WHEN THE SEA BECOMES THE WORKPLACE
Employment Rights of Kenyan Seafarers Under the MLC 2006

IMAGINE THIS...

David is a Kenyan seafarer employed by an international shipping company. He has worked at sea for several years and has a valid Seafarers' Employment Agreement (SEA). Before joining his vessel for a new contract, he undergoes the required medical examination and is certified fit for duty. Several months into his engagement, David develops a medical condition and is declared temporarily unfit to work at sea. His employer suspends him from duty and sends him home for treatment.

David undergoes treatment, recovers and is subsequently examined by an approved maritime medical practitioner. He is issued a medical certificate confirming that he is fit to resume his duties. He sends the certificate to his employer expecting to be given a date to rejoin his vessel.

Instead, the company tells him "*You cannot return to sea for another twelve months. This is the required waiting period after a medical unfitness finding*."

David asks a simple question: *"Where does the twelve-month waiting period come from?"*

The company points to "company policy" but does not identify a provision in his Seafarers' Employment Agreement, the law of the vessel's flag State, the Maritime Labour Convention, 2006 (MLC 2006), or any applicable medical regulation that requires him to remain ashore for twelve months after being certified fit.

David is now in an uncertain position. He is not formally dismissed. He has not been declared permanently unfit. He remains employed, but he is not being permitted to return to work. At the same time, he wants to know whether he is entitled to wages, whether his employer is responsible for his continued medical costs, whether he is entitled to repatriation and whether the company's decision can be challenged.

This scenario raises a question that is increasingly relevant to Kenyan seafarers working in international waters:

CM ADVOCATES LLP

Can an employer keep a medically cleared seafarer out of employment for a fixed period simply by relying on an internal policy, or must the restriction have a legal or contractual basis?

The answer requires looking beyond the MLC 2006 alone. For Kenyan seafarers, the legal position may be shaped by the MLC 2006, the Employment Act, 2007, the Merchant Shipping Act, 2009, the applicable medical certification regime, the law of the vessel's flag State, the SEA and any applicable Collective Bargaining Agreement (CBA).

That layered framework is important because a restriction imposed on a seafarer's right to work, receive wages or return to sea cannot simply be assumed to have legal effect because an employer describes it as "policy."

LEGAL BASIS AND APPLICABLE FRAMEWORK

Kenya ratified the MLC 2006 on 31 July 2014, becoming the tenth African State to do so, and the Convention entered into force for Kenya on 31 July 2015. The MLC 2006 sets minimum international standards across five areas: minimum requirements for seafarers to work on a ship, conditions of employment, accommodation and food, health protection and welfare, and compliance and enforcement.

There is no rule under the Maritime Labour Convention, 2006 (MLC 2006) that automatically suspends a Kenyan seafarer from duty for a fixed period, such as one year, following a medical assessment. A Kenyan seafarer's rights are governed cumulatively by the MLC 2006, Kenya’s Employment Act, 2007 (foreign contracts of service), the Merchant Shipping Act, 2009, and the Seafarers' Employment Agreement (SEA) itself. Any restriction placed on a seafarer, medical or otherwise, must trace to an identifiable source in one of these instruments. Where an employer cannot identify that source, the restriction is unlikely to have a valid legal basis.

Kenyan seafarers working internationally are, however, rarely governed by the MLC alone. Depending on the circumstances, an engagement may also be governed by:

- Part XI of the Employment Act, 2007, which governs foreign contracts of service entered into in Kenya for work to be performed outside the country;
- the Merchant Shipping Act, 2009, and the Merchant Shipping (Maritime Labour) Regulations, 2024;
- the Merchant Shipping (Seafarer Medical Examination and Certification) Regulations;
- the law of the vessel's flag State;
- the Seafarers' Employment Agreement (SEA) or crew agreement itself; and
- any applicable Collective Bargaining Agreement (CBA).

A dispute over suspension, wages or repatriation will usually need to be tested against several of these instruments together. A further point is often overlooked: under the MLC's “no more favourable treatment” principle, a ship flagged in a State that has not ratified the Convention does not escape it. Such a ship still faces inspection to MLC standards when calling at the ports of a ratifying State, such as Kenya.

This is not a marginal issue for the Kenyan economy. Kenya's registered seafarer workforce has grown from roughly 1,000 in 2016 to close to 6,900 by early 2023, with government policy targeting 200,000 seafarers by 2027. Kenya also sits on the IMO's STCW “white list” and is a member State of the Indian Ocean MOU on Port State Control, meaning the Kenya Maritime Authority itself carries out MLC standard inspections on foreign ships calling at Mombasa.

WHO IS COVERED?

