

ONE COUNTRY, TWO SHIP ARREST PROCEDURES

1) The Cameroon Bijural System

The rule is for a country to have one system of laws.

But Cameroon is an exceptional bijural system with the English Common Law operating in the two anglophone regions of North West and South West and the French Civil Law operating in the eight francophone regions of Adamaoua, Centre, East, Far North, Littoral, North, West and South. These systems of law expanded to Cameroon through colonisation by conquest.

1.1 The Common Law System

The Common Law family embraces the law of England and legal systems of the English type. It has certain features which make it peculiar.

First, it is basically a judge made law. The Common Law was formed primarily by judges who had to resolve individual disputes.

Second, the legal rule in the Common Law system is one which seeks to provide the solution to the case in hand. It does not seek to formulate a general rule of conduct for the future.

Three, rules relating to the administration of justice, procedure, evidence and execution of judicial decisions have, for Common Law jurist, an interest equal, or even superior, to substantive rules of law. Common Law attaches a lot of importance to adjectival law. English Law was conceived essentially in the light of litigation and so is more concerned with the administration of justice.

This is why guiding principles such as "fair trial" and "due process of law" are central to English Law.

Four, and finally, the Common Law procedure is accusatorial and is essentially oral.

In Cameroon the received English Law consists of:

- The Common Law;
- The doctrines of equity; and
- The statutes of general application in force in England as of January 1, 1900.

The current general law of anglophone Cameroon comprises:

- Received extraneous basic law (as listed in the preceding paragraph);
- Enactments by the English Colonial Legislative Authority; and
- Enactments by the national legislative authority since independence;
- International treaties.

1.2 The Civil Law System

The French Civil Law was inspired by the Roman Law of old. It has certain special marks which make it stand out as a system of law in its own right.

One, the French Civil Law procedure is inquisitorial and is essentially written.

Two, in the French Civil Law the rule of law is elaborated by legal scholars and not judges.

Three, the French Civil Law has evolved as an essentially private law, i.e., as a means of regulating private relationships between individual citizens.

Four, the legal rule is much more abstract than in Common Law.

Five, and finally, all Civil Law jurisdictions have adopted the legal technique of codification. French law stands out as the prototype of the Civil Law system of laws because the Napoleonic codes have served as model codes for other countries.

The current general law of francophone Cameroon comprises:

- The received French Civil Law;
- Enactments by the French Colonial Legislative Authority;
- Enactments by the national legislative authority since independence; and
- International treaties.

The translocation of the Common Law and the Civil Law to Cameroon earlier last century, has created differences between the legal traditions of England and France where they originated and that of Cameroon into which they were exported. Today, modern Cameroon municipal law is a hybrid, indeed a modified version of the received laws, peculiarly adapted to its Cameroon environment. Moreover, it is also a novel blend of local and imported laws and international treaties, harmonised and integrated together. In other words, we are witnessing the emergence of a new species of Common plus Civil Law, a specifically Cameroonian Common/Civil law defined, fortified and elaborated by local legislation and decisions of Cameroonian courts.

From the foregoing it can be seen that, the substantive laws being virtually the same in essence (received laws from colonial masters, enactments by the colonial legislative authorities, enactments by the national legislative authority since independence and international treaties) the main difference between the Cameroon English Common Law and Cameroon French Civil Law is procedural.

2) The Law Governing Ship Arrest in Cameroon

The law governing ship arrest as a conservatory measure is the CEMAC (Communauté Economique et Monétaire de l'Afrique Centrale) Merchant Shipping Community Code of 22/07/2012 (the code). This international treaty was inspired chiefly by the International Convention of 1999 on the Arrest of Ships and the Brussels Convention of 1952 on the Unification of Certain Rules on the Arrest of Ships.

The code defines ship arrest (as a conservatory measure) as, arrest for security pending a substantive matter or the procurement of the executory formulae. It is the temporary immobilisation of a ship by a claimant (presumed creditor) following a court order to that effect.

2.1 Object of arrest

According to the code (Art 144) the object of arrest shall either be:

- The ship which caused the maritime claim to arise or,
- A sister ship, meaning any other ship belonging to the person who was owner of the ship which caused the maritime claim to arise at the time the maritime claim arose. That is, if the ship which caused the maritime claim is not available (destroyed, sold out or missing in the high seas) any other ship belonging to the maritime debtor at the time of the arrest procedure would be arrested, or subject to arrest.

The only exception to the object of arrest is a ship belonging to a State or exploited by a State, which cannot be arrested if, at the time the maritime claim arose, it was doing exclusively a government (and not commercial) service.

2.2 Procedure

Ship arrest in Cameroon is done by way of petition (“requête” in French or motion ex parte in English) to the president of the competent court who decides on the same in the form of a court order (“Ordonnance” in French or Ruling in English) after seeking the opinion of the competent Maritime Authority (the Department of Merchant Shipping and Inland Waterways of the Ministry of Transport). The schedule to this petition are (of course) justifying documents, one of which shall be a notice to pay, addressed by the claimant to the debtor, which notice was either simply ignored or, the claimant was not satisfied with any reaction the debtor might have shown. The other justifying documents would include, but not limited to, and not exclusively, the bill of lading and the marine survey report.

