

The maritime salvor as a volunteer adventurer

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Abstract

This article reviews and examines the role of a maritime salvor in salvage operations in shipping law. It explains who a salvor is and the ingredients a salvor should satisfy for there to be compensation. These ingredients include the fact that the ship must be in danger; the service must be voluntary; the salvage service must be partially or fully successful and the subject matter of salvage must be maritime in nature. Furthermore, the legal framework in Nigeria that addresses the issue of maritime salvage will be reviewed. It concludes by recommending that salvage operation carried out on land be legally recognized in deserving cases for compensation in line with the state of affairs in maritime salvage.

Keywords: volunteer, maritime salvor, satisfy

Introduction

Salvage is a voluntary service by which ships or any other maritime property which are in danger of being lost in navigable water or other waters are assisted or rescued by volunteers. Such volunteers who engage in such salvage operations are legally known as salvors.

In *The Neptune*, Lord Stowell described a salvor as:

one who, without any particular relation to the ship in distress, proffers useful service, and gives it, as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship^[1].

It is noteworthy that at sea the person who saves property receives a reward which is generally computed in the light of “the fundamental public policy...for the encouragement of seamen to render prompt services in future emergencies^[2].” However, on land, the person who rushes in to save another’s property from danger is described as an “officious intermeddler, the volunteer whom even equity will not aid”^[3]. The right to salvage may, but does not necessarily, arise out of an actual contract. It may be a legal liability arising out of the fact that property has been saved, that the owner of the property who had the benefit of it should make remuneration to those who have conferred the benefit, upon him notwithstanding that he had entered into any contract on the subject matter^[4].

It is to be noted that the protection of lives at sea and of maritime property is very important which the law needs to encourage. This is because, without this encouragement, only few people would engage in maritime activity because of the risks associated with the industry in spite of its importance in international commerce^[5].

In Nigeria, the master of every vessel is statutorily bound to render assistance to any person in danger of being lost at sea

so far as to do so would not endanger his own vessel or persons on the vessel^[6]. Any master of a vessel who fails to obey this duty commits an offence and on conviction is liable to a fine not less than N 500,000.00 or to imprisonment for a term not exceeding two years or both^[7]. In carrying out this salvage operation, the owner and the master of a vessel or the owner of the property in danger is enjoined to co-operate fully with the salvor during the course of salvage operations^[8].

Characteristics of Salvage

For there to be an effective salvage which would entitle a salvor to receive compensation, the following ingredients must be available.

1. There must be a maritime peril from which the ship or other property could not have been rescued without the salvor’s assistance. That is, the ship must be in danger.
2. The Salvor’s act must be voluntary – that is, he must be under no official or legal duty to render the assistance.
3. The act must be successful in saving, or in helping to save, at least a part of the property at risk.
4. The service must be rendered to a legally recognized subject of salvage, that is, to vessels, their apparel, cargo and merchandise, bunkers, wreck etc.

The ship in danger

To determine whether a maritime property is in danger for it to satisfy this requirement, the test is usually both objective and subjective. Thus, the requirement that the subject of salvage must be in danger means real, but not necessarily immediate danger, provided that it is not so remote as to be a mere possibility^[9].

The onus of proof lies on the person claiming salvage operation to adduce evidence to show that at the time the salvage operation was commenced, the maritime property was exposed to real danger. Thereafter, it is left to the court to determine, whether within the available evidence before it, the property was in danger or not^[10]. The court in doing this must

