



**FACULTY OF BUSINESS ADMINISTRATION
IMO STATE UNIVERSITY**

www.imsubiznessjournals.org
imsubiznessjournals@yahoo.com

**WEST AFRICAN JOURNAL OF
BUSINESS AND MANAGEMENT SCIENCES**
NIGERIAN EDITION

VOL. 7 NO. 3 JUNE, 2018

WEST AFRICAN JOURNAL OF BUSINESS AND MANAGEMENT SCIENCES
FACULTY OF BUSINESS ADMINISTRATION
IMO STATE UNIVERSITY, OVERRI
NIGERIAN EDITION
VOL. 7 NO. 3 JUNE 2018

**LEGAL APPRAISAL OF MARITIME LIENS IN ADMIRALTY BUSINESS: PRACTICE
AND PROCEDURE IN NIGERIA.**

ADEPOJU ADEBIYI ANTHONY

College of Law
Redeemer's University
Ede, Osun State

And

IRINYEMI ADEMOLA

Department of Transport & Tourism
Faculty of Management and Social Sciences
Redeemer's University
Ede, Osun State

Abstract

Sometime, when a maritime lien arises from the claim and the owner(s) of the ship or the ship itself or both of them need to be held responsible for the deed of their ship, the appropriate parties to be included in an actions at times often missed and thereby create an irreparable vacuum and rendered the judgment unenforceable or too difficult to enforce. This is as a result of misunderstanding of or confusion as to the kind of cause of action that can ground an admiralty action in rem warranting the arrest of the ship or there ("a thing") or the kind of maritime claim to ground an action in 'personam'. Ex parte orders of arrests of the ship or other maritime 'res' have usually been set aside and the arrested ship or maritime 'res' released because the person who would be liable in an action in 'personam' was not the beneficial owner of the vessel as it was stated in the case of M.V.S. Araz v. LPG Shippings A. (1993 – 1995) 5 NSC 298. The court among other things held that such indiscriminate arrest of ship on insufficient grounds or without good cause, occasion undue delay and colossal loss and expense to ship owners or charterers or owners of the 'res' arrested and are goods basis for application to court by defendants for compensation.

Introduction

Maritime Law, also referred to as admiralty law, consists of the statutes and case precedents that govern legal disputes originating on Navigable waters. Navigable waters include all bodies of waters that are capable of being used for interstate or foreign commerce. Thus a large river that flows into the ocean or cross state line would fall within maritime jurisdiction. A lake entirely within a single state would not.

Admiralty issues or law deals with a variety of factual scenario. Examples include commercial accidents resulting in damage to vessels and cargo, seamen injuries and hazardous

material spills. Admiralty law can also apply to piracy and criminal activity, liens against ship, wake damage, and towage constraints. "Admiralty" in a legal and competent acceptable description means "The system of jurisprudence that has grown out of the practice of Admiralty Court.¹

"Jurisdiction" on the other hand means authority which a court has to adjudicate on a matter brought or instituted before it. The necessary competence of an institution established by a law or statute is what is called jurisdiction, and such institution is called "court".

Courts are generally conferred with jurisdiction either by the constitution of the land or an enabling statute.

The jurisdiction of a court to entertain certain matters submitted before it may be limited or unlimited. The limitation may be limited by either the amount or value of the property in litigation or as to the type of the subject-matter it can handle. Courts are creatures of statutes, and it is the statute that created a particular court that will cloth it with jurisdiction. Admiralty jurisdiction of a court is the authentic authority which a court has to decide on any admiralty matters instituted before it for adjudication.

In the time past specifically under 1979 constitution² there were controversy as to which court has jurisdiction in respect of admiralty matters but presently the controversy has been settled and the only court that exercises admiralty jurisdiction in Nigeria is the Federal High Court³. However, this thesis will discuss extensively on admiralty jurisdiction and at the end, it will proffer solutions to conflict that normally arise in the jurisdiction of admiralty matters in Nigeria.

History and Origin of Admiralty Jurisdiction

One of the emergent features of the economic configuration of post oil boom in Nigeria is an increase in maritime activities, and one of the chain effects of this increase is invariably an almost proportional increase in maritime litigation.

The race for admiralty jurisdiction started in England in 1852 at common law where all actions were by way of proceeding in personam, since then an action in rem has been available in certain circumstances in maritime disputes. Admiralty court acts in the 19th century⁴. Introduced into English law the statutory right to arrest, originally conferring it upon claimants in respect of necessary materials supplied or services such as towage rendered to foreign vessels. The in rem jurisdiction was expanded in 1873-75 by the supreme court of judicature act and the right was next consolidated by the supreme court of judicature (consolidation) act 1925. This last mentioned statute was replaced by the 1956 Administration of Justice Act, itself being replaced by the Supreme Court act 1981⁵.

¹ Black law dictionary, 8th Edition pg 50

² Section 230 & 236 of 1979 Constitution of Federal Republic of Nigeria

³ Section 7 Federal High Court Act, LFN 2004.

