convention country.

### *Ship and Port Facility Security*

#### **374. Application**

- (1) Sections 375 to 380 shall apply to—
- (a) the following types of ships engaged on international voyages—
    - (i) passenger ships, including high-speed passenger vessels;
    - (ii) cargo ships, including high-speed craft, of 500 tons or more; and
    - (iii) mobile offshore drilling units; and
    - (iv) port facilities serving such ships engaged on international voyages;
  - (b) port facilities within the territorial limits of Kenya that serve a ship or a mobile offshore drilling unit, of a type specified in paragraph (a); and
  - (c) fixed and floating platforms within Kenyan continental waters.

- (2) Sections 375 to 380 shall not apply to—
- (a) warships; or
  - (b) naval auxiliaries; or
  - (c) other ships that are—
    - (i) owned or operated by the Government; and
    - (ii) used on Government non-commercial service; or
    - (iii) pleasure vessels.

### 375. Interpretation

In sections 374 to 380—

“Code” means the International Code, for the Security of Ships and of Port Facilities, as adopted on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974;

“declaration of security” means an agreement reached between a ship and either a port facility or another ship with which it interfaces, specifying the security measures each will implement;

“maritime security incident” means—

- (a) a threat of unlawful interference with maritime transport made, and the threat is, or is likely to be, a terrorist act; and
- (b) if an unlawful interference with maritime transport is, or is likely to be, a attack of organised intimidation then the unlawful interference is a maritime security incident;

“port” includes an area of water or land and water (including any buildings, installations or equipment situated in or on that water), intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance, or provisioning of ships, and includes—

- (a) areas of water, between the land of the port and the open waters outside the port, intended for use by ships to gain access to loading, unloading or other land based facilities; and
- (b) areas of open water intended for anchoring or otherwise holding ships before they enter areas of water described in paragraph (a);

“port facility” means a location, as determined by the Director-General, where the ship-port interface takes place, and includes areas such as anchorages, waiting berths and approaches from seaward, as appropriate;

“port facility security assessment” means an assessment of the security of a port facility carried out in accordance with section 15 of Part A of the Code;

“port facility security plan” means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ship’s stores within the port facility from the risks of a security incident;

“recognized security organization” means an organization with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorized to carry out an assessment, a verification, or an approval or a certification activity, required by this Act or by Part A of the Code;

“security level” means the qualification of the degree of risk that a security incident will be attempted or will occur;

“ship” means every description of boat or vessel used in navigation, whether or not it has any means of propulsion, and includes—

- (a) a barge, lighter, or other like vessel;
- (b) a hovercraft, wing in ground or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (c) a submarine or other submersible;
- (d) a high-speed craft; or
- (e) a mobile offshore drilling unit that is not on location; and

“ship security plan” means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship’s stores, or the ship from the risks of a security incident.

### 376. Designated authority

- (1) The Authority is the designated authority for Kenya in terms of section 4 Part B of the Code.
- (2) The principle duties of the designated authority are to—
  - (a) undertake activities necessary for the effective implementation of the Code and in particular—
    - (i) with respect to port facilities within the territorial limits of Kenya, ensure that—
      - (aa) port facility security assessment are carried out, reviewed and approved in accordance with regulations made by the Cabinet Secretary;
      - (bb) port facility security plans are developed, implemented, maintained and approved in accordance with regulations made under this Part;
    - (ii) with respect to Kenyan ships, ensure that—
      - (aa) ship security assessment are carried out, reviewed in accordance with regulations made under this Part;
      - (bb) ship security plans are developed, implemented, maintained and approved in accordance with regulations made under this Part;
  - (b) specify, in accordance with regulations made under this Part, the appropriate security level for—
    - (i) port facilities within Kenya; and
    - (ii) ships—
      - (aa) registered in Kenya;
      - (bb) using port facilities within territorial limits of Kenya;
      - (cc) conducting ship to ship activities within Kenyan continental waters; and
      - (dd) mobile offshore drilling units that are on location within Kenya continental waters;
  - (c) approve—
    - (i) any ship security plans in accordance with regulations for the purpose; and
    - (ii) any amendment to an approved ship security plan that is specified in regulations as requiring the approval of the designated authority;
  - (d) specify and communicate the measures that must be addressed in a port facility plan or a ship security plan for each security level;

- (e) determine—
  - (i) whether a declaration of security is required; and
  - (ii) the requirement of any declaration of security;
- (f) approve—
  - (i) any port security assessment carried out by a recognised security organisation in accordance with regulations;
  - (ii) any port facility plan in accordance with regulations; and
  - (iii) any amendment to an approved port facility plan that is specified in regulations and requiring the approval of the designated authority;
- (g) exercise all control measures specified in the regulations;
- (h) authorise recognised security organisations in accordance with regulations made under this Act;
- (i) undertake any functions or duties specified in regulations made under this Part; and
- (j) carry out any lawful directions as may be given by the Cabinet Secretary.

### **377. Delegation by Director-General**

- (1) The Director-General may in writing and with the approval of the Cabinet Secretary, delegate all or any of his powers and functions under section 376 to a person who—
  - (a) satisfies the criteria prescribed in regulations made under this Part; and
  - (b) is engaged by a recognised security organization.
- (2) The Cabinet Secretary may determine in writing that an organisation is a recognised security organisation.
- (3) In exercising the powers or functions delegated under subsection (1), the delegate shall comply with any directions given by the Cabinet Secretary.

### **378. Regulations**

- (1) The Cabinet Secretary may make regulations for all or any of the following purposes—
  - (a) prescribing, or providing for the fixing of, fees and charges payable in respect of security functions provided by, or security activities undertaken by, a government department or government agency;
  - (b) prescribing the security requirements for a ship or port facility, including, but not limited to—
    - (i) a declaration of security, a ship security plan;
    - (ii) a port facility security plan;
    - (iii) an assessment of a ship security plan or a port facility security plan;
    - (iv) an identification system for accessing a specified port security area or a specified port facility;
  - (c) providing for any other matters that are contemplated by, or necessary for giving full effect to, the provisions of this section or for its due administration.
- (2) Any regulations made under this section may prescribe offences and penalties for contravention of, or non-compliance with, their provisions.

### 379. Exemptions

- (1) The Director-General may, if he considers it appropriate and on such conditions as he considers appropriate, exempt any person, ship, or port facility from an requirement specified in regulations made under section 378.
- (2) The Director-General may not grant an exemption under subsection (1) unless he is satisfied in the circumstances that—
  - (a) the exemption will not breach Kenya’s international obligations under any maritime convention; and
  - (b) one or more of the following conditions apply—
    - (i) the prescribed requirements have been substantially complied with and that further compliance is unnecessary;
    - (ii) the action taken or provision made in respect of the matter to which the prescribed requirements relate is as effective or more effective than actual compliance with the prescribed requirements;
    - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
    - (iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
  - (c) the risk to safety will not be significantly increased by the granting of the exemption.
- (3) The number and nature of any exemptions granted under subsection (1) shall be notified as soon as practicable in the *Gazette*.
- (4) Nothing in this section shall apply in any case where a maritime rule specifies that exemptions may not be granted.