treat every circumstance on its own merit, and as pointed out above, the test is usually both subjective and objective. A reasonably effective test is usually “would the Master of vessel in distress, assuming him to be a reasonable man, have answered, “yes” or “no” to the offer of assistance?”^[11]. Thus, in the decided case of *The Cynthera*,^[12] the auxiliary yacht *Cynthera* was stolen off New South Wales with the intention on the part of the thieves to sail her to South America. Subsequently, the *Cynthera* was sighted off Norfolk Island by the Master of *Colorado del Mar*. The Island’s administration was informed but it refused to send out a government launch due to the adverse weather conditions. However, it gave permission for a police officer to accompany the *Colorado del Mar* if she should attempt recovery. The *Colorado del Mar* went in pursuit of *Cynthera* and when the yacht took avoiding action, a collision occurred. The thieves were thrown into the water and later taken on board *Colorado del Mar* but attempts by the vessel to take possession of *Cynthera* were unsuccessful. The yacht was then unmanned and without power. The administration was again informed and a government launch was dispatched, the *Cynthera* boarded and was brought into Cascade Bay. The Plaintiffs, the owners of *Colorado del Mar*, claimed a Salvage reward on the grounds that they recovered the *Cynthera* from the pirates. The Defendants denied such a right, alleging negligence and counter claimed for damage caused by the collision. The court held that the plaintiffs were entitled to a reward. This is because the *Cynthera* was in danger, even if not physical danger, within the requirement of the salvage law and also, the Plaintiffs endeavours were voluntarily undertaken. Furthermore, it was held that the act of collision was not sufficient evidence of negligence, therefore, the defendants defence and counter-claim failed.

It is worthy of note that when it comes to the proof of “danger” as an ingredient of salvage, what is normally in dispute is not the existence of the danger but the degree of danger that exists.

Thus:

...a frightened, timid and perhaps incompetent ship’s Master, although suffering from an illusion that there was a real danger when in-fact there was not, could, by his attitude, constitute the existence of a danger himself^[13].

Thus, in *The Helmsman*,^[14] a tanker lay alongside a steamship which was in turn moored alongside a wharf on the Tyne. The tanker was transferring oil to the steamship. The steamship’s moorings broke, and both ships drifted across the river at the mercy of the tide and a gale force wind. With the aid of tugs the ships were re-berthed.

The steamship paid salvage but it was disputed that the tanker had ever been in danger. It was held that the tanker, although adrift, could have used her engines and would have saved herself at anytime. Therefore, no salvage was payable in respect of any services to her.

It would be fruitless to list the almost infinite range of acts which have been held to constitute salvage^[15]. This is because the consensus of case law on the subject seems to favour a liberal interpretation of the concept of danger^[16]. Therefore, the most important act is rescuing a ship in peril at sea and

towing her to a place of safety. Thus, if the ship was not a under command, unable to navigate or to reach port unaided, the service will be considered salvage even though the ship was not in imminent danger of destruction”^[17].

It was in the light of this that Gilmore posits that releasing a ship that has run aground or on reefs,^[18] breaching a ship to keep her from running on rock^[19], raising a sunken vessel,^[20] putting out a fire,^[21] and recapture of a ship taken by pirates^[22], are all salvage acts^[23].

Furthermore, the act of salvage “need not be so dramatic and need not even consist in rendering physical assistance”^[24]. So, standing by or escorting a distressed ship in a position to give aid if it becomes necessary^[25], giving information on the channel to follow to escape from an ice floe or to avoid running aground,^[26] carrying a message as a result of which necessary aid and equipment are forthcoming^[27], had all qualified for salvage activity in times of danger. Therefore, so long as the ship is in peril, any voluntary act which contributes to her ultimate safety may rank as an act of salvage^[28].

The service must be voluntary

For there to be a valid claim for salvage, the act or service must be voluntary. Since a salvage act must be voluntary, a person who is under a duty to render assistance cannot claim to be a salvor^[29]. The duty may arise in the following ways:

1. from the relationship of the salvor to the salved ship – as in the case of its own crew or passengers; or
2. from the relationship of the salving ship to the salved ship – as in the case of tug and tow; or
3. from the fact that the salvor was by virtue of his employment required to give aid – as in the case of pilots and firemen^[29].

Therefore, to defeat a claim for salvage, it must be shown beyond doubt that there existed a duty to render the services wholly and completely and, secondly, that duty was owed to the owners of the property saved. For example, a pilot on board or the crew of the ship in distress are usually unable to claim salvage unless the services rendered are “outside or beyond the scope and bounds of their duties under contract”^[30].