⁴ Admiralty Courts Act of 1840 & 1861

⁵ Maritime Law by Christopher Hill: London Hongkong 1998, 5th Edition pg 91

However, Admiralty Jurisdiction in Nigeria can be said to have actively commenced in 1890. The Supreme Court act of 1876 did not vest any of the courts with admiralty jurisdiction. The act⁶ specifically excluded the exercise of such jurisdiction. It thus provides as follows⁷

"The supreme court shall be a superior court of record, and in addition, to any other jurisdiction conferred by this or any other ordinance of the colonial legislature, shall within the limit and subject as in this ordinance mentioned possess and exercise all the jurisdiction powers and authorities, expecting the jurisdiction and powers of the High Court of Admiralty, which are vested in or capable of being exercised by Her Majesty's High Court of Justice in England, as constituted by the supreme court of Judicature Acts 1873 and 1875".

The court of admiralty⁸ which came into force on 25th July 1890 was passes by the British Imperial Parliament. The Act⁹ gave the jurisdiction of colonial courts of admiralty was made to "be over the like places, persons, matters and things as the admiralty jurisdiction of the high court in England and shall have the same regard as that court in international law and the country of nations". The Act¹⁰ further conferred admiralty jurisdiction on every court of law having unlimited original jurisdiction in civil cases in the colonies, and by virtue of the same section of the Act¹¹. The Supreme Court which hitherto lacked jurisdiction became vested with jurisdiction.

The Act¹² empowered the Queen-in-council to direct that the provision of the colonial courts of Admiralty Act shall apply to any court established by the Queen for the exercise of jurisdiction in any colony. In exercising this power, the Nigerian protectorate admiralty jurisdiction order of 1928 was made. This order gave the supreme court of the colony of Lagos (i.e High Court) jurisdiction over admiralty matters, and by 1933, the jurisdiction of the Supreme Court of the colony of Lagos had gradually extended throughout the whole protectorates¹³. It is worthy to note that the Supreme Court for the colony of Lagos had been in existence since 1863 but exercise no jurisdiction over admiralty matters until 1928.

In 1943¹⁴, the Supreme Court (Amendment) ordinance no. 43 of 1933 was repealed by the Supreme Court Act 1943 and a new Supreme Court (i.e High Court) was established for the colony and protectorate of Nigeria. The admiralty jurisdiction conferred on the court by the Nigerian protectorate admiralty jurisdiction order of 1928 was retained in section 24 of the Supreme Court act of 1943 England admiralty law.

Consequence upon the adoption of Federal system of Government in 1954, the Federal Supreme Court was created, as well as high court for Lagos and each of the three regions of the federation, under this new federal structure none of the regional High Courts, the High Court of

6 Section 11 of Supreme Court Act of 1876

7 Section 11 Supra.

8 1890

9 Section 2 (2) Court of Admiralty Act 1890

10 Section 3 Court of Admiralty Act 1890

11 Section 3 Supra

12 Section 12 Court of Admiralty Act 1890

13 No. 43 of 1933 Supreme Court (Amendment) ordinance

14 Compiled Note on Maritime Law II National Open University 2015

Lagos, or the Federal Supreme Court was vested with admiralty jurisdiction. In 1956, the original admiralty jurisdiction of the former Supreme Court (i.e. High Court) became vested in the Federal Supreme Court. But upon attainment of Independence in 1960, a new Federal Supreme Court was created¹⁵. The new Act¹⁶ conferred admiralty jurisdiction upon the new court in the same manner as the acts of 1943 and 1955. This remained the position until 1963 when the original jurisdiction of the Federal Supreme Court in admiralty cases was replaced by the Admiralty Jurisdiction Act No. 34 of 1962. This Act made it possible at the same time for the Lagos and Regional High Courts to exercise jurisdiction in admiralty cases.

Furthermore, in order to effectively dispense with the plethora of maritime activities, the admiralty jurisdiction was modified with the establishment of the Federal Revenue Court in 1973 and later in 1976 translated into Federal High Court to accommodate plethora of cases in which maritime matters were included. The Federal High Court Act¹⁷, CAP 134 of 1990 laws of the federation (as amended) confers jurisdiction over admiralty matters on the federal high court. However, there were controversy as to whether high courts of a state can also exercise jurisdiction along with the federal high court because 1979 constitution¹⁸ gave jurisdiction in respect admiralty matters to the federal high court, while the same constitution¹⁹ gave unlimited jurisdiction to state high court to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, obligation or claim is in issue. In resolving the controversy the Supreme Court held in *JAMMAL STEEL STRUCTURES LIMITED VS. A.C.B.*²⁰; *SAVANNAH BANK LIMITED VS PAN ATLANTIC SHIPPING & TRNASPORTAGENCIES LIMITED*²¹ that the High Courts have concurrent jurisdiction with the Federal High Court over admiralty matters.

However, the controversy and confusion was resolved with promulgation of admiralty jurisdiction decree²². This Decree²³, explicitly provides that notwithstanding the provisions of any other enactment or law, the Federal High Court shall as from the commencement of the Decree exercise exclusive jurisdiction over admiralty matters whether civil or criminal. The struggle between the Federal High Court and State High Courts on jurisdiction in and over admiralty matters was put to rest following the enactment of Federal High Court (Amendment) Act No. 60 of 1991 and constitution (suspension and modification) Act No. 107²⁴ section 2 of the Act amended section 7 of the Federal High Court Act²⁵ and substituted the list of matters upon which the Federal High Court can exercise jurisdiction to the exclusion of the court.