### 380. Extension of application

- (1) If the Director-General has reasonable cause to believe that a security risk exists that may warrant the extension of this section to a ship or port facility to enhance ship or port security or to prevent organised intimidation, the Director-General may—
  - (a) conduct a security assessment of that ship; or
  - (b) require a security assessment of that ship to be carried out.
- (2) For the purposes of subsection (1), reasonable cause to believe that a security risk exists may be based on the—
  - (a) receipt of threat or security information; or
  - (b) results of a security assessment of a ship under this section.
- (3) If, following a security assessment under subsection (1), the Director-General considers that the action should be extended to a ship or class of ship, the Director-General shall make a recommendation to that effect to the Cabinet Secretary.
- (4) Following a recommendation by the Director-General under subsection (3), the Cabinet Secretary may extend the application of this section to a ship or port facility by notice in the *Gazette*.
- (5) A *Gazette* notice under subsection (4)—
  - (a) shall—
    - (i) clearly identify the ship or port facility concerned;

- (ii) state which sections of this section apply to that ship or port facility; and
  - (iii) state, the time period for the extension of this section; and
- (b) may cover—
  - (i) more than 1 ship or port facility; and
  - (ii) any combination of ships and port facilities.
- (6) For the purposes of subsection (1) to (5)—

“port facility” means a port facility that is not included in section 374, and includes fixed and floating platforms and mobile offshore drilling units referred to in section 374.
- (7) For the avoidance of doubt, the Cabinet Secretary may not extend the application of this Part to—
  - (a) warships;
  - (b) naval auxiliaries; or
  - (c) other ships that are—
    - (i) owned or operated by the Government; and
    - (ii) used on government non-commercial service; or
  - (d) pleasure vessel as defined in section 2.

### **381. Seamen’s identification document**

- (1) The Cabinet Secretary may, by regulations made under this Part, require crew members on vessels calling at Kenyan ports to carry and present on demand any identification that the Cabinet Secretary may consider necessary, having regard to the relevant Convention.
- (2) Regulations may establish the proper forms and process that shall be used for identification and verification of crew members.

### **382. Automatic identification system**

- (1) Subject to subsection (2), all ships engaged on international voyages, while operating on the navigable Kenyan waters, shall be equipped with and operate an automatic identification system under regulations prescribed by the Cabinet Secretary, but this section shall not apply to—
  - (a) ships of war and troop ships;
  - (b) cargo ships of less than five hundred tons;
  - (c) ships not propelled by mechanical means;
  - (d) wooden ships of traditional build;
  - (e) pleasure vessels not engaged in trade; and
  - (f) fishing vessels.
- (2) The Cabinet Secretary may—
  - (a) exempt a vessel from subsection (1) if the Cabinet Secretary finds that an automatic identification system is not necessary for the safe navigation of the vessel on the waters on which the vessel operates; or
  - (b) waive the application of subsection (1) with respect to operation of vessels on navigable waters of the Kenya specified by the Cabinet Secretary if the Cabinet Secretary finds that automatic identification systems are not needed for safe navigation on those waters.

- (3) The Cabinet Secretary may make regulations prescribing any of the following—
  - (a) requirements for the operation and maintenance of the automatic identification systems so required under this section;
  - (b) matters that are required to be prescribed to give effect to this Part; and
  - (c) anything that may be necessary or convenient to be prescribed for carrying out or giving effect to the relevant conventions on security.

### **383. Long-range vessel tracking system**

- (1) The Authority may develop and implement a long-range automated vessel tracking system for all vessels in Kenyan waters that are equipped with the Global Maritime Distress and Safety System or equivalent satellite technology.
- (2) The system shall be designed to provide the Authority with the capability of receiving information on vessel positions at interval positions appropriate to deter transportation security incidents.
- (3) The Authority may use existing maritime organisations to collect and monitor tracking information under the system.

## **Part XVII – LIMITATION AND DIVISION OF LIABILITY FOR MARITIME CLAIMS**

### **384. Interpretation**

In this Part, unless the context otherwise requires—

“salvage operation” has the meaning given in section 2, and includes the operations referred to in section 386(1)(d), (e) and (f);

“salvage services” means services rendered in direct connection with salvage operations;

“salvor” means any person rendering salvage services;

“ship” includes any structure (whether completed or in the course of completion) launched and intended for use in navigation as a ship or as a part of a ship;

“shipowner” includes charterer, manager or operator of a ship; and

“Unit of Account” means the special drawing rights as defined in section 2 of Article XXI of the Articles of Agreement of the International Monetary Fund.

### **385. Limitation of liability**

- (1) Shipowners and salvors may limit their liabilities in accordance with this Part.
- (2) An insurer of liability for claims subject to limitation under this Part shall be entitled to the benefit of limitation to the same extent as the assured.
- (3) A person for whose act, neglect or default the shipowner or salvor is responsible may limit his liability under this Part.

### **386. Claims subject to limitation**

- (1) Subject to sections 388 and 389, the following claims shall be subject to limitation of liability regardless of the basis of liability—
  - (a) claims in respect of loss of life or personal injury or loss of or damage to property, including damage to harbour works, basins and waterways and aids to navigation, occurring on board

or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
  - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
  - (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
  - (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
  - (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Part, and further loss caused by such measures.
- (2) The claims referred to in subsection (1) shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise, but the claims referred to subsection (1)(d), (e) and (f) shall not be subject to limitation to the extent that they relate to remuneration under a contract with the person liable.

### **387. Extent of liability**

For the purposes of this Part, the liability of a shipowner shall include liability in an action against his ship, and the act of invoking limitation shall not constitute an admission of liability.

### **388. Claims excepted from liability**

Limitation of liability under this Part shall not apply to the following claims—

- (a) claims for salvage under section 338 and corresponding claims under a contract;
- (b) claims for contribution in general average;
- (c) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is under such contract only permitted to limit his liability to an amount greater than that provided for in section 391;
- (d) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November, 1969;
- (e) claims subject to any law applicable in Kenya governing or prohibiting limitation of liability for nuclear damage;
- (f) claims against the shipowner of a nuclear ship for nuclear damage; and
- (g) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, and any protocol thereto.

[Act No. 18 of 2014, Sch.]

**389. Conduct barring limitation**

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

**390. Counter claims**

Where a person entitled to limitation of liability under this Part has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of this Part shall only apply to the balance, if any.

**391. Calculation of limitations**

The limits of liability for claims other than those provided for in section 388, arising on any distinct occasion, shall be calculated as follows—

- (a) in respect of claims for loss of life or personal injury—
  - (i) 166,667 special drawing rights for a ship with a tonnage not exceeding 300 tons;
  - (ii) 333,000 special drawing rights for a ship with a tonnage from 301 tons to 500 tons; and
  - (iii) for a ship with a tonnage in excess of 500 tons, the following amounts in addition to that mentioned in sub-paragraph (ii)—
    - (aa) for each ton from 501 to 3,000 tons, 500 special drawing rights;
    - (bb) for each ton from 3,001 to 30,000 tons, 333 special drawing rights;
    - (cc) for each ton from 30,001 to 70,000 tons, 250 special drawing rights; and
    - (dd) for each ton in excess of 70,000 tons, 167 special drawing rights; and
- (b) in respect of any other claims—
  - (i) 83,333 special drawing rights for a ship with a tonnage not exceeding 300 tons;
  - (ii) 167,000 special drawing rights for a ship with a tonnage from 301 tons to 500 tons;
  - (iii) for a ship with a tonnage in excess of 500 tons the following amounts in addition to that mentioned in sub-paragraph (ii)—
    - (aa) for each ton from 501 to 30,000 tons, 167 special drawing rights;
    - (bb) for each ton from 30,001 to 70,000 tons, 125 special drawing rights; and
    - (cc) for each ton in excess of 70,000 tons, 83 special drawing rights.

**392. Limitation of liability for salvors**

The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which, he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

**393. Calculation of limitation for fixed claims**

Where the amount calculated in accordance with section 391(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with section 391(b) shall be available for payment of the unpaid balance of claims under section 391(a) and such unpaid balance shall rank rateably with claims mentioned under section 391(b).

### 394. Measurement of ship's tonnage

For the purposes of this Part, a ship's tonnage shall be her gross tonnage calculated in accordance with the Tonnage Regulations made under this Act.