Therefore, where a pilot contracted to perform a pilotage service has acted over and above the call of duty and voluntarily to the extent of bringing his actions within the realm of salvage services independent of his contractual duties as a pilot, he is entitled to some compensation^[31].

The question may be asked as to whether a crew can maintain a salvage action against the same ship of which they are in-charge. Gilmore states that as a matter of doctrine, a crew member, no matter how heroic his acts may have been or how instrumental in saving the ship, is not entitled to salvage unless, before the acts were performed, there had been a final abandonment of the ship by the master^[32]. Thus, in *Matt W. Ransom*,^[33] a crew salvage was denied where after torpedoing, the master had ordered the crew into lifeboats against the danger of sinking but with the intention of returning aboard if it should prove possible.

Also, in *The Albion*^[34], a ship caught fire and her steering gear jammed on her way out of Avon mouth. The vessel’s wireless operator claimed a salvage award for his part in saving the ship with 11 other members of its crew, including

the chief officer. The ship's master, together with other crew members, had left the vessel in some of the ship's lifeboats which had broken away from the ship and drifted away. The court held that since there was no express order by the Master to abandon ship, there was no abandonment either actual or constructive, to that extent, therefore, the crew's contracts of services were not terminated at the time when they performed what they considered as salvage services. The claim was dismissed.

Therefore, for abandonment to be valid, there must at the time of the order to abandon, no hope or intention of returning to the stricken ship, usually expressed in "*sine spē recuperandi and sine spē reverendi*"^[36]

Also, no right of salvage accrues to crewmen as such, and claiming as individual salvors, unless their contract of employment has been actually or constructively terminated before the salvage service commenced. This is because it is implied in the terms and conditions of their contract of service that they shall "use their best endeavours and strive to the best of their ability to save and preserve their ship in time of peril".^[37]

However, in the following instances the court upheld the existence of valid termination of employment and authorized abandonment of ship under the Master's authority.

1. The *San Demetrio*^[38], a tanker was severely damaged in the North Atlantic by gunfire from a German warship. She was fully loaded with a cargo of petrol. The Master gave the order to abandon ship. The whole crew left in three life boats. Subsequently, the tanker caught fire after being hit again. The following day the tanker, still on fire, was sighted again by one of the lifeboats. Under the command of the second officer, the boats' crew reboarded the ship and, with great skill and courage, brought the vessel several hundred miles through bad weather to safety on the Clyde. The crew claimed salvage award. The court held that the vessel had been properly abandoned under the orders of her Master. Therefore, the vessel's own crew were entitled to claim salvage. Also, in *The Warrior*,^[39] a steamship was disabled and drifted onto a rocky shore in the Canary Island. Subsequently, she filled with water and some hours later the Master and crew left the vessel and went ashore. On the following day, the Master formally discharged his entire crew in a written document. Subsequent to that discharge, some crew members at the Chief Officer's request returned to the ship and after several days' effort they were successful in saving stores and substantial amount of the cargo. It was held that the concerned seamen were entitled to salvage reward since their contract of employment was validly terminated.

Furthermore, in *The Beaver*,^[40] the Master and a boy apprentice of a British Merchant ship were awarded salvage remuneration for bravely regaining possession of their vessel from French privateers, and, with a little outside assistance, navigating it safely back to an English port.

It should further be noted that passengers, like crew members, are held to be under a duty to give aid when the ship is in danger, so that, short of abandonment, their efforts are not customarily compensated. The duty, however, is not absolute as in the case of the crew and, without abandonment,

exceptionally ingenious or meritorious services have occasionally been rewarded^[41]. One type of situation where a passenger could justify his claim to reward is if he chose to remain with stricken ship to assist in her preservation when an alternative means of safety for himself and his property was offered to him. This means that what assistance a passenger provides must be material and significantly contribute to the ultimate success of the rescue^[42]. Thus, in *Newman*^[43], a sailing ship stranded on shoals off the English coast, was abandoned by Master and the bulk of the crew. The pilot was too intoxicated to be capable of any action. The ship was brought to safety by the efforts of a passenger who, as it happened, was a qualified merchant marine captain and who acceded to the request of the vessel's chief officer to take control. It was held that in volunteering to act, he ceased to be a passenger altogether and certainly did more than was expected of him under the circumstances.