¹⁵ No. 12 Federal Supreme Court Act 1960

¹⁶ Section 17 Federal Supreme Court Act 1960

¹⁷ Section 7 (1) (d)

¹⁸ Section 230 1979 Constitution of Federal Republic of Nigeria

¹⁹ Section 236 1979 Constitution of Federal Republic of Nigeria

²⁰ (1973) NSCC Volume 8, pg 619

²¹ (1987) INWLR pt 49

²² 1991

²³ Section 19 Admiralty Jurisdiction Decree of 1991

²⁴ 1993

²⁵ 1973

Thus, the Admiralty Jurisdiction Decree No. 59 of 1991 (now Admiralty Jurisdiction Act²⁶ was promulgated and that repealed the Admiralty Jurisdiction Decree of 1962 under which the state high courts were given jurisdiction over admiralty matters thus, Admiralty Jurisdiction Act²⁷ in conjunction with 1999 constitution²⁸ gave exclusive jurisdiction in respect of Admiralty matters to Federal High Court.

Classes of Claims Within the Admiralty

The gamut of maritime claims which fall within the jurisdiction of the Federal High Court, and these types of claims may be heard and determined by the court²⁹ and the Act³⁰ classified as proprietary maritime claims, general or statutory maritime claims and maritime liens.

Proprietary Maritime Claims

The Act³¹ distinguishes between what it refers to as “proprietary” maritime claims and “general” maritime claims. Proprietary maritime claims are enforceable rights which the owner of property has by virtue of his her ownership. For reasons which are not quite known, a ship has from very early times been notionally divided into sixty-four parts. This must have been to facilitate dealings and transfers of ships. An individual or company could own one part or more. All such owners of parts in the ship are co-owners of the vessel and such parts may be sold, transferred, assigned or mortgaged as with other proprietary rights.

Proprietary maritime claims within the context of the Admiralty Jurisdiction Act³² include claims relating to:-

- (1) The Possession of a ship
- (2) A title or ownership of a ship or a share of a ship
- (3) A mortgage of a ship or a share in a ship
- (4) A mortgage of a ships freight
- (5) A claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship
- (6) A claim for the enforcement of a judgement given by any court against a ship or other property in proceedings in rem
- (7) A claim for interest in respect of any of the above claims.

It is clear that for these categories of claims the admiralty jurisdiction “in rem” of the federal High Court may be involved. In keeping with the International Convention Relating to the Arrest of Seagoing Ships, Brussels³³, no ship other than the particular ship in respect of which the claim arose may be arrested in respect of any of these claims. In this respect the Act³⁴ provides as follows:-

26 CAPAS, LFN 2004

27 Supra

28 Section 251 (1) (g) and (3)

29 Admiralty Jurisdiction Act 2004

30 The Federal High Court (S. 251 (1) (g) and 251 (3) 1999 Constitution of Federal Republic of Nigeria

31 Section 2 of the Admiralty Jurisdiction Act 2004

32 Section 2 Supra

33 Section 2 (2) (a) – (d) of the Admiralty Jurisdiction Act 2004

34 May 10, 1952 Article 3 Rule 1

In the case of a claim as mentioned in section 2(2) (a) or section 2(3) (a); or a question as its mentioned in section 2(2) (b) of this Act, an action may be brought against the ship or property in connection with which the claim or question arose"

The claim in the comet case did not fall under any of these heads of claim and as such did not constitute a proprietary claim in respect of which an action in rem could be brought.

Maritime Liens

A maritime lien is a privileged charge on a ship or maritime property. It does not depend on agreement rather it accrues from the moment the event which give rise to a cause of action arises. Where a maritime lien exist, the admiralty jurisdiction "in rem" of the Federal High Court may also be invoked. A maritime lien has earlier been defined as a claim or privilege on a maritime 'res' in respect of service done to it or injury caused by it. The Ripon City³⁵, per Gorrel Barnes J. said it is not essential for the existence of such a lien that there be possession of a res because it is a claim or privilege on the res which is carried into effect by the legal process. A maritime lien travels with the res into whosoever's possession it may come and even in cases where the res may have been purchased without notice of the lien as it was reiterated in the case of Bold Buccleugh³⁶. It is principally a claim against the ship as opposed to the claim against the ship owner. This is because, the ship has caused harm, loss or damage to others or their property and must herself make good that or damaged.

The maritime lien is a proprietary interest in the res or property. It attaches to the res at the moment the cause of action arises and travels with it even into the hands of third or subsequent parties. As put by Carver in his work carriage by sea³⁷

"A maritime lien attached to the first property from the time the claim first arises, and clings to it without regard to the person who may have possession and notwithstanding any transfers of the general rights in the property".

Maritime lien is inchoate in nature and is devoid of any legal consequence unless and until it is carried into effect by legal process, by an action in rem. A claimant who wants to succeed in his or her claim must bring an action in rem against the ship. However, an action in rem does not lie against government ship or property, and where such has been commenced on the reasonable belief that ship was not a government ship, the court may order that the proceeding be treated as though it was an action in personam³⁸.