As soon as the maritime debt appears justified (if only in principle) the ruling is granted. In practice though, the opinion of the maritime authority (being of a consultative character) is not binding on the judge.

Petitions in view of ship arrest are filed on clear days (Mondays-Fridays) during working hours (7.30a.m.-3.30p.m or, so long as the private secretariat of the president of the competent court is open).

If allowed to move naturally (depending upon the number of petitions pending the president’s attention) it could take up to two weeks for the petition to be granted (or rejected). But if you see the private secretary (and talk “convincingly”) your petition would be put on top for the urgent attention of the president, who may also be interested in such a file. In effect, we have often put pressure and obtained arrest orders within hours of receiving instruction.

2.3 Jurisdiction (*ratione materiae*)

According to Art 150 of the code, ship arrest as a conservatory measure is ordered by the competent court in the form of a ruling upon a motion ex-parte. Which is this competent court? The code does not specify. This is the more reason recourse must be made to section 15(2) of law n° 2006/015 of 29/12/2006 on Judicial Organisation of Cameroon, which provides that, the President of the Court of First Instance (meaning Magistrates Court) or the judicial officer designated by him shall have jurisdiction to rule on motions ex-parte (or ordonnances sur requêtes in French).

There are five sea ports (Douala, Kribi, Limbe, Idenau and Tiko) and one river port (Garoua) in Cameroon. All these ports fall within the territorial jurisdiction of the respective Courts of First Instance.

In the spirit of the code however, any Court of First Instance in Cameroon is competent to issue an arrest order against any ship within Cameroon territorial waters. I think in practice we only seize the port-town courts of Douala, Tiko, Limbe, Buea, Kribi and Garoua for purposes of convenience, especially if a visit to the locus in-quo has to be made.

While some of these courts are in the Civil Law jurisdiction, others are in the Common Law jurisdiction.

3) The ship arrest procedure of “ordonnances sur requête”

“Requête” in etymological French is “petition” in English. In the French Civil Law jurisdiction, the petitioner prepares the petition which is essentially a narrative of the facts of the claim and

the law. Attached to this petition are documents to justify the maritime claim (Bill of Lading, maritime survey report, and formal notice to pay, in a typical case). These documents must either be originals or certified true copies. To the petition must be affixed a fiscal stamp upon filing. To the "ordonnance" is also affixed a fiscal stamp. Although no filing fee is charged categorically, a refundable "ordonnance" fee is deposited always. Of course being a non-disputable procedure, the adverse party is not put on notice. The applicant also proposes (the wordings of) the "ordonnance" for the judge to simply append his signature thereto if, from the petition and justifying documents, the maritime claim appears justified in principle pursuant to article 150 of the code. Here it is purely a documentary procedure.

If the petition is rejected, the judge would not sign the "ordonnance" and usually gives a reason on a small note written in red attached to the petition as a rule of thumb. The "ordonnance" fee is refunded, but the applicant loses the fiscal stamps (already affixed).

Once he signs the "ordonnance", it is dated and formalized, and a fiscal stamp affixed thereto when the petitioner comes to collect ("expeditions") stamped copies thereof. While the original "ordonnance" signed by the President remains in the courts file, the "expéditions" are signed and issued by the Registrar-in-Chief.

At the bottom of the ordonnance is written "Cette ordonnance sera exécuté par provision sur minute avant enregistrement" which when loosely translated into English reads "this order shall be executed forthwith before registration". With this, the applicant moves straight to the sheriff/bailiff for him to execute the "ordonnance" by serving same on the captain of the vessel.

Indeed the civil law procedure of "ordonnance sur requête" is designed to move quickly in a veritable attempt to be expeditious and expedient. With a ready-made "ordonnance", an applicant could even meet the judge anywhere (along the corridors) to sign for the former to proceed to the court registry only for formalization.

4) The ship arrest procedure of motion ex-parte

In the English Common Law jurisdiction of Cameroon, the applicant prepares a motion paper notifying a hearing date (to be confirmed by the Registrar-in-Chief) and his prayer(s) numbered in Arabic numerals. Attached to the motion paper is an affidavit in support thereof.

This affidavit is made up of statements of fact (and facts only) numbered (in Arabic numerals) in paragraphs deposed to by the applicant or counsel and sworn to before the Commissioner of oaths - the Registrar-in-Chief of the Court. Attached to the affidavit are documents (mere photocopies are allowed) in support of the maritime claim, numbered alphabetically. Upon filing, a non-refundable filing fee is payable and the amount depends on the number of exhibits as numbered. Being a motion ex-parte, the adverse party is not put on notice.

On the date of hearing, the applicant moves the court (either in open court or in chambers) and the matter is adjourned for ruling to any near future date or the same day depending upon the pressure put on the judge by the applicant.

The judge drafts the ruling before handing it down. If the arrest is ordered, the applicant has to follow up for the ruling to be typed and signed by the judge and the Registrar-in-Chief.