Salvage service must be partially or fully successful.

The basic principle of salvage law is that the salvor is rewarded only if, and to the extent that, he has been successful in saving property. However, success need not be total. Partial success no matter how small, provided there is a small measure of preservation of the owner's property, is sufficient^[44].

The requirement that service must be successful is explained under what is referred to as "*no cure – no pay*" concept^[45]. The basis of this concept is that reward should only be paid out of the fund preserved as a result of the property having been saved^[46].

It is of note, however, that a shipowner may agree to pay for salvage services to ship or cargo whether or not they are successful. This means that salvage can, in certain situations be payable where service to be rewarded has not actually contributed to the final savings of the property^[47].

Under "*no cure – no pay*", the salvor "gambles on his ability to complete the job successfully, short of which he gets nothing"^[48].

The most widely used form of contract salvage agreement is the "*Lloyds Standard Form of Salvage Agreement/No Cure – No Pay*". The use of the form appears to be worldwide, not only by professional salvage outfits but by "fortuitous or amateur salvors as well"^[49].

The form provides thus: *The services shall be rendered and accepted as salvage services upon the principle of "no cure – no pay"*. A blank is provided for inserting the sum which is to be the salvors "remuneration in the event of success"^[50]. In any case, the actual sum to be paid in salvage is seldom, if ever, fixed before the start of operations but is left for subsequent assessment by some independent arbitrators or tribunal^[51].

Subject of salvage must be maritime in nature

Historically, before a property is regarded as a subject of salvage, it must (a) be on water (or at any rate on the beach) and not on land^[52], and (b) the property must be maritime in nature – that is, the vessels, their apparels, furnishings and cargo^[53]. According to this theory, cargo was salvageable because, through its association with the ship, it had become maritime property and not merely because it was (or had been)

afloat in navigable waters^[54].

However, the principle appears to have changed “as the more recent cases suggest that anything rescued from navigable waters, without regard to what it is or how it got there, will be considered salvageable”^[55].

Thus, the court in *Hollinsworth v. Seventy Doubloons & Three Small Pieces of Gold* stated:

...the test as to what is the subject of salvage is no longer, whether it is a vessel engaged in commerce or its cargo or furniture, but whether the thing saved is a moveable thing, possessing the attributes of property, susceptible of being lost and saved in places within the local jurisdiction of the admiralty^[56].

Therefore, every act of assistance or salvage which yields a useful result gives a right to reward. However, payment shall not be made to a salvor if salvage operations do not yield any beneficial result^[57].

A person who takes part in salvage operations notwithstanding the express and reasonable prohibition on the part of the vessel to which the services were rendered shall not be entitled to receive a reward^[58].

Criteria for salvage award

According to section 391 MSA 2007, the criteria for determining the reward for salvage operations shall be fixed by taking into consideration the following points:

- the salvaged value of the vessel and other property;
- the skill and efforts of the salvors in preventing or minimizing damage to the environment;
- the measure of successes obtained by the salvor;
- the nature and degree of the danger;
- the skill and effort of the salvors in salvaging the vessels, other property and life;
- the time spent and expenses and losses incurred by the salvors;
- the risk of liability and other risks run by the salvors or their equipment.
- the promptness of the services rendered;
- the availability and use of the vessels or other equipment intended for salvage operations;
- the state of readiness and efficiency of the salvors' equipment and the value thereof.

It is submitted that section 391(1) of MSA, appears to be a wholesale adoption of what is usually referred to as “Justice Clifford’s opinion in the *Blackwall*”,^[59] which stipulate that:

Courts of admiralty usually consider the following circumstances as the main ingredients in determining the amount of the award to be decreed for a salvage service:

1. The labor expended by the salvors in rendering the salvage services.
2. The promptitude, skill and energy displayed in rendering the service and saving the property.
3. The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed.
4. The risk incurred by the salvors in securing the property from the impending peril.
5. The value of the property saved.