Shipping

Merchant shipping Act³⁹ classified inventory claims to include the following:-

- (i) Wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;

³⁵ (1878) pp. 226 at 141

³⁶ (1851) 7 Moo. P.C.P. 267

³⁷ 12th Edition, Vol. 2. Paragraph 138 at p 1172

³⁸ Section 24 (2) of Admiralty Jurisdiction Act 2004

³⁹ Section 66, Merchant Shipping Act 2007

- (ii) Disbursements of the master on account of the ship;
- (iii) Claims in respect of loss of life or personal injury occurring whether on land or on water in direct connection with the operation of the ship;
- (iv) Claims for salvage, wreck removal and contribution in general average;
- (v) Claims for ports, canal and other waterways, dues, and pilotage dues

Claims Under Maritime Liens as Specified by the Act⁴⁰

- (i) claims relating to salvage including life, cargo or wreck found on land;
- (ii) claims for damages caused by a ship;
- (iii) claims by the master or crew member of a ship for wages; and
- (iv) claims by the master in respect of disbursement on account of a ship.

General Maritime Claims or Statutory Liens

The former administration of Justice Act greatly widened the scope of the admiralty jurisdiction of the Federal High Court by extending the right to proceed in rem to many claims which would not have ordinarily given rise to a maritime lien⁴¹. Such liens are of a different nature, form maritime liens and are often described as statutory liens because they arise from statute unlike the maritime liens which are product of the common law.

Classification according to the Act are general or statutory maritime claims or statutory liens.

- (1) Collision claims
- (2) Damage to a ship
- (3) Loss of life or personal injury caused by a ship
- (4) Loss of or damage to goods carried by a ship
- (5) Claims arising from agreements for carriage of goods or persons by a ship or for the use or hire of a ship;
- (6) Salvage claims
- (7) General average claims
- (8) Pilotage
- (9) Towage of a ship or water-born aircraft
- (10) Goods supplied or to be supplied to a ship
- (11) Claims in respect of the construction of a ship
- (12) Claims for alteration, repair or equipping of a ship
- (13) Claims for port charges or dues
- (14) A claim arising out of bottomry
- (15) Claim for disbursement on account of a ship
- (16) Claims for insurance premiums due on a ship or its cargo
- (17) Claims for wages of crewmen
- (18) Claims for forfeiture or condemnation of a ship or goods carried thereon
- (19) Claims for enforcement or arbitral awards in proprietary maritime claims; and
- (20) Claims for interest in any proprietary maritime claims

⁴⁰ Section 3 (2) & 3 (4) of the 1956 Act now in section 2 (3) (a) – (u) Admiralty Jurisdiction Act 2004

⁴¹ Admiralty Jurisdiction Act 2004 (Supra)

These are categories of statutory liens created by the Act⁴². Where an action can be brought under any of these heads of claim, and action in rem may be brought to enforce the claim. The question that follows it is that could it be argued that the transaction between the parties in the comet case was a claim arising out of an agreement relating to the carriage of goods as provided by the Act⁴³. The courts have held that for a claim to fall under this head of claim it must arise out of the contract of carriage of goods between the parties.

In the case of the *St. Eleffevio*⁴⁴ and *Savannah Bank VS Pan Atlantic Shipping and Transport Agencies Ltd*⁴⁵. It was held that the words of the equivalent section 1 (1) (h) of the Administration of Justice Act were wide enough to cover claims whether in contract or tort arising out of any agreement relating to the carriage of goods in a ship. For example, a claim for refund for demurrage payment. However, the claim must arise out of the agreement between the parties. Where a contract of carriage of goods, for example does not make provision for the return of a container, a claim for the value of such a container will not constitute a maritime claim within the ambit of this section, this is seen in the case of *African Container Express vs The Tourist Company*⁴⁶ and *West African Shipping Agency (Nig) Ltd. vs Nablico Ltd.*⁴⁷.

Admiralty Claims that do not arise from Maritime Liens, Statutory Liens, or Proprietary Claims but which are Enforceable only in Personam

In a recent ruling in the case of *COMET MERCHANT BANK LTD. VS COLUMBIA INTERNATIONAL LTD. & ORS*⁴⁸. The Nigeria Federal High Court examined the type of actions that may be brought before it under its new jurisdiction as enlarged by the Admiralty Jurisdiction Decree of 1991 now Act 2004. The court examined in particular the position of matters which come within this extended jurisdiction but which do not constitute maritime liens, statutory liens or proprietary claims as classified under the old 1991 Decree which similar provision is contained in Admiralty Jurisdiction Act 2004.

The Plaintiff, Comet Merchant Bank, granted a pre-shipment export finance loan facility in the cumulative sum of twenty million naira to the 2nd defendant company, Intra Fisheries on the 2nd of November, 1992, for a period of 180 days. It was agreed that the proceeds which accrued from the export should be repatriated through plaintiff so as to be utilized in offsetting the loan. Contrary to this agreement the 2nd defendant failed to repatriate the export proceeds agreed. Instead, the 2nd defendant diverted the export which accrued from the loan to the first defendant. The first defendant on its part now utilized the fund to import about 1600 metric tons of fish (Herring) into Nigeria while the loan granted the 2nd defendant remained unpaid.