### 395. Liability for dock owners and port authority

- (1) This section applies in relation to a port authority and the owners of any dock.
- (2) The liability of a port authority or person to whom this section applies for any loss or damage caused to any ship, or to any goods, merchandise or other things whatsoever on board any ship shall be limited in accordance with subsection (5), by reference to the tonnage of the largest Kenya ship which, at the time of the loss or damage is, or within the preceding five years has been, within the area over which an authority or person discharges any functions.
- (3) The limitation of liability under this section relates to the whole of any loss and damage which may arise on any one distinct occasion, although such loss and damage may be sustained by more than one person, and shall apply whether the liability arises at common law or under any enactment, and notwithstanding anything contained therein.
- (4) This section does not exclude the liability of a port authority or person to which it applies for any loss or damage resulting from any such personal act or omission of the port authority or person as is mentioned in section 389.
- (5) The limit of liability shall be ascertained by applying to the ship by reference to which the liability is to be determined, the method of calculation specified in section 391 (b) read with section 394.
- (6) For the purposes of subsection (2), a ship shall not be treated as having been within the area over which a port authority discharges any functions by reason only that it has been built or fitted out within the area, or that it has taken shelter within or passed through the area on a voyage between two places both situated outside that area, or that it has loaded or unloaded mails or passengers within the area.
- (7) Sections 399 and 400 shall apply for the purposes of this section.
- (8) Nothing in this section imposes any liability for any loss or damage where no liability exists apart from this section.
- (9) In this section—

“dock” includes wet docks and basins, tidal docks and basins, locks, cuts, entrances, dry docks, graving docks, slips, quays, wharves, piers, stages, landing places and jetties; and

“owners of any dock” includes any authority or person having the control and management of any dock.

### 396. Limits for passenger claims

- (1) In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 special drawing rights multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate.
- (2) For the purpose of this section, “claims for loss of life or personal injury to passengers of a ship” means any such claims brought by or on behalf of any person carried in that ship—
  - (a) under a contract of passenger carriage; or
  - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

- (3) In the case of a ship for which there is in force a Passenger Ship Safety Certificate or Passenger Certificate, as the case may be, issued under or recognised by this Act, the ship's certificate mentioned in subsection (1) shall be that certificate.

### 397. Conversion of Units of Accounts

- (1) For the purpose of converting the amounts mentioned in sections 391, 392, 393 and 396 from special drawing rights into dollars one, special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund has fixed as being the equivalent of one special drawing right for—
  - (a) the date the limitation fund shall have been constituted, payment is made, or security is given under section 399; or
  - (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.
- (2) A certificate given by or on behalf of the Director-General stating that—
  - (a) a particular sum in dollars has been fixed as mentioned in subsection (1) for a particular date; or
  - (b) no sum has been so fixed for that date and that a particular sum in dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those sections and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

### 398. Aggregation of claims

- (1) The limits of liability determined in accordance with sections 391, 392 and 393 shall apply to the aggregate of all claims which arise on any distinct occasion—
  - (a) against the shipowner and any person for whose act, neglect or default he or they are responsible;
  - (b) against the shipowner of a ship rendering salvage services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
  - (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship to, or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.
- (2) The limits of liability determined in accordance with section 396 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the shipowner in respect of the ship referred to in section 396, and any person for whose act, neglect or default he may be responsible.

### 399. Limitation fund

- (1) Any person alleged to be liable and seeking to limit his liability under this Part may constitute a fund by depositing with the Court an amount at least equivalent to the limit provided for in section 391 or section 396 as appropriate, or by producing a guarantee acceptable by the Court, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund, and the fund so constituted shall be available only for the payment of claims in respect of which limitation of liability can be invoked.
- (2) A fund constituted by one of the persons mentioned in section 398(1) (a), (b) or (c) or his insurer, or by a person or his insurer in respect of section 398(2), shall be deemed to have been constituted by

all persons mentioned in section 398(1) (a), (b) or (c), or all persons in respect of section 398(2), as the case may be.

- (3) Where a fund is constituted with the court in accordance with this section for the payment of claims arising out of any occurrence, the court may stay any proceedings relating to any claim arising out of that occurrence which are pending against the person by whom the fund has been constituted.

#### **400. Distribution of fund**

- (1) Subject to sections 391, 393 and 396, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
- (2) The court may proceed in such manner as to the exclusion of any claimants who do not come in within a certain time and as to payment of costs, as the court deems just.
- (3) No lien or other right in respect of any ship or property shall affect the proportions in which any amount is distributed among several claimants.
- (4) All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under the provisions of this Part and all costs incurred in relation thereto may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.
- (5) Where, before the fund is distributed, the person liable, or his insurer, has settled the claim, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Part.
- (6) In making any distribution in accordance with this section the court may, if it deems fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims, subrogated or otherwise, that may be established later.

#### **401. Bar to other actions**

- (1) Where a limitation fund has been constituted in accordance with section 399, any person having made a claim against the fund shall be barred from exercising any right in respect of such claim against any other assets of a person by or on behalf of whom the fund has been constituted.
- (2) Where a ship or other property is attached or arrested in connection with a claim which appears to the court to be founded on liability to which limitation is applicable under this Part, and in respect of which a fund has been constituted or a security or guarantee has been deposited, the court shall order the release of the ship or property if the limitation fund has been constituted in Kenya or at the port—
  - (a) where the occurrence took place, or, if it took place out of port, at the first port of call thereafter;
  - (b) of disembarkation in respect of claims for loss of life or personal injury; or
  - (c) of discharge in respect of damage to cargo,

but where the release is ordered, the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

- (3) Subsections (1) and (2) shall apply only if the claimant brings a claim before the court and the limitation fund is actually available and freely transferable in respect of that claim.

#### **402. Governing law**

Where a limitation fund is constituted in Kenya, the rules relating to its constitution and distribution, and all rules of procedure in connection therewith, shall be governed by Kenyan law.

**403. Apportionment for liability**

- (1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to liability to make good the damage or loss shall be in proportion to the degree in which each ship was at fault.
- (2) Where, in any such case, having regard to all the circumstances, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
- (3) This section applies to persons other than the owners of ships who are responsible for the faults of the ships, as well as to the owners of ships and where, by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the ship in question, this section applies to the charterers or other persons for the time being so responsible instead of the owners.
- (4) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which the fault of the ship has not contributed.
- (5) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
- (6) In this section—
  - (a) “freight” includes passage money and hire;
  - (b) references to damage or loss caused by the fault of a ship include references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

**404. Liability for injury or loss of life**

- (1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and of any other ship, the liability of the owners of the ships shall be joint and several.
- (2) Nothing in this section shall be construed as depriving any person of any right of defence on which, apart from this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life, or shall affect the right of any person to limit his liability in the manner provided by law.
- (3) Section 403(3) and (6)(b) applies also to this section.

**405. Contribution for injury or loss of life**

- (1) Where loss of life or personal injury is suffered by any person on board a ship owing to the fault of that ship and any other ship or ships, and a proportion of the damages is recovered against the owners of one of the ships which exceeds the proportion in which the ship was in fault, the owners thereof may recover by way of contribution the amount of the excess from the owners of the other ship or ships to the extent to which those ships were respectively at fault.
- (2) Nothing in this section authorises the recovery of any amount which could not, by reason of any statutory or contractual limitation of, or exemption; from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the persons entitled to sue therefor.
- (3) In addition to any other remedy provided by law, persons entitled to any contribution recoverable under this section shall, for the purposes of recovering it, have the same rights and powers as the persons entitled to sue for damages in the first instance.
- (4) The provisions of section 403(3) applies to this section.

**406. Limitation of time**

- (1) This section applies to any proceedings to enforce any claim or lien against a ship or her owner—
  - (a) in respect of damage or loss caused by the fault of that ship to another ship, its cargo or freight or any property on board it; or
  - (b) for damages for loss of life or personal injury caused by the fault of that ship to any person on board another ship.
- (2) The extent of fault is immaterial for purposes of this section.
- (3) Subject to subsections (5) and (6), no proceedings to which this section applies shall be brought after the period of two years from the date when the—
  - (a) damage or loss was caused; or
  - (b) loss of life or injury was suffered.
- (4) Subject to subsections (5) and (6), no proceedings under any provisions of sections 403 to 405 to enforce any contribution in respect of any overpaid proportion of any damages for loss of life or personal injury shall be brought after the period of one year from the date of payment.
- (5) The court may, in accordance with the rules of court, extend the period allowed for bringing proceedings to such extent and on such conditions as it deems fit.
- (6) The court, if satisfied that there has not been during any period allowed for bringing proceedings, any reasonable opportunity of arresting the defendant ship within the—
  - (a) jurisdiction of the court; or
  - (b) territorial sea of the country to which the plaintiffs ship belongs or in which the plaintiff resides or has his principal place of business,shall extend the period allowed for bringing proceedings to an extent sufficient to give a reasonable opportunity of so arresting the ship.