Under Article II(1)(f) of the MLC, a “seafarer” is any person employed, engaged, or working in any capacity on board a ship to which the Convention applies. This is not limited to deck, engine or navigating crew. On a cruise ship, the definition extends to hotel and hospitality staff, cabin and cleaning personnel, catering staff, entertainers and casino personnel, a significant share of Kenya's international maritime workforce.

The MLC applies to all ships, publicly or privately owned, ordinarily engaged in commercial activities, regardless of whether the flag State has ratified the Convention. It does not apply to ships engaged in fishing or similar pursuits, ships of traditional build such as dhows and junks, warships or naval auxiliaries, or ships navigating exclusively in inland or closely sheltered waters. Where coverage is genuinely unclear, Article II (3) and (5) place the determination with the flag State's competent authority, following consultation with shipowners' and seafarers' organisations. It is not a determination the employer may make independently.

THE MEDICAL SUSPENSION SCENARIO: APPLYING THE FRAMEWORK

A recurring question in this practice area concerns Kenyan crew suspended from duty for an extended period, commonly around one year, on the basis of being medically unfit, notwithstanding a subsequent medical clearance. Three questions resolve this in sequence.

a) **Is there a general MLC rule requiring a one-year stand-down?** No. The MLC 2006 contains no provision imposing a universal one-year waiting period before a medically fit seafarer may return to sea.
b) **Where, then, does such a restriction derive its authority?** It must stem from an identifiable source: an individual medical assessment, a flag-State requirement, a recognised maritime medical standard, an STCW requirement, a lawful term of the SEA, or a CBA. Where none of these can be identified, the restriction has no legal basis.
c) **Is the restriction, in substance, an internal company policy rather than a legal requirement?** Shipowners are entitled to maintain internal safety and medical policies not exceeding the regulatory minimum. Such a policy is not, however, equivalent to an MLC requirement or a flag-State rule, and should not be represented to a seafarer as one.

Where a seafarer has been medically cleared but remains suspended, the correct first step is to require the employer to identify, in writing, precisely which of these sources it relies upon. Where it cannot do so, the suspension is difficult to sustain.

CORE ENTITLEMENTS UNDER THE SEA

Five entitlements sit at the centre of the MLC's protection of seafarers, and most disputes over suspension, non-payment or early termination ultimately turn on what these require.

a) **Wages:** seafarers must be paid in full, at intervals no longer than monthly, in accordance with the SEA or CBA, with a monthly account of wages due and paid. Basic pay is calculated on normal hours not exceeding eight per day and 48 per week, and must not fall below the applicable recommended minimum. Where a seafarer is held captive due to piracy or armed robbery, wages continue throughout the period of captivity until release and repatriation.
b) **Paid leave:** seafarers are entitled to a minimum of 2.5 calendar days of paid annual leave per month of employment, approximately 30 days a year. Sick leave and approved training do not count against this entitlement, and any agreement requiring a seafarer to forgo the statutory minimum is prohibited and cannot be given effect.
c) **Working hours and rest:** the flag State must fix either a maximum working hours standard or a minimum rest hours standard. Work must not exceed 14 hours in any 24-hour period or 72 hours in any 7-day period; equivalently, rest must be no less than 10 hours in 24 and 77 hours in 7, split into no more than two periods, one of at least six hours. Shipowners must keep signed daily records of hours worked and rested.
d) **Repatriation:** a seafarer is entitled to repatriation at no cost to themselves where the SEA expires abroad, is terminated by either party, or the seafarer can no longer perform their duties due to illness, injury, shipwreck, the shipowner's insolvency, or a conflict zone. Continuous service before this entitlement arises must be capped at 12 months. A shipowner may not require advance payment for repatriation or deduct its cost from wages, except following a proper finding of serious fault.

CM ADVOCATES LLP

e) **Injury, illness and compensation:** separate from repatriation, Title 4 Regulation 4.2 MLC makes the shipowner liable for the costs of a seafarer's sickness, injury or death connected to their employment, and flag States must require shipowners to carry financial security specifically to cover compensation for death or long-term disability arising from an occupational injury, illness or hazard. This security is evidenced by a certificate distinct from the certificate covering repatriation and abandonment.

LIFE ON BOARD: ACCOMMODATION, FOOD AND SAFETY

The MLC devotes an entire Title, Title 3, to living conditions on board. Cabin size, ventilation, heating, lighting, noise and sanitary facilities are subject to defined minimum standards, with fuller construction requirements applying to ships built after August 2013, and the competent authority must require frequent onboard inspections to confirm accommodation remains fit for habitation. Food and drinking water must be suitable in quantity, nutritional value, quality and variety, having regard to the length of the voyage and the crew's religious and cultural requirements, and any seafarer engaged as a ship's cook must be certified competent for the role. Substandard accommodation, contaminated water and an undertrained galley remain, together with rest-hour violations, among the most common findings on MLC port State inspections worldwide.