The Directors/owners of the 1st and 2nd defendants were virtually the same. The loan facility expired on the 31st of July 1993 without being paid where upon the plaintiff filed an action for breach of contract and repayment of the debt and accrued interest. This action was

⁴² S. 2 (3) (f) of the Admiralty Jurisdiction Act 2004

⁴³ (1957) 2 ALL ER. 374

⁴⁴ Op cit p -

⁴⁵ Vol. 3 N.S.C. p. 268

⁴⁶ Suit No. FHC/L/62/86

⁴⁷ FHC/L/CS/1345/94 unreported)

⁴⁸ Admiralty Jurisdiction Act 2004 (Supra)

commenced as an action in rem. The plaintiff also sought and obtained an arrest order in respect of the cargo of Herring aboard the M.V. Kapitan Volchkowich in addition to several other interim injunction orders. The 1st defendant brought a notice of preliminary objection on the ground that the Federal High Court had no jurisdiction to entertain the action as an admiralty action in rem, or to grant reliefs (more particularly) the arrest of cargo, being a relief conditional upon the ability to bring an admiralty action in rem. It was the contention of the defendant that the plaintiff's claim if any was enforceable only by an action in personam.

The presiding judge Jinadu J., held that the plaintiffs' claim was for a simple debt against the 2nd defendant. This claim, he said was unconnected with the security of the ship, the cargo it carried, or any bank accounts. He further held that the claim fell within the admiralty jurisdiction of the Federal High Court and was a claim enforceable in personam and not in rem. In his opinion, for a claim to fall within the definition of a maritime claim or maritime liens for which the arrest of a ship or its cargo or other properties like freezing of bank accounts can be effected, the claim must fall within the provisions of section 2(2) (a-d) and 2 (3) of the Admiralty Jurisdiction Decree now Act 2004 which defined proprietary maritime claims and section 5(3) which defines a maritime liens. If a claim does not fall within any of these categories the claim cannot be entertained in rem but in personam.

He therefore held that the vessel M.V. Kapitan Volskovich and the consignment of fish on board the vessel should not have been arrested and detained. That the action never savoured of any maritime claim. It is a simple debt owed by one company to another and guaranteed by three other companies. All orders made in respect of the arrest of the said vessel and cargo were discharged.

Types of Actions in Maritime Claims

Under the Act⁴⁹ two types of actions are recognized and they are:

- (1) Action in Rem and
 - (2) Action in Personam
- (1) **An Action in Rem:** is an action against a res or property which is usually the ship itself. It may in certain circumstances be commenced against a freight or cargo or proceeds of sale as stated in the comet case.
 - (2) **An Action in Personam:** is a form of proceeding in maritime claims brought against persons who are usually the owners of a ship. An action in personam as distinct from an action in rem is one directed at the person, usually the owners, charterers or operators of a ship.

The Admiralty Jurisdiction Decree 1991 now Admiralty Jurisdiction Act 2004 set out the extent of the jurisdiction of the Federal High Court in admiralty matters Act⁵⁰ provides that the:

"admiralty jurisdiction of the court shall apply to (a) all ships, irrespective of the place of domicile or residence of the owners; and (b) to all maritime claims whenever arising"

Causes of action over which Federal High Court has jurisdiction listed under section 1 of the 1991 now section 1 of Admiralty Jurisdiction Act 2004 includes

⁴⁹ Section 3 of the Admiralty Jurisdiction Act 2004

⁵⁰ Section 1 (i) (h) of the Act 2004

Any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or aircraft⁵¹.

The comet of Mr. Chidi Ilogu of the maritime newsletter volume 2 pg 54 was however appreciated when he described the transaction in the case of comet as banking a letter of credit transaction. He went further by bringing the prior position of the client to our notice that parties to a documentary credit transaction deal in documents only and not in the goods, and that the contract in question in such cases, is a contract in contemplation of an order of goods and not one of carriage of goods in a ship. It is a normal contract between customer and his local bank in an international commercial contract. Such a document evidences a letter of credit transaction and in such transactions, credits are by their nature separate and distinct contract that may emerge from some transactions. Though dissenting opinion were given to similar situation by Justice Nnaemaka-Agu J.C.A. upheld by the Supreme Court in the case of A.M.O. Akinsanya vs United Bank for Africa Ltd.⁵² it was also commented.

In the comet case, the claim before the court did not arise out of a contract of carriage between the parties to the suit. The contract between the parties was a loan facility guaranteed by the assets of the defendant company. The contract was not in any way based upon the particular contract of carriage under which the cargo of Herring Fish was transported to Nigeria. The cause of action in the Comet case therefore did not constitute a statutory lien as defined by the Act⁵³ in respect of which an action in rem could be brought.

In a nutshell, the cause of action which gave rise to the claim for the repayment of the loan and accrued interest in the comet case does not constitute a maritime, statutory or proprietary claim as defined by the Admiralty Jurisdiction Act. As such, the admiralty jurisdiction of the court could be invoked by an action in rem as was rightly pointed out by the learned Justice Jinadu.

It is interesting to note that the defined scope of the jurisdiction of the Federal High Court under the new Act⁽⁵³⁾ is very broad indeed and that applications are bound to arise which do not fall under any of the classified heads of claim, yet which fall under the Admiralty Jurisdiction of the court by that such claims will not create any form of statutory or maritime lien on the rest in question. Such claims will fall under section 5(1) of the Act which provides that an action in personam may be brought in Federal High Court in all cases within the admiralty jurisdiction of the court. Where a claim does not fall under any of the liens classified by the Act but falls within the admiralty jurisdiction of the Federal High Court it can only be enforced by the action in personam.