**407. Scope of application of Part**

- (1) Subject to subsection (3), this Part shall apply whenever any person referred to in section 385 seeks to limit his liability before the court or seeks to procure the release of a ship or other property, or the discharge of any security given within the jurisdiction of Kenya.
- (2) This Part shall apply in relation to Government ships as they apply in relation to other ships.
- (3) In this section, “Government ships” means ships—
  - (a) of which the beneficial interest is vested in the Government;
  - (b) which are registered as Government ships;
  - (c) which are for the time being demised or sub-demised to or in the exclusive possession of the Government.
- (4) This Part shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to, any property of a person who is on board the ship in question or employed in connection with that ship, or with the salvage operations in question, if he is so on board or employed under a contract of service governed by the law of Kenya.

**408. Exclusion of liability**

- (1) Subject to subsection (3), the owner of a Kenyan ship shall not be liable for any loss or damage in the following cases—
  - (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
  - (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not, at the time of shipment, declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.
- (2) Subject to subsection (3), where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude the liability of—
  - (a) the master, member of the crew or servant; and
  - (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph, the person whose servant he is.
- (3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in section 389.
- (4) This section shall apply in relation to Government ships as it applies in relation to other ships.
- (5) In this section “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

**Part XVIII – ENFORCEMENT OFFICERS AND POWERS***Enforcement Officers***409. Powers of enforcement officers**

- (1) The following officers appointed under the Kenya Maritime Authority Act, 2006 ([No. 5 of 2006](#)) shall exercise such powers as are provided for under this Part—
  - (a) Director-General;
  - (b) Registrar of Ships;
  - (c) Registrar of Seafarers;
  - (d) Chief Receiver of Wreck; and
  - (e) Chief Surveyor of Ships.
- (2) Surveyors of ships may be appointed either generally or for any particular case or purpose.
- (3) The Director-General may, if he deems fit, appoint a surveyor or any other person as an inspector—
  - (a) to report to him—
    - (i) on the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
    - (ii) whether any requirements, restrictions or prohibitions imposed by or under this Act have been complied with or, as the case may be, contravened;

- (iii) whether the hull and machinery of a ship are sufficient and in good condition;
  - (b) for the purposes of sections 415, 416, 421 and 425.
- (4) In this Act, “surveyor of ships” means a surveyor appointed under subsection (2) or (3), and the reference to requirements, restrictions or prohibitions under this Act includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given in any document issued under this Act.

#### **410. Regulations on marine pollution**

- (1) The Cabinet Secretary may make regulations for the protection and preservation of the marine environment from pollution by matter from ships.
- (2) Without prejudice to the generality of subsection (1), the regulations may give effect to any provision of the following international maritime conventions and agreements—
  - (a) the United Nations Convention on the Law of the Sea (UNCLOS), 1982;
  - (b) the International Convention for the Prevention of Pollution from Ships (MARPOL), 1973 as modified by the Protocol of 1978 relating thereto (as amended);
  - (c) the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (the Intervention Convention) as amended;
  - (d) the Protocol Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, 1973;
  - (e) the International Convention on Oil Pollution Preparedness, Response and Cooperation, 1990;
  - (f) the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, (LDC) 1972;
  - (g) the Protocol on Preparedness response and Cooperation to Pollution Incidents by Hazardous and Noxious Substances, 2000 (HNS Protocol);
  - (h) the International Convention on the Control of Harmful Anti-Fouling Systems on Ships (AFS) 2001; and
  - (i) the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004;
  - (j) any international convention or agreement not mentioned in paragraphs (a) to (h) above which relates to the prevention, reduction and control of pollution as well as liability and compensation for pollution damage of the sea or other waters by dumping of wastes and matter from ships.
- (3) In this section, reference to a convention, protocol or an agreement includes a convention, protocol or an agreement which provides for the modification of another convention, protocol or agreement.

#### ***Inspection***

#### **411. Production of ship’s documents**

- (1) The powers conferred by this section are conferred in relation to Kenyan ships and are available to any of the officers, mentioned in section 409 including any Kenyan consular officer.
- (2) The powers conferred under this section shall also be available to any Kenyan consular officer whenever he has reason to suspect that this or any law for the time being in force relating to merchant seafarers or navigation is not being complied with.

- (3) Powers conferred under this section are as follows—
- (a) to require the owner, master, or any of the crew to produce any official log books or other documents relating to the crew or any member of the crew in their possession or control;
  - (b) to require the master to produce a list of all persons on board his ship, and take copies of or extracts from the official log books or other such documents;
  - (c) to muster the crew; and
  - (d) to require the master to appear and give any explanation concerning the ship or her crew or the official log books or documents produced or required to be produced.
- (4) Where any person, on being duly required by an officer under this section to produce a log book or any document, fails without reasonable excuse to produce the log book or document, he commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding fifteen months or to both such fine and imprisonment.
- (5) Where any person, on being duly required by any officer under this section to—
- (a) produce a log book or document, refuses to allow the log book or document to be inspected or copied;
  - (b) to muster the crew, impedes the muster; or
  - (c) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer,

he commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.

#### **412. Inspection of ships and equipment**

- (1) For the purpose of seeing that the provisions of this Act and of regulations made under this Act or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, a surveyor of ships may, at all reasonable times, go on board a ship and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Act or regulations made under this Act.
- (2) The powers conferred by subsection (1) are, if the ship is a Kenyan ship, also exercisable outside Kenya and may be so exercised by a proper officer as well as the persons mentioned in that subsection.
- (3) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.
- (4) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises, provisions or water intended for supply to a Kenyan ship which, if provided on the ship, would not be in accordance with regulations containing requirements as to provisions and water to be provided on ships, he may enter the premises and inspect the provisions or water for the purpose of ascertaining whether they would be in accordance with the regulations.
- (5) Where any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (3), he commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both such fine and imprisonment.

#### 412A. Penalties under Regulations

Regulations made under sections 8, 360, 410 and 450 may provide that any person contravening any of the provisions thereof is liable on conviction to a fine not exceeding ten million shillings, or to imprisonment for a term not exceeding ten years, or to both. [Act [No. 12 of 2012](#), Sch.]

#### 413. Powers of inspectors in relation to premises and ships

- (1) The powers conferred by this section are conferred in relation to—
  - (a) any premises in Kenya; or
  - (b) any Kenyan ship wherever it may be and any other ship which is present in Kenya or in Kenyan waters, and are available to any inspector appointed under section 409(3), for the purpose of performing his functions.
- (2) An inspector may—
  - (a) at any reasonable time or, in a situation which in his opinion is or may be dangerous, at any time—
    - (i) enter any premises; or
    - (ii) board any ship,if he has reason to believe that it is necessary for him to do so;
  - (b) on entering any premises by virtue of paragraph (a), or on boarding a ship by virtue of that paragraph, take with him any other person authorised for the purpose by the Director-General, and any equipment or materials he requires;
  - (c) make such examination and investigation as he considers necessary;
  - (d) give a direction requiring that the premises or ship or any part of the premises or ship or any thing in the premises or ship or such a part shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purposes of any examination or investigation under paragraph (c);
  - (e) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c);
  - (f) take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
  - (g) in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test, but not so as to damage or destroy it unless that is necessary in the circumstances;
  - (h) in the case of any such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes—
    - (i) to examine it and do to it anything which he has power to do under that paragraph;
    - (ii) to ensure that it is not tampered with before his examination of it is completed;
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;
  - (i) require any person who he has reasonable cause to believe is able to give any information relevant to any examination or investigation under paragraph (c) to—
    - (i) attend at a place and time specified by the inspector;