REQUIRED PARTICULARS OF THE EMPLOYMENT AGREEMENT

Regulation 2.1 and Standard A2.1 of the MLC require every seafarer to have a written SEA, signed by both the seafarer and the shipowner or its authorised representative.

A Seafarer's Employment Agreement (SEA) should contain the seafarer's full name, date of birth or age and place of birth, together with the shipowner's name and address and the place and date where the SEA was entered into. It should also specify the capacity in which the seafarer is employed, the wages or formula for calculating wages and the paid annual leave entitlement or the applicable formula.

In relation to termination, the SEA should state the applicable notice periods for indefinite agreements, the expiry date for fixed-term agreements or, in the case of voyage agreements, the destination port and the timing of discharge. The agreement should further set out the seafarer's entitlement to health and social security protection benefits and repatriation and include a reference to any applicable Collective Bargaining Agreement (CBA).

It is important to note that these MLC particulars are a floor, not a ceiling, for a Kenyan seafarer. Where the SEA also constitutes a foreign contract of service under Part XI of the Employment Act, sections 82 to 85 apply in addition:

- Section 82 requires the contract to be in the prescribed form, signed by both parties, and attested by a labour officer.
- Section 83 requires the labour officer to be satisfied of the employee's genuine consent, the absence of fraud, coercion, undue influence, mistake of fact or misrepresentation, compliance of the terms with the Act, the employee's understanding of those terms, medical fitness for the duties, and the absence of any conflicting existing contract of service.
- Section 84 requires an employer who does not reside or carry on business in Kenya to give security by bond, with one or more sureties resident in Kenya approved by the labour officer, for due performance of the contract. Where the employer has an authorised agent resident in Kenya, the Cabinet Secretary may direct that the bond be given by that agent instead, and the agent is then personally bound by its terms even though the employer has been disclosed as the principal.
- Section 86 makes it an offence to recruit or induce a person to work abroad outside this framework, including through informal or social-media-based recruitment. On conviction, the penalty is a fine of up to KES 200,000, imprisonment for up to six months, or both.

Two further points matter in practice. First, a contract made outside Kenya is not automatically unenforceable for want of Kenyan attestation: section 89 preserves the parties' rights under a contract of service made abroad, provided it is attested by a judge or magistrate of that country and authenticated by the court's official seal, with a specific safeguard where the employee cannot read or understand the contract. Second, section 88 operates as a general penalty provision, catching any other breach of the Act for which no specific penalty is prescribed, with a fine of up to KES 50,000, imprisonment for up to three months, or both, without preventing separate proceedings under any other applicable law.

An SEA silent on repatriation, termination notice, or the wage formula does not merely reflect incomplete drafting. It falls short of the mandatory minimum, and that shortfall is itself a matter a seafarer or their advisor may raise.

ENFORCEMENT, COMPLAINTS AND DISPUTE RESOLUTION

Every ship of 500 gross tonnage or more on international voyages must carry a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance (DMLC) in two parts: Part I, issued by the flag State, sets out the applicable national standards; Part II, prepared by the shipowner, states how the shipowner intends to meet them on that ship. Both documents are meant to be available to seafarers on request.

Additionally, every covered ship must also operate a fair, effective onboard complaint procedure under Standard A5.1.5. A seafarer may complain directly to the master, is entitled to be accompanied, and, where the complaint remains unresolved, may escalate it to the shipowner's shore-based contact, the flag State, or, where the ship is in port, the port State authority.

For a Kenyan seafarer, this often means a complaint may be raised directly with the Kenya Maritime Authority, given Kenya's membership of the Indian Ocean MOU on Port State Control, and international bodies such as the International Transport Workers' Federation (ITF) maintain port inspectors who can assist independently of the employer and advise on the right legal procedures.

These mechanisms are not theoretical. In January 2026, the ITF reported that 2025 was the worst year on record for seafarer abandonment worldwide, with 6,223 seafarers left behind on **410 vessels**, owed a combined **USD 25.8 million** in unpaid wages. Kenyan crew have been directly affected: four Kenyan seafarers were left stranded in Oman following the abandonment of the vessel MV Saharla, and ten crew were abandoned for eighteen months aboard the MV Jinan at Mombasa in 2019. In the MV Saharla matter, it was a formal appeal by the Seafarers Union of Kenya, invoking Kenya's status as an MLC signatory, that secured government and diplomatic intervention.

COMMON RISK AREAS

- Repatriation clauses that are absent, vague, or silent on the triggering circumstances.
- Wage figures or formulas that differ between recruitment representations and the signed SEA.
- Absence of, or inability to produce, financial security certificates for repatriation and abandonment, or for occupational injury and death compensation.
- Recruitment conducted informally, including through social media, or SEAs signed only after arrival abroad.
- Duty restrictions, most often medical stand-downs, that are asserted verbally or in a company memo without any reference to a specific clause, standard or medical finding.
- Substandard accommodation, food, or rest-hour record-keeping, which are among the most common port State inspection findings.