The Impact of Section 1 (1) (G) of Admiralty Jurisdiction Act 1991 on Petrojessica Enterprises Ltd and Another Vs Leventis Technical Company Limited⁵⁴.

In carriage of goods by sea contracts, the Bill of lading plays a very important role as a symbol of the right of property in the goods specified in it. The possession of a Bill of lading is equivalent to the possession of the goods. It is evidence of the terms of the carriage of goods

51 (1986) N.S.C. Vol II p 515 at 524

52 Admiralty Jurisdiction Act 2004

53 Supra

54 (1992) 2 N.S.C.C. pg 228

by sea contract. There are various types of Bill of Lading. A typical one is "shipped Bill of Lading" which may be claused to operate from "port to port". The liability of the carrier of ship-owner in this type of Bill arises at the port of shipment and terminates at the port of discharge.

In a multimodal or through Bills, the goods have to be carried for a portion of the journey by land at times on conveyance belonging to some person other than the ship owners. This was enunciated by HALSBURY'S LAW OF ENGLAND⁵⁵ states.

"Unless the through Bill of Lading states the contrary; the contract must be regarded as made solely with the ship-owner or other person who issues it, and he alone exercises the right and incurs the liabilities arising out of the various stages of the transit"

The liability of the carrier in Bills of this nature arises when the goods are loaded and continues whether on land or sea until final delivery to the holder of the Bill. Loss or damage to the goods before delivery whether on land or sea comes within the ambit of the Admiralty Jurisdiction of the court⁵⁶.

Also, a Bill of Lading may also operate from "House to House". In this type of bill, liability arises from the house of the holder where the goods are loaded and continues uninterrupted until delivery at the final destination. This covers journey by land from the holder's house to the port of shipment. Prior to the coming into force of the admiralty jurisdiction act 1991 and now act 2004, the law relating to the scope of the admiralty jurisdiction of the Federal High Court confused lawyers. Sometimes the courts were not sure whether a loss or damage to goods which occurs during loading or discharging as well as during transportation after discharge but before it reaches its final destination could be construed to be within the admiralty jurisdiction of the Federal High Court. This is very important since a plaintiff is required to establish a claim cognizable as a maritime claim to not only bring suit in the Federal High Court but also to be entitled to invoke its admiralty jurisdiction. In *INTERWORLD ENTERPRISES (NIG.) LTD VS TRANSALTIC (NIG.) LTD*⁵⁷. It was held by Justice Belgore C.J that a claim for loss of or damage to goods carried in a ship was not limited to what occurred at sea; it may occur during loading or discharging as well as during transportation after discharge before it reaches its final destination.

In *ALUMINIUM MANUFACTURING COMPANY LTD. VS N.P.A.*⁵⁸ the supreme court interpreted the extent of the Admiralty Jurisdiction narrowly, overruling Belgore C.J's decision in the *INTERWORLD* case⁵⁹, it was held that admiralty jurisdiction terminated when the goods were discharged from the carrying vessel. The supreme court was however faced with facts in *parimateria* in *PETROJESSICA LTD. VS LEVENTIS LTD.*⁶⁰ with the *ALUMINIUM MANUFACTURING CASE*.

The Plaintiffs/Applicant sued the Defendant/Respondent at the Federal High Court Benin claiming the sum of #270,470:00 due to them for warehousing the Defendant/Respondent's cargo. The pleadings of both parties established the fact that the claim was for rent. At the commencement of the action, learned counsel for the

⁵⁵ 5th edition paragraph 497 pg 335

⁵⁶ Section 1 (i) (g) of the Act 1991

⁵⁷ (1984) 2 N.S.C. 308

⁵⁸ (1987) 3 N.S.C. 82

⁵⁹ Supra

⁶⁰ Supra

Defendant/Respondent verbally raised the issue of jurisdiction to hear the matter, as it was not an Admiralty matter. The trial Judge, after due consideration of the provision of section 1 of the Administration of justice Act 1956 (U.K.), held that he lacked jurisdiction to entertain the matter. The Plaintiff/Appellant's dissatisfied with this decision appealed to the court of Appeal arguing that the trial court erred in holding that the matter was not an admiralty one. The court of Appeal dismissed the appeal and affirmed the decision of the trial Federal High Court.