At the bottom of the ruling may (or may not) be written "This order shall be executed forthwith". "May (or may not)" because, unlike in the French civil law procedure wherein the "ordonnance" by dint of practice is drafted by the applicant in a given format, neither practice nor procedure has provided a particular content for the ruling to have in the English Common

Law system. The Registrar-in-Chief would usually insist that the ruling must be registered. A ruling fee is payable.

Indeed the Common Law procedure of ex-parte motions is designated to achieve delay. There are cases where the hearing of an ex-parte proceeding has been adjourned many times (or a couple of time, to be fair) and the applicant is forced to relax unduly (out of sheer frustration) in the face of an otherwise urgent situation.

5) Biased nature of the maritime code

The Merchant Shipping Community Code of 22/07/2012 is applicable to the CEMAC region comprising: Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea and Tchad. With the exception of the two Anglophone regions of Cameroon and Equatorial Guinea, this whole community is French-speaking. So the code, initially conceived in French, remains in French. I do not know anybody who has ever seen an English version. Indeed some of the courts in the English-speaking regions of Cameroon are not even aware of its existence. In effect, in matters of ship arrest, they still apply the Supreme Court (civil procedure) Rules, Cap 211, 1948 Edition, of the Laws of Nigeria. Order 34 of these rules empowers the High Court to entertain motions (on notice and ex-parte). Its order 22 (on Detention of Ships) empowers the High Court to order the arrest and detention of any ship about to leave the jurisdiction.

In 2007 in the matter of M/V Nadine Corlett vs Col. Eyong Tabong, the Court of First Instance, Tiko, ordered the arrest of the ship in ignorance of the Merchant Shipping Community Code and when we filed a motion under the code to discharge the order, the court disregarded the code and our application was dismissed. So each time we have to apply for the arrest of a ship before a court in the English Common Law jurisdiction, we start by providing the court a copy of the code. Yet there is sometimes a problem of translation into English which bedevils interpretation.

From the foregoing, it can be seen that in purely Private International Law terms, (where a legal system is said to coincide with a country) Cameroon is made up of two countries, to wit:

- The Cameroon English Common Law jurisdiction and
- The Cameroon French Civil Law jurisdiction.

6) Graphic dissimilarities of the one procedure to the other.

	Cameroon English Common Law	Cameroon French Civil Law
1	Procedure is commenced by motion ex-parte.	Procedure is commenced by "Ordonnance sur requête."
2	The motion paper and sworn affidavit are made of facts and facts alone.	The unsworn "requête aux fins de saisie" comprises facts and an admixture of law.
3	The exhibits may be mere photocopies.	The "pièces jointes" must be either originals or certified copies.
4	The motion paper does not have to have a fiscal stamp.	The "requête aux fins de saisie" must have a fiscal stamp.
5	A non refundable filing fee is payable.	There is no categorical filing fee. There is rather a refundable deposit for the "ordonnance."
6	A hearing date is fixed with possible adjournments.	No hearing date is fixed

7	Matter may (sometimes) be heard in open Court and decision rendered in open court.	The ordonnance is always signed in chambers.
8	The applicant moves the court.	The applicant does not need to be heard.
9	The ruling is drafted by the judge.	The ordonnance is ready-made by the applicant and presented to the judge for signature.
10	The judge's secretary types the ruling.	The judge's secretary has no typing to do.
11	The ruling is signed by both the judge and Registrar-in-Chief.	The ordonnance is signed by the judge alone and the Registrar-in-Chief only signs stamped copies (expéditions in French) thereof.
12	The word "forthwith" may not even appear at the bottom of the ruling. The Registrar-in-Chief generally insists the ruling must be registered for him to affix the executory formulae on it.	At the bottom of the "ordonnance" is written "... execution par provision sur minute avant enregistrement" meaning "execution forthwith before registration."
13	The ruling is sometimes registered.	The ordonnance is never registered.
14	The sheriff/bailiff wants to see the executory formulae before proceeding with execution.	The sheriff/bailiff does not need to see the executory formulae before proceeding with execution.
15	When an application is made under the Supreme Court (civil procedure) rules, in ignorance of the Merchant Shipping Community Code, the opinion of the maritime authority is not required.	The opinion of the Maritime Authority is always sought.
16	The procedure to have the court discharge its ruling is by way of motion on notice which does not require leave of court.	The procedure for the court to set aside its ordonnance is by way of "référé d'heure à heure" which requires leave of court.
17	The arrest order is within the jurisdiction of the President of the Court of First Instance (Magistrates Court). Yet the President of the High Courts have been seen to entertain motions ex-parte and motions on notice on matters of ship arrest.	The arrest order is the exclusive jurisdiction of the President of the Court of First Instance being the "juge des requêtes" (or petition judge).
18	The ruling, although an interlocutory measure, is rendered in the name of the people of Cameroon.	The ordonnance being a provisional measure, is not considered a judgment, so not rendered in the name of the people of Cameroon.
19	The language of the procedure is English.	The language of the procedure is French
20	The procedure of motion exparte is designed to achieve delay.	The procedure of "Ordonnance sur requête" is designed to be expeditious.

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