- (ii) answer, in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed, such questions as the inspector thinks fit to ask; and
    - (iii) sign a declaration of the truth of his answers;
  - (j) require the production of, and inspect and take copies of, or of any entry in—
    - (i) any books or documents which by virtue of any provision of this Act are required to be kept; and
    - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c);
  - (k) require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.
- (3) Nothing in the preceding provisions of this section authorises a person to unnecessarily prevent a ship from proceeding on a voyage.
- (4) The Cabinet Secretary may, by regulations, provide for the procedure to be followed in connection with the taking of samples under subsection (2)(f) and subsection (7), and the way in which samples that have been so taken are to be dealt with.
- (5) Where an inspector proposes to exercise the power conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in, and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.
- (6) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.
- (7) Where, under the power conferred by subsection (2)(h), an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power, and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.
- (8) No answer given by a person pursuant to a requirement imposed under subsection (2)(i) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings, except proceedings pursuant to section 411(2), in respect of a statement in or a declaration relating to the answer, and a person nominated as mentioned in subsection (2)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

#### 414. Offences

- (1) A person who—
- (a) intentionally obstructs an inspector in the exercise of any power available to him under section 408;
  - (b) without reasonable excuse, does not comply with a requirement imposed under section 411 or prevents another person from complying with such a requirement;

- (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made pursuant to section 413(2)(i), commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred and twenty thousand shillings, or imprisonment for a term not exceeding one year, or both.
- (2) Nothing in section 411 shall be taken to compel the production by any person of a document which he would, on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.
- (3) A person who complies with a requirement imposed on him in pursuance of section 413(2)(i), (j) and (k) shall be entitled to recover, from the person who imposed the requirement, such sums in respect of the expenses incurred in complying with the requirement as may be prescribed.
- (4) Any payments under subsection (3) shall be made out of money provided by Treasury.

#### *Improvement and Prohibition Notices*

#### **415. Improvement notices**

- (1) Where an inspector appointed under section 409(3) is of the opinion that a person—
  - (a) is contravening one or more of the relevant statutory provisions; or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,he may serve on that person a notice under this section, referred to in the following sections of this Part as an “improvement notice”.
- (2) An improvement notice shall—
  - (a) state that the inspector is of the said opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
  - (b) require the person on whom the notice is served to remedy the contravention in question or, as the case may be, the matters occasioning it within such period as may be specified in the notice.
- (3) The period specified in subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 416 requiring questions relating to the improvement notice to be referred to arbitration.
- (4) In this Part, “relevant statutory provisions” means the—
  - (a) appropriate provisions of Parts VII to XII and Part XX of this Act; and
  - (b) provisions of any instrument of a legislative character having effect under any of those provisions.

#### **416. Prohibition notices**

- (1) Where, as regards any relevant activities which are being or are likely to be carried on board any ship by or under the control of any person, an inspector appointed under section 409(3) is of the opinion that, as so carried on or as likely to be carried on, the activities involve or, as the case may be, will involve the risk of serious personal injury to any person, whether on board the ‘ship or not, the inspector may serve on the first-mentioned person a notice under this section, referred to in the following sections of this Part as a “prohibition notice”.

- (2) In subsection (1), “relevant activities” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.
- (3) A prohibition notice shall—
- (a) state that the inspector is of the said opinion;
  - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
  - (c) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
  - (d) direct that—
    - (i) the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served; or
    - (ii) the ship shall not go to sea,or both of those things, unless the matters specified in the notice in pursuance of paragraph (b), and any associated contravention of any provision so specified in pursuance of paragraph (c), have been remedied.
- (4) A direction contained in a prohibition notice in accordance with subsection (3)(d) shall take effect—
- (a) at the end of a period specified in the notice; or
  - (b) if the direction is given in accordance with subsection (3)(d)(ii) or the notice so declares, immediately.

#### 417. Directions on remedial measures

- (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates, and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.
- (3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served—
- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 415(2)(b) or, as the case may be, section 416; and
  - (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 418.

#### 418. References of notices to arbitration

- (1) Any question—
- (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 415(2)(a), or section 416(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion; or

- (b) as to whether directions included in the notice in pursuance of section 417(1) were reasonable,

shall, if the person on whom the notice was served so requires by a notice given to the inspector within twenty-one days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

- (2) Where a notice is given by a person in accordance with subsection (1), then—
  - (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;
  - (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs, and then only from the giving of the direction.
- (3) Where, on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances—
  - (a) the reason or matter did not constitute a valid basis for the inspector's opinion; or
  - (b) the direction was unreasonable,

he shall either cancel the notice or affirm it with such modifications as he may, in the circumstances, deem fit, and in any other case, the arbitrator shall affirm the notice in its original form.

- (4) A person shall not qualify for appointment as an arbitrator under this section unless such person—
  - (a) holds an unrestricted certificate of competency as a master mariner or as a chief engineer officer, or a person holding a certificate equivalent to any such certificate;
  - (b) is a naval architect;
  - (c) has at least 10 years standing as an advocate at law; or
  - (d) has special experience of shipping matters, or of activities carried on in ports.
- (5) In the performance of his functions under this section, an arbitrator shall have similar powers to the powers conferred on an inspector under section 413(2).

#### **419. Compensation for invalid prohibition notice**

- (1) Where on a reference under section 418 relating to a prohibition notice—
  - (a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion; and
  - (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the service of the notice as the arbitrator deems fit.

- (2) Where on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered by him in consequence of the direction as the arbitrator deems fit.

- (3) An arbitrator shall not award any compensation under subsection (1) or (2) in the case of any prohibition notice unless—
  - (a) it appears to him that the direction given in accordance with section 416(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or
  - (b) it appears to him that—
    - (i) the inspector was of the opinion that there would be such a risk of injury as is referred to in the notice if the ship went to sea; and
    - (ii) the effect of the direction given in pursuance of section 416(3)(d) was to prohibit the departure of the ship unless the matters, or, as the case may be, the matters and contraventions referred to in the direction were remedied.
- (4) Any compensation awarded under this section shall be paid by money provided by the Treasury.

#### **420. Offences**

- (1) Any person who contravenes any requirement imposed by an improvement notice commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.
- (2) Any person who contravenes any prohibition imposed by a prohibition notice commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred and fifty thousand shillings, or to imprisonment for a term not exceeding two years, or both or to imprisonment for a term not exceeding fifteen months, or to both such fine and imprisonment.
- (3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.
- (4) In this section, any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 418.

### **Part XIX – INQUIRIES AND INVESTIGATION INTO MARINE CASUALTIES**

#### **421. Shipping casualties**

- (1) Where any of the following casualties occur, that is to say—
  - (a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to, a ship;
  - (b) a loss of life or serious injury to any person, caused by fire on board, or by any accident to a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
  - (c) any damage caused by a ship,

and, at the time it occurs, the ship was a Kenyan ship or the ship or ship's boat was in Kenyan waters, the Director-General may cause a preliminary inquiry into the casualty to be held by a person appointed for the purpose by the Director-General, and the person so appointed shall have the same powers as those conferred on an inspector by section 411.

- (2) Whether or not a preliminary inquiry into the casualty has been held under subsection (1), the Cabinet Secretary may cause a formal investigation to be held by a Board appointed for that purpose.

#### **422. Formal investigation**

- (1) A Board holding a formal investigation into a shipping casualty under section 421 shall consist of a Judge of the High Court or a chief magistrate or an advocate of at least ten years standing, who

shall be assisted by one or more assessors appointed by the Cabinet Secretary, such assessors being persons with requisite skills and knowledge in maritime matters.