The Plaintiff/Appellant again dissatisfied, appealed further to the Supreme Court and the Supreme Court held inter alia; that the law governing the admiralty jurisdiction of the federal high court is the administration of justice act 1956 (U.K.) and if there is any claim arising after the termination of agreement between the shipper and consignee, it will be over stretching the purport of section 1 (i) (h) of the Administration of Justice Act to interpreted the provisions of a contract thereafter as that in admiralty once the cargo was unloaded from the ship and received into the warehouse without any loss or blemish, the shipper's obligation terminates and what follows is mere contract and not a matter of admiralty. The mere fact that goods at one stage in their ipso facto giving rise to jurisdiction in admiralty for cargo already discharged only to be collected by the consignee or his agent. The contract covered by admiralty jurisdiction is that of voyage in a ship. The supreme court in delivering its judgement cited with approval it's former decision in ALUMINIUM MANUFACTURING COMPANY LTD.VS. N.P.A.61, NNAEMEKA-AGU at pages 241-242 stated

"It is settled that once a cargo has been discharged from the vessel, carriage by sea; admiralty jurisdiction (of the federal high court) ends. The locus for admiralty jurisdiction is the high sea. A warehouse in Burutu Port is not part of the High Sea and so a suit arising from the warehousing of the goods therein cannot be an admiralty matter"

This case was concluded before the promulgation of the Admiralty Jurisdiction Act⁶². Section 1 (i) (g) of the Act provides;

"The Admiralty jurisdiction of the Federal High Court (in this Decree referred to as "the court") includes the following that is (g) any matters arising within any federal port or national airport and it's precincts, including claims for loss of or damage to goods across space from a ship or aircraft and their delivery at the consignee's premises or during storage or transportation between delivery to the consignee".

This section is wide and unambiguous, a literal construction of the section will suggest that it has expressly reversed the supreme court decision in above mentioned case of Petrojesica & Aluminum Manufacturing⁶³.

Courts with Jurisdiction in Admiralty Matters

Court is an institution created by law or enabling statutes, courts in most occasions created by the constitution in the land. The bane, power and compositions of court are generally spelt out in the constitution that created them. Before now specifically between 1973

⁶¹ Supra

⁶² 1991

⁶³ Supra

and 1983 there were controversy as to which court was to approach whenever there is an issue which borne out in admiralty matters or sea contracts. There were controversy in the time past whether state high court was appropriate court to approach to settle the admiralty claims or federal high court. Under 1979 constitution and subsequent military decrees that followed, many admiralty claims were instituted before many state high court and some were also instituted before federal high court. In this chapter we shall be looking at the establishment of the Federal High Court which by virtue of admiralty jurisdiction decree⁶⁴ and federal high court (Amendment) act⁶⁵ and constitution (Suspension and Modification) Act⁶⁶ gave admiralty jurisdiction to the federal high court and contained the list of matter which it can entertain. For instance, section 2 of the Act amended section 7 of the Federal High Court Act of 1973 and substituted the list of matters upon which the federal high court can exercise to the exclusion of other courts.

For the purpose of removing doubt on which court have the jurisdiction in admiralty matters, we shall examine federal high court and state high court side by side and give focus to the most competent one under the current 1999 constitution of Federal Republic of Nigeria and new Federal High Court Act.

Federal High Court

The history of establishment of Federal high Court could be traced to 1973 when it was first established as Federal Revenue Court. The then Federal Government of Nigeria felt the need of establishment of specialized court and created Federal Revenue Court to administer certain aspect of the law. Sooner after its establishment the call for extension of its jurisdiction to entertain certain area of law was accommodated and extended its jurisdiction and felt the need to change its name to match the new and attached jurisdiction and the then federal government of Nigeria changed the name to Federal High Court.

Also, 1979 constitution of Federal republic of Nigeria⁶⁷ vested the Admiralty Jurisdiction in this Federal High Court without any affirmative word(s). The scenario continued even when military took over the power in December 1983 and continued until the time when the affirmative word(s) i.e. exclusionary words was instituted in its jurisdiction.

State High Court under 1979 Constitution of Federal Republic of Nigeria⁶⁸

State High Courts is the one which shall exist in all states of the federation and the same constitution⁶⁹ empowered it "to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability privilege, obligation or claim is in issue". However, this section of the 1979 constitution was in conflict with section 230 which gave federal high court jurisdiction to hear and determine any admiralty matters. The controversy were in existence for certain number of years and during this period many cases were filed and determined and it was finally held that both the state high court and federal high

64 Section 21 Admiralty Jurisdiction Decree No. 59 of 1991

65 No. 60 of 1991

66 No. 107 of 1993

67 Section 230 1979 Constitution of Federal Republic of Nigeria

68 Section 236 1979 Constitution of Federal republic of Nigeria

69 Op cit

court have concurrent jurisdiction to hear and determine admiralty matters. The mentioned cases are stated as follows:-

Savannah Bank of Nigeria Ltd. vs Pan Atlantic Shipping & Transport Agencies Ltd.⁷⁰, Jamal Steel Structures Co. Ltd. VS African Continental Bank Ltd.⁷¹, American International Insurance Co. VS. Ceekay Traders Ltd.⁷² and Bronik Motors Ltd. VS. Wema Bank Ltd.⁷³. As earlier stated, on appeal the Supreme Court held that both the federal high court and state high court exercised concurrent jurisdiction to determine admiralty matters.

This controversy continued until 1993 when admiralty jurisdiction procedure rules was promulgated gave exclusive jurisdiction to federal high court.

Federal High Court under 1999 Constitution of Federal Republic of Nigeria

The constitution⁷⁴ provides that, there shall be a federal high court. The court shall consist of a chief judge and such number of judges as may be prescribed by an act of the National Assembly⁷⁵. The appointment of chief judge and other judges shall be made by the president and commander in chief of armed forces in accordance with the recommendation of the National Judicial Council. But appointment into the office of chief judge of the federal high court shall not be complete unless such appointment is confirmed by the Senate⁷⁶.