6. The degree of the danger from which the property was rescued^[60].

It is of note that valuation of the property salvaged is of great importance in deciding on the award to be made. However, when it comes to such things as “skill”, “energy”, “risk” and “danger” as provided for by the Merchant Shipping Act 2007, it is submitted that the courts would have some difficulty in assessing these and there may be need for the court’s discretion to be exercised one way or the other. In doing this, the use of a reasonable man’s test, that is, the objective test, would not be out of place.

It is also noteworthy that when the salvage is of human life, no remuneration is due from persons whose lives are saved^[61]. However, a salvor of human life who took part in the services rendered on the occasion of an accident giving rise to the salvage or assistance, is entitled to a fair and reasonable reward from the owners of the salvaged vessel and cargo as maybe determined by the court^[62].

Exclusion of compensation on salvage operation

Section 399 of MSA 2007, provides that salvage compensation shall not be made where the salvage operation took place in inland waters of Nigeria and in which all the vessels involved are of inland navigation^[63], where a salvage operation takes place in inland water of Nigeria and in which no vessel is involved^[64], or in a fixed or floating platforms or mobile offshore drilling units when the platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources^[65].

Also, where the salvage operation was with regard to a warship or other non-commercial vessel or non-commercial cargo owned by the Federal Government of Nigeria and entitled at the time of salvage operation in sovereign immunity, compensation is not payable^[66]. Furthermore, salvage services shall not be used as a basis for the seizure, arrest or detention of humanitarian cargoes if the country that donate humanitarian cargoes has agreed to pay for salvage services rendered in respect of the humanitarian cargoes^[67].

Limitation of Action

An action for compensation for salvage must be instituted within two years of rendering the services otherwise it becomes time barred^[68]. The limitation period commences on the day the salvage operation is terminated but may be extended where it has not been possible to arrest the vessel assisted or salvaged in Nigeria^[69].

Conclusion

It would be concluded by stating that salvage is a voluntary service by which ships or maritime property which are in peril and immediate danger of being lost at sea are voluntarily assisted or rescued by others. Such volunteers who engage in such salvage operation are known as salvors.

The right to salvage may or may not arise out of an actual contract but rather legal liability arising out of the fact that property has been saved. Thus, the owner of the property who had the benefit of it should make remuneration to those who have conferred the benefit upon him notwithstanding that he had entered into any contract on the subject^[70].

The characteristics of salvage and the ingredients that are

considered in the award of the salvage compensation have also been explained.

A salvor is in a peculiar situation and is sometimes referred to as a volunteer adventurer. This is because while ordinarily, volunteers are seldom compensated for their voluntary service, a salvor is mostly compensated for his volunteer missions. The reason given for this is that transactions at sea are always perilous. This is in contradiction to salvage carried out on land which even equity cannot aid. It is hoped that in future, salvage on land would be legally recognized and in deserving cases, compensated.