- (2) Where in any investigation, any question as to the cancellation or suspension of the certificate issued to an officer in pursuance of any regulations made under section 170(5)(c) is likely to arise, there shall be not less than two assessors.
- (3) Where as a result of the investigation the Board is satisfied, with respect to any officer, or any of the matters mentioned in section 182(1) and, if it is a matter mentioned in paragraph (a) or (b) of that section, is further satisfied that it caused or contributed to the accident, the Board may cancel or suspend any certificate issued to the officer under regulations made pursuant to section 170(5)(c) or censure him, and where the Board cancels or suspends the certificate, the officer shall deliver the certificate to the Board or the Director-General.
- (4) Where a person fails to deliver a certificate as required under subsection (3), he commits an offence shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.
- (5) Where a certificate has been cancelled or suspended under this section, the Director-General, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.
- (6) The Board may make such awards as it deems just with regard to the costs or, as the case may be, expenses of the investigation, and with regard to the parties by whom those costs or expenses are to be paid, and any such award of the Board may, on the application of any party named in it, be made an order of the Court.
- (7) Subsections (2), (3) and (4) shall apply to endorsements of certificates in the same manner as they apply to certificates.
- (8) The Board shall make a report on the investigation to the Cabinet Secretary.

#### **423. Re-hearings and appeal**

- (1) Where a formal investigation has been held under section 422, the Cabinet Secretary may order the whole or part of the case to be reheard and shall do so if—
  - (a) new and important evidence which could not have been produced at the inquiry or investigation has been discovered; or
  - (b) it appears to the Cabinet Secretary that there are other grounds for suspecting that a miscarriage of justice may have occurred.
- (2) An order under subsection (1) may provide for the rehearing to be made by the Board which held the investigation or by the Court.
- (3) Any rehearing under this section shall be conducted in accordance with rules made under section 424, and section 422 shall apply in relation to a rehearing of an investigation by a Board as it applies in relation to the holding of an investigation.
- (4) Where the Board holding the investigation has decided to cancel or suspend the certificate of any person issued pursuant to any regulations made under section 170(5)(c), or has found any person at fault, then if no application for an order under subsection (1) has been made, or if such application has been refused, that person or any other person who, having an interest in the investigation has appeared at the hearing and is affected by the decision or finding, may appeal to the Court.

#### **424. Rules**

- (1) The Cabinet Secretary may make rules for the conduct of inquiries under section 421, for formal investigations under section 422, and for the conduct of any rehearing under section 423 which is not held by the High Court.

- (2) Without prejudice to the generality of subsection (1), rules under this section may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear, and the notices to be given to persons affected.
- (3) Rules of the Court made for the purpose of rehearings under section 423 which are held by the Court, or of appeals to the Court, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

#### **425. Inquiries and reports on deaths and injuries**

- (1) Subject to subsection (6), where—
  - (a) any person dies in a Kenyan ship or in a boat or life-raft from such a ship; or
  - (b) the master of, or a seafarer employed in, such a ship dies in a country outside Kenya,an inquiry into the cause of the death shall be held by the Registrar of Seafarers or a proper officer at the next port where the ship calls after the death, or at such other place as the Director-General may direct.
- (2) Subject to subsection (6), where it appears to the Director-General that—
  - (a) in consequence of an injury sustained or a disease contracted by a person when he was the master of, or a seafarer employed in, a Kenyan ship, he ceased to be employed in the ship and subsequently died; and
  - (b) the death occurred in a country outside Kenya during the period of one year beginning with the day on which he so ceased,the Director-General may arrange for an inquiry into the cause of the death to be held by the Registrar of Seafarers or a proper officer.
- (3) Subject to subsection (6), where it appears to the Director-General that a person may—
  - (a) have died in a Kenyan ship or in a boat or life-raft from such a ship; or
  - (b) have been lost from such a ship, boat or life-raft and have died in consequence of being so lost,the Director-General may arrange for an inquiry to be held by the Registrar of Seafarers, or a proper officer into whether the person died as mentioned above and, if the Registrar of Seafarers, or proper officer finds that he did, into the cause of death.
- (4) The Registrar of Seafarers or proper officer holding the inquiry shall for the purpose of the inquiry have the same powers as those conferred on an inspector by section 411.
- (5) The person holding the inquiry shall make a report of his findings to the Director-General who shall make the report available—
  - (a) if the person to whom the report relates was employed in the ship and a person was named as his next of kin in the crew agreement or list of the crew in which the name of the person to whom the report relates last appeared, to the person so named;
  - (b) in any case, to any person requesting it who appears to the Director-General to be interested.
- (6) No inquiry shall be held under this section where an inquest is to be held.

**426. Transmission of particulars of certain deaths on ships**

Where—

- (a) an inquest is held into a death or a post mortem examination is made of a dead body as a result of which the Attorney-General is satisfied that an inquest is unnecessary; and
- (b) it appears to the Attorney-General that the death in question is such as is mentioned in section 368(2),

the Attorney-General shall send to the Registrar of Ships, particulars in respect of the deceased of a kind as may be prescribed by regulations made by the Cabinet Secretary.

**Part XX – LEGAL PROCEEDINGS*****Prosecution of Offences*****427. Offences by an officer of body corporate**

- (1) Where a body corporate commits an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a Managing Director, Manager, Director or other similar officer of the body corporate, or any person who was purporting to act in such a capacity, he as well as the body corporate commits an offence and shall be liable to be prosecuted and punished accordingly.
- (2) Any document required or authorised, by virtue of any statutory provision, to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by the company as the owner of a ship, shall be treated as duly served on that company if the document is served on the master of the ship, and any person authorised to serve any document for the purposes of the institution of, or otherwise in connection with proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this subsection) shall, for that purpose, have the right to go on board the ship in question.
- (3) In this section, “foreign company” has the same meaning as in the Companies Act (Cap. 486).

**428. Conduct of prosecutions**

Prosecutions in respect of offences under this Act may, without prejudice to the provisions of any other law relating to prosecutions, be conducted by any officer appointed under this Act and specially authorized in writing in that behalf by the Director of Public Prosecutions.

[Act No. 18 of 2014, Sch.]

**429. Penalties**

- (1) A person who commits an offence under this Act, for which no specific penalty is provided, shall be liable, upon conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.
- (2) Where an offence under this Act is a continuing one, and no penalty is provided in respect of the continuance thereof elsewhere than in this section, every person who commits that offence, in addition to any other liability, shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings for every day or part thereof during which the offence continues after conviction.

***Jurisdiction***

**430. Jurisdiction for offences**

- (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in Kenya where the offender may be for the time being.
- (2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in Kenya where the person complained against may be for the time being.
- (3) The jurisdiction under subsections (1) and (2) shall be in addition to, and not in derogation of, any jurisdiction or power of the court under any other law.

**431. Jurisdiction over ships lying off coast**

Where the area within which the court has jurisdiction is situated on the coast of the sea or abuts on or projects into any bay, channel, or other navigable water, the court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, or navigable water and over all persons on board that vessel or for the time being belonging to it.

**432. Offences onboard ships**

Where any person is charged with having committed any offence under this Act, the person—

- (a) if he is a Kenyan citizen and is charged with having committed it—
  - (i) on board any Kenyan ship on the high seas;
  - (ii) in any foreign port or harbour; or
  - (iii) on board any foreign ship to which he does not belong; or
- (b) if he is not a Kenyan citizen and is charged with having committed it on board any Kenyan ship on the high seas,

and he is found within the jurisdiction of the court in Kenya, which would have had jurisdiction in relation to the offence if it had been committed on board a Kenyan ship within the limits of its ordinary jurisdiction to try the offence, the court shall have jurisdiction to try the offence as if it had been so committed.

**433. Offences by Kenyan seafarers**

- (1) Any act in relation to property or persons done in or at any place, ashore or afloat, outside Kenya by any master or seafarer who at the time is employed in a Kenyan ship, which, if done in any part of Kenya would be an offence under the law of Kenya, shall—
  - (a) be an offence under that law; and
  - (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the court.
- (2) Subsection (1) also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.
- (3) Subsections (1) and (2) apply to omissions as they apply to acts.

#### 434. Return of offenders

- (1) The powers conferred on a Kenyan consular officer by subsection (2) are exercisable in the event of any complaint being made to him—
  - (a) that any offence against property or persons has been committed at any place, ashore or afloat, outside Kenya by any master or seafarer who at the time when the offence was committed, or within three months before that time, was employed in a Kenyan ship; or
  - (b) that any offence on the high seas has been committed by any master or seafarer belonging to any Kenyan ship.
- (2) The powers referred in subsection (1) are—
  - (a) to inquire into the case upon oath; and
  - (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by a Kenyan ship as soon as practicable in safe custody to Kenya for proceedings to be taken against him.
- (3) The consular officer may, subject to subsections (4) and (5), order the master of any Kenyan ship bound for Kenya to receive and carry an offender and the witnesses to Kenya, and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Director-General requires.
- (4) A consular officer shall not exercise the power conferred by subsection (3) unless no more convenient means of transport is available or it is available only at disproportionate expense.
- (5) No master of a ship may be required under subsection (3) to receive more than one offender for every one hundred tons of his ship's gross tonnage, or more than one witness for every fifty tons of his ship's gross tonnage.
- (6) The master of any ship to whose charge an offender has been committed under subsection (3) shall, on his ship's arrival in Kenya, give the offender into the custody of a police officer.
- (7) Where any master of a ship, when required under subsection (3) to receive and carry any offender or witness in his ship—
  - (a) fails to do so; or
  - (b) in the case of an offender, fails to deliver him as required by subsection (6),he commits an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand shillings.
- (8) The expense of imprisoning any such offender and of carrying him and witnesses to Kenya otherwise than in the ship to which they respectively belong shall be paid out of money provided by the Treasury.
- (9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

#### *Detention of Ship and Distress on Ship*

#### 435. Enforcing detention of ship

- (1) Where under this Act a ship is to be detained, any of the following officers may issue an order for detention and detain the ship—
  - (a) the Director-General;
  - (b) any surveyor of ships authorised by the Director-General for the purpose;

- (c) any Kenya consular officer; and
  - (d) any person authorised in writing by the Director-General.
- (2) Where a ship which has been detained, or in respect of which notice of detention or an order for detention has been served on the master, proceeds to sea before it is released by a competent authority, the master of the ship commits an offence and shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- (3) The owner of a ship, and any person who sends to sea a ship as respects which an offence is committed under subsection (2), if party or privy to the offence, also commits an offence under that subsection and shall be liable accordingly.
- (4) Where a ship proceeding to sea in contravention of subsection (2) takes to sea, any officer authorised by subsection (1) to detain the ship, who is on board the ship in the execution of his duty, the owner and master of the ship shall each—
- (a) be liable to pay all expenses of, and incidental to, the officer being so taken to sea; and
  - (b) commit an offence.
- (5) A person who commits an offence under subsection (4), shall be liable, upon conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- (6) Where under this Act a ship is to be detained, an officer of customs and excise shall, and where under this Act a ship may be detained, an officer of the port authority customs and excise may, refuse to clear the ship outwards.
- (7) When any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of the port authority or the officer able to grant a clearance, unless the context otherwise requires, that officer may detain the ship until the document so required is produced to him.
- (8) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.
- (9) A person exercising the power of detention in respect of an alleged contravention of this Act shall immediately release the ship if—
- (a) no proceedings for the offence in question are instituted within seven days beginning with the day on which the ship is detained;
  - (b) such proceedings, having been instituted through exercise of the power conferred by subsection (1) within that period, are concluded without the master or owner being convicted;
  - (c) either—
    - (i) the sum of ten million shillings is paid to the Authority by way of security; or
    - (ii) security which, in the opinion of the Director-General, is satisfactory and is for an amount not less than one million shillings is given to the Authority by or on behalf of the master or owner; or
  - (d) where the master or owner is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid; or
  - (e) the release is ordered by a competent court, and any bond or other financial security ordered by such a court or tribunal is posted.

- (10) The Director-General shall repay any sum paid in pursuance of subsection (9)(c) or release any security so given—
- (a) if no proceedings for the offence in question are instituted within seven days beginning with the day on which the sum is paid; or
  - (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.
- (11) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (9)(c) and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the master or owner; and
  - (b) next in payment of any fine imposed by the court,
- and the balance shall be repaid to the person paying the sum, or giving the security.

#### **436. Levy of distress on ship**

- (1) Where the court makes an order directing payment to be made of any seafarer's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the court which made the order may direct the amount remaining unpaid to be levied by distress.
- (2) Where a fine imposed by a court in proceedings against the owner or master of a ship for an offence under this Act is not paid, or any costs or expenses ordered to be paid by him are not paid at the time ordered by the court, the court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or arrest and sale of the ship, her tackle, furniture and apparel.
- (3) Where a person is convicted of an offence under this Act and the court imposes a fine in respect of the offence, then if it appears to the court that any person has incurred, or will incur, expenses in making good any damage which is attributable to the offence, the court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

#### *Special Evidentiary Provisions*

#### **437. Admissibility of depositions by persons abroad**

- (1) Where the evidence of any person is required in the course of any legal civil proceedings before a judge or magistrate in relation to the subject matter of the proceedings, and it is proved that that person cannot be found in Kenya, any deposition that he may have previously made at a place outside Kenya in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.
- (2) For a deposition to be admissible under subsection (1) in any civil proceedings, the deposition shall —
  - (a) have been taken on oath;
  - (b) have been taken before a judge or magistrate or a Kenya consular officer in any other place; and
  - (c) be authenticated by the signature of the justice, magistrate or officer taking it.
- (3) No proof may be given of the signature or official character of the person appearing to have signed any such deposition.

- (4) This section also applies to proceedings before any person authorised by law or consent of the parties to receive evidence.
- (5) Nothing in this section affects the admissibility in evidence of depositions under any other law or the practice of court.

#### **438. Compounding of offences**

- (1) The Director-General may, where he is satisfied that any person has committed an offence under this Act in respect of which a fine is provided or in respect of which anything is liable to forfeiture, compound the offence and may order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as the Director-General may deem fit; and the Director-General may order anything liable to forfeiture in connection with the offence to be condemned.
- (2) The Director-General shall not exercise his powers under subsection (1) unless the person admits in a prescribed form that he or she has committed the offence and requests the Director-General to deal with such offence under this section.
- (3) Where the Director-General makes any order under this section—
  - (a) the order shall be put in writing and shall have attached to it the request of the person to the Director-General to deal with the matter;
  - (b) the order shall specify the offence which the person committed and the penalty imposed by the Director-General.

#### **439. Admissibility and inspection of certain documents**

- (1) The following documents shall be admissible in evidence and, when in the custody of the Director-General, shall be open to public inspection—
  - (a) documents purporting to be submissions to or decisions by the Registrar of Seafarers or proper officers under section 141;
  - (b) the official log book of any ship kept under section 198 and, without prejudice to section 440(2), any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship;
  - (c) crew agreements, lists of crews made under section 119 and notices given under Part V of additions to or changes in crew agreements and lists of crews;
  - (d) returns or reports under section 368; and
  - (e) documents transmitted to the Director-General under section 447.
- (2) A certificate issued under regulations made pursuant to section 170 shall be admissible in evidence.

#### **440. Admissibility of documents generally**

- (1) Where a document is by this Act declared to be admissible in evidence the document shall, on its production from proper custody—
  - (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
  - (b) subject to all just exceptions, be evidence of the matters stated in the document.
- (2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3), also be admissible in evidence and evidence of the matters stated in the document.

- (3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2), unless—
- (a) it is proved to be an examined copy or extract; or
  - (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,
- and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Director-General may determine.
- (4) A person shall, on payment of such reasonable price as the Director-General may determine, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.
- (5) Where any officer having duties of certification under subsection (3), in relation to any document, intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract, he commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings, or imprisonment for a term not exceeding six months, or both.

#### **441. Admissibility of copies of documents**

- (1) Where under any law a document is open to public inspection when in custody of the Director-General—
- (a) there may be supplied for public inspection a copy or other reproduction of the document instead of the original; but
  - (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.
- (2) Where the Director-General destroys any document which has been sent to him under or by virtue of any law, and keeps a copy or other reproduction of that document, then—
- (a) any law providing for that document to be admissible in evidence or open to public inspection; and
  - (b) in the case of a document falling within subsection (1), that subsection,
- shall apply to the copy or other reproduction as if it were the original.
- (3) For the purposes of this section and of section 440(2) in its application to documents in the custody of the Director-General, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

#### **442. Proof of exceptions, etc**

- (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act—
- (a) it may be proved by the defendant; but
  - (b) need not be specified or negatived in any information or complaint,
- and, if so specified or negatived, shall not require to be proved by the informant or complainant.
- (2) This section applies in relation to an offence whether or not the exception, exemption, excuse or qualification is contained in the section creating the offence.

**443. Service of documents**

- (1) A notice or document authorised or required to be served on any person may be served on that person by—
  - (a) delivering it to him;
  - (b) leaving it at his proper address; or
  - (c) sending it by post to him at his proper address.
- (2) Any such document required to be served on the master of a ship may be served—
  - (a) where there is a master, by leaving it for him on board the ship with the person appearing to be in command or charge of the ship; and
  - (b) where there is no master, on—
    - (i) the managing owner of the ship;
    - (ii) if there is no managing owner, on any agent of the owner; or
    - (iii) where no such agent is known or can be found, by leaving a copy of the document fixed to the mast of the ship.
- (3) Any document authorised or required to be served on any person may—
  - (a) in the case of a body corporate, be served on the chief executive or secretary of that body; or
  - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.
- (4) Any notice authorised by section 415 or 416 to be given to an inspector may be given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (5) For purposes of this section, the proper address of any person on whom any document is to be served shall be his last known address, except that—
  - (a) in the case of a body corporate or its Chief Executive or Secretary, it shall be the address of the registered or principal office of that body; or
  - (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be the principal office of the partnership,and for the purposes of this subsection, the principal office of a company registered outside Kenya shall be its principal office in Kenya.
- (6) Where the person to be served with any notice has, whether in pursuance of registration regulations or otherwise, specified an address in Kenya other than his proper address within the meaning of subsection (5), as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section as his proper address.

**Part XXI – MISCELLANEOUS****444. Protection from liability**

No action shall lie against the Government or any public officer or other person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

**445. General power to dispense**

- (1) The Director-General may, and upon such conditions, if any, as the Director-General deems fit to impose, exempt any ship from any specified requirement of, or prescribed under, this Act, or dispense with the observance of any such requirement in the case of any ship, if he is satisfied, as respects that requirement, of the matters specified in subsection (2).
- (2) Matters referred to in subsection (1) are that—
  - (a) the requirement has been substantially complied with in the case of that ship or that compliance with it is unnecessary in the circumstances; and
  - (b) the action taken or provision made as respects the subject-matter of the requirement in the case of the ship is as effective as, or more effective than, actual compliance with the requirement.

**446. Payment to assessors**

There shall be paid to any assessor appointed under this Act such remuneration out of moneys provided by the Authority.

**447. Returns**

All consular officers of Kenya shall make and send to the Director-General such reports on any matter relating to Kenyan seafarers as the Director-General may require.

**448. Forms**

- (1) The Director-General may prepare and approve forms for any book, instrument or paper required under this Act and may alter such forms as he deems fit.
- (2) The Director-General shall cause every such form to be marked with the distinguishing mark of the Authority and, before finally issuing any form or making any alteration in a form, shall cause public notice thereof to be given in such manner as he deems fit in order to avoid any inconvenience.
- (3) The Director-General shall cause such forms to be available from the Authority.
- (4) Every such book, instrument or paper shall be made in the form, if any, approved by the Director-General, or as near as circumstances permit, and unless so made shall not be admissible in evidence in any civil proceedings on the part of the owner or master of any ship.
- (5) Every such book, instrument or paper if made in a form purporting to be the proper form and to be marked in accordance with subsection (2), shall be deemed to be in the form required by this Act, unless the contrary is proved.
- (6) The foregoing provisions do not apply where special provisions is made by this Act.
- (7) Where any person prints, sells or uses any document purporting to be a form approved by the Director-General knowing that the document is not the form approved for the time being or that the document has not been prepared or issued by the Director-General, that person commits an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding four months or to both such fine and imprisonment.

**449. Fees and fines**

- (1) The Cabinet Secretary may make regulations prescribing fees to be charged in respect of—
  - (a) the issue or recording in pursuance of this Act of any certificate, licence or other document;or

- (b) the doing of any thing in pursuance of this Act.
- (2) In the case of fees for the measurement of a ship's tonnage, the fees may be prescribed as maximum fees.
- (3) All fees payable under this Act shall be paid into the Authority.

#### **450. Regulations**

- (1) Without prejudice to any other provision of this Act, the Cabinet Secretary may make regulations containing such provisions as he considers appropriate for all or any of the following purposes—
  - (a) securing the safety and security of ships registered in Kenya and persons on them and for protecting the health of persons on Kenyan ships;
  - (b) giving effect to any provisions of an international agreement so far as the agreement relates to the safety and security of other ships or persons on them, or to the protection of the health of persons on other ships;
  - (c) securing the safety and security of other ships and persons on them while they are within a port or place in Kenya;
  - (d) the protection and preservation of the marine environment;
  - (e) the safety and security of ships not covered by the provisions of this Act;
  - (f) the welfare of the seafarers;
  - (g) the determining the composition of crew of Kenyan ships and foreign ships operating in Kenyan waters.
- (2) The power conferred by subsection (1) to make provision for giving effect to an agreement includes power to provide for the provision to come into force although the agreement has not come into force.
- (3) Regulations made under subsection (1) may—
  - (a) make different provision for different circumstances and, in particular, make provision for an individual case;
  - (b) be made so as to apply only in such circumstances as are prescribed by the regulations;
  - (c) be made so as to extend outside Kenya; and
  - (d) contain such incidental and transitional provisions as the Cabinet Secretary considers appropriate.

#### **451. Application of Act to non-Kenyan ships**

- (1) Without prejudice to the provisions of section 3, the Cabinet Secretary may make regulations specifying any description of non-Kenya ships and directing that such of the provisions of this Act and of instruments under this Act as may be specified in the regulations—
  - (a) shall extend to non-Kenya ships of that description and to masters and seafarers employed in them; or
  - (b) shall so extend in such circumstances as may be so specified, with such modifications, if any, as may be so specified.
- (2) Regulations under this section may contain such transitional, supplementary and consequential provisions as appear to the Cabinet Secretary to be expedient.
- (3) In this section, "non-Kenyan ships" means ships that are not registered in Kenya.

**452. International conventions**

- (1) The Cabinet Secretary may, from time to time by notice in the *Gazette*, publish the international conventions, bi-lateral treaties or regional agreements relating to ships and shipping, including amendments thereto and replacements thereof, and other international instruments which apply to Kenya, the reservations, if any, entered thereon by Kenya, as well as those international conventions, including amendments thereto and replacements thereof and other international instruments which cease to apply to Kenya.
- (2) The Director-General shall keep in his office a copy of—
  - (a) all the instruments referred to in subsection (1) that have application in Kenya;
  - (b) all regulations and notices made pursuant to this Act,and, upon payment of a prescribed fee, copies may be made available for inspection, or for the taking of copies thereof by members of the public, seafarers or persons concerned with or having an interest in ships or merchant shipping.

**453. Contravention of Act**

Where, in respect of any Kenyan ship, there is any contravention of a requirement of this Act or any regulations made thereunder, the Director-General may suspend the Certificate of Registry of the ship until the contravention is rectified.

**454. [Spent]**