Appellate Jurisdiction of Federal High Court

The constitution⁷⁷ provide thus:

"Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the federal high court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters relating to a – s"

That upon all matters which the federal high court shall have exclusive jurisdiction to entertain, the one that is important and relate to the topic of discuss is subsection (g) which provides as follows:

*"any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland water way as may be designated by any enactment to be an international waterway all federal ports (including the constitution and powers of the ports authorities for federal ports) and carriage by sea"*⁷⁸.

Furthermore, the constitution did not only provide/grant jurisdiction on federal high court to entertain civil admiralty claims or matters but also clothed the federal high court jurisdiction to hear and determine criminal cases and matters in respect of which jurisdiction is

70 (1987) NWLR pt 49, pg 212

71 (1973) ALL NLR (part 2) 208

72 (2001) FWLR (part 47) 1164

73 (1983) 6 SC 158

74 Section 249 (1) 1999 Constitution of Federal Republic of Nigeria

75 Section 2 (a) – (b) 1999 Constitution of Federal Republic of Nigeria

76 Section 250 (1) – (2) 1999 Constitution of Federal Republic of Nigeria

77 Section 251 (1) 1999 Constitution of Federal Republic of Nigeria

78 Section 251 (i) (g) of 1999 Constitution of Federal republic of Nigeria

conferred by subsection 1 of section 251 (1) (a) – (s)⁷⁹. The constitution⁸⁰ went further by extending the jurisdiction and powers of the federal high court to include all those matter in which state high court can hear and determine. The inclusion of these in constitution made it possible for the federal high court to also have jurisdiction to hear and determine all matters in which state high court can entertain.

Also, unlike state high court which is limited to hear and determine only issues which arise from its own state, the federal high court has the jurisdiction to hear and determine all issues which its cause arise or arose in any part of Nigeria. Nigeria as a whole is exact jurisdiction of federal high court, the whole Nigeria is seen as single or only one jurisdiction of the federal high court. This singleness has made it possible for the federal high court to hear and determine any cause of action which arose in any part of the country.

Our constitution has made it possible for the federal high court to have branches in all states of the federation with its head office or headquarter in Federal Capital Territory (FCT), all these branches including its head office in Abuja are regarded as single jurisdiction of federal high court. The practice and procedure of the Federal High Court are regulated by the Chief Judge of the Federal High Court subject to the provisions of any Act of the National Assembly.

State High Court under the Constitution⁸¹

Appointment of Chief Judge and other judges are to be made by the Governor in accordance with the recommendation of National Judicial Council except that of the Chief Judge which needed to be confirmed by the House of Assembly of the state.

Jurisdiction of State High Court

The constitution⁸² provides that subject to the provision of section 251 and provisions of this constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceeding in which the existence or extent of a legal rights, power, duty, liability, privilege, interest, obligation or claim is in issues or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

It went further to clarify the reference made to civil and criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a state and those which are brought before the high court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction⁸³. It is now clear from the examination of both the federal high court and state high court that it is only the federal high court has exclusive jurisdiction to hear and determine both civil and criminal cases of action arose from admiralty matters. This put to rest the long controversy which existed for years in claiming maritime claims and damages.

The Scope of Jurisdiction of the Federal High Court under the Admiralty Jurisdiction Act⁸⁴.

The Act⁸⁵ provides that all the causes of actions over which the federal high court can exercise jurisdiction to include the one stated in the constitution⁸⁶ and by virtue of the same

79 Section 251 (3) of 1999 Constitution of Federal Republic of Nigeria

80 Section 252 (1) of 1999 Constitution of Federal Republic of Nigeria

81 Section 270 (1) 1999 Constitution of Federal Republic of Nigeria

82 Section 272 (1) – (2) 1999 Constitution of Federal Republic of Nigeria

83 Section 272 (1) – (2) 1999 Constitution of Federal Republic of Nigeria

84 CAPA5, LFN 2004

85 Section 1 AJA CAPA5, LFN 2004

Act⁸⁷ the Federal High Court has this same admiralty jurisdiction that existed in any court in Nigeria prior to the commencement of the Act.

Although the Act did not expressly divest those other courts of their jurisdiction in admiralty matters, but the Act⁸⁸ in its other section vests exclusive jurisdiction in admiralty causes or matters, whether civil or criminal in federal high court. The Act⁸⁹ provides that the admiralty jurisdiction of the Federal High Court shall apply to all ships irrespective of places of domicile or residence of the owners, and to all maritime claims wherever arising at international level. While the other section of the Act made reference to a claim in respect of an aircraft to includes a claim that can be made under any of the convention in force to which Nigeria is a party.

Finally, it is important to point out that appeal in admiralty matters lie from this Federal High Court to Court of Appeal.

Procedure for Making Claims in Admiralty Matters

In an attempt to give shape and address the unprecedented growth admiralty matters in Nigeria and to equate it with the level of maritime administration in other advanced countries of the world, the Chief Judge of the Federal High Court in exercise of the powers conferred on him by the constitution⁹⁰ of the Federal Republic of Nigeria 1999 and Admiralty Jurisdiction Act⁹¹ and of all other powers enabling him on that regard, Justice Daniel Dantsoho Abutu, the Honourable Chief Judge