PRACTICAL CHECKLIST

Before signing an SEA or crew agreement, confirm:

- Employer details are clearly identified and traceable.
- Vessel, flag, rank, and duration of engagement are defined.
- Wages, overtime, leave pay, allotments, and currency are fully broken down.

- Working hours, rest periods, and logging mechanisms are specified.
- Repatriation triggers and financial security are addressed.
- Medical coverage, insurance, and termination terms are stated.
- Governing law, jurisdiction, and grievance procedures are set out.

If a dispute has already arisen:

- Gather the SEA, CBA if any, medical reports, and all relevant correspondence.
- Request, in writing, the specific clause or rule the employer relies upon.
- Use onboard or company grievance procedures while retaining independent records.
- Obtain advice promptly, given the exclusive jurisdiction of the Employment and Labour Relations Court and the applicable limitation periods.

CONCLUSION

Kenyan seafarers work under a genuinely layered system of protection, and that is a strength rather than a complication once its parts are understood. The MLC sets the international floor; the Employment Act adds a Kenyan attestation, consent and security layer on top of it; and the SEA translates both into terms specific to the seafarer and the ship. A gap in any one layer, an unattested contract, a missing repatriation clause, a suspension with no cited authority, tends to surface as a dispute precisely because the other layers were relied upon to catch it and did not. For employers, agencies and shipowners, the practical answer is to treat compliance as part of recruitment and contracting from the outset, rather than as a defence assembled after a claim is filed.

HOW CM ADVOCATES LLP CAN HELP

The employment of seafarers often involves more than one legal system. A Kenyan seafarer may be recruited in Kenya, employed by an international shipowner, serve on a vessel registered in another jurisdiction and become subject to the maritime and employment laws of several countries. Disputes concerning medical fitness, wages, repatriation, termination or working conditions therefore require an understanding of both Kenyan law and the international maritime framework.

CM Advocates LLP advises clients on maritime, employment, regulatory and commercial matters affecting the shipping and Blue Economy sectors. Our multidisciplinary approach allows us to address disputes and compliance issues from both the maritime and employment perspectives. Our support may include:

- Reviewing Seafarers' Employment Agreements (SEAs) and crew agreements, including remuneration, leave, termination, repatriation, medical obligations and dispute resolution provisions.
- Advising on seafarer medical-fitness disputes, including cases involving suspension, withdrawal of duty, medical certification and return-to-work decisions.
- Advising on wages and employment entitlements, including unpaid wages, leave, overtime, deductions and other contractual or statutory benefits.
- Advising on repatriation and abandonment, including the contractual and regulatory obligations of shipowners and the available remedies where those obligations are not met.
- Advising shipowners, operators and recruitment agencies on maritime labour compliance, including the interaction between Kenyan employment law, the MLC 2006, the Merchant Shipping Act and applicable maritime regulations.
- Assisting seafarers with employment disputes, including disputes arising from suspension, termination, breach of contract, non-payment of wages and other employment-related claims.
- Advising on regulatory and compliance requirements, including matters involving the Kenya Maritime Authority and other maritime regulators.
- Representing clients in maritime and employment disputes, including litigation, arbitration, negotiation and other appropriate dispute resolution processes.
- Advising on cross-border maritime employment matters, where the seafarer,

employer, vessel, flag State and place of performance are located in different jurisdictions.

Our **Blue Economy & Maritime Law Practice Unit** works alongside our **Dispute Resolution & Appellate Practice Unit** to provide integrated advice on matters at the intersection of maritime operations and employment law. CM Advocates LLP also has an established maritime practice covering shipping disputes, admiralty enforcement, maritime regulatory compliance and cross-border disputes.

This publication is intended for general information purposes only and does not constitute legal advice or a legal opinion. It is not intended to be a substitute for legal advice on any specific matter. The application of the law will depend on the particular facts and circumstances of each case. If you require advice your specific circumstances, please contact **Cyrus Maina, Managing Partner** (cmaina@cmadvocates.com) and **Fiona Ikou** (fikou@cmadvocates.com) or your usual contact at our firm.

Contact our Practice Units

Marine & Blue Economy Practice Group
E: blueeconomy@cmadvocates.com

Dispute Resolution & Appellate Practice Group
E: disputeresolution@cmadvocates.com

Contributors:

Cyrus Maina
Managing Partner
cmaina@cmadvocates.com

Fiona Ikou
Lawyer
Blue Economy | Oil and Gas | International Arbitration
fikou@cmadvocates.com

CM Advocates LLP – Contact Details

Head Office Nairobi
I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 or +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office
Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

Regional Presence
Uganda | Tanzania | Rwanda | Zambia | Ethiopia | South Sudan

www.cmadvocates.com