References

1. Christopher Hill, *Maritime Law*, 4th edn. Lloyds of London Press Ltd, P.313. See also *Five Steel Barges* (1890) 15 PD 142.
2. Grant Gilmore and Charles L. Black, *The Law of Admiralty* (1975) 2nd edn, Mineola, New York (The Foundation Press, Inc.) P.532.
3. Ibid.
4. Omogbai I. Omo-Eboh, "Ports of Refuge and Wreck Removal in Nigeria Territorial Waters", (9th Maritime Seminar for Judges (Organized by Nigerian Shippers Council). P.4.
5. Ibid.
6. Merchant Shipping Act (MSA) 2007, section 390(1).
7. Ibid. Section 390 (2). See also Article 10 of the salvage convention 1989 which Nigeria is a state party. See also section 8 of the Cabotage Act of 2003, which exempts vessels engaged in salvage duties from certain responsibilities.
8. MSA 2007, section 387 (3) (9).
9. Christopher Hill, (n1) P. 318.
10. Ibid.
11. Ibid.
12. (1965) 2 Lloyd's Rep. 454, NSW Supreme Court (as cited by Christopher Hills (n1) P. 319.
13. Christopher Hill, (n1) P. 318.
14. (1950) 84 L.I.L Rep. 207.
15. Christopher Hill (n1) P. 320. See also *The Troilus* (1951) 1 Lloyd's Rep. 467, HL; *The Goring* 81 L.L.L Rep. 262.
16. Grant Gilmore (n2) P.537.
17. *The Sandringham*, 10F. 556 (E.D Va. 1882).
18. *The Jason*, 257 F. 438 (E.D Va. 1919).
19. *The Camanche*, 75 U.S (8 wall) 448 (1869).
20. *The Blackwall*, 77 U.S (10 wall), (1870).
21. *The Lomonosoff* (1921) P. 97.
22. Grant Gilmore, (n1) P.537.
23. Ibid.
24. *The Pendragon Castle*, 5 F. 2d 56, 1925 A.M.C 146 (2d Cir. 1924).
25. *South American S.S Co v. Atlantic Towing Co.* 22 F. 2d 16, 1928 A.M.C 148 (5th Cir. 1927).
26. *The Cachemire*, 38 F. 518 (D.S.C 1889).
27. Ibid.
28. Grant Gilmore, (n2) P. 541
29. Ibid.
30. Christopher Hill, (n1) P. 315.
31. Ibid. See also *The Sandefjord* (1953) 2 Lloyds Rep. 557 where a pilot's advice was regarded as valid enough to ground salvage action.
32. Grant Gilmore (n2) P. 541.
33. Ibid.
34. (*Drevals v. United States*) 66 F. sup 788, 1946.
35. (1941) 70 L.L.L Rep. 247.
36. *Christopher Hills* (n1) P. 317.
37. Ibid. P. 316.
38. Ibid.
39. (1800) 3. Ch. Rob 92.
40. Grant Gilmore, (n2) P. 543; (citing *Towle v. The Great Eastern* 24 Fed cas. 75, case No. 14, 110 (S.D.N.Y 1864).
41. *Christopher Hill* (n1) P. 318.
42. Ibid.
43. Grant Gilmore, (n1) P.518, citing *The Newman* (1804) 3 Bos P. 612.
44. *Christopher Hill* (n2) P. 321.
45. Ibid.
46. Ibid.
47. Ibid. citing *The Rene* (1955), Lloyd's Reg. 101.
48. Ibid, P.583.
49. Ibid.
50. Ibid.
51. *Christopher Hill* (n1) P. 321.
52. See *Jefferson*, 215 U.S 130, 30 S.C.T 54 (1909). Where a vessel under repair in dry dock was held subject to salvage. See also *Gas Float Whitton* (No. 2) (1895) P. 301 where it was held that a structure anchored in a navigable waters as a beacon was not, when it came adrift, salvageable property.
53. *Cope v. Vallete Dry Dock Co* 119 U.S 625, 7. S. ct. 336 (1887), where the same conclusion as to dry-dock was reached. Here, a dry dock was moved in a fixed position for 20years. It was agreed that cargo was salvageable, whether it was recovered from the ship, or saved along with the ship or picked up from the water as jetsam, flotsam or ligam, or raised from the bottom or found on the beach.
54. Grant Gilmore (n2) P. 538.
55. Ibid.
56. 12 Fed. Cas. 380, Case No. 6620.
57. MSA 2007, Section 389 (1).
58. Ibid, section 389(3).
59. Grant Gilmore, (n1) P. 559. citing *The Blackwall*, 77 U.S (10 Wall) 1.14 (1869).
60. Ibid.
61. MSA 2007, section 394 (1)
62. Section 394(2).
63. Ibid. section 399(1)(a)
64. Ibid. 399 (1) (b).
65. Ibid. Section 399 (1)(c).
66. Ibid 399 (2).
67. Ibid. Section 399 (3).
68. Ibid. Section 398 (1).
69. Ibid.
70. *Christopher Hills*, (n1) P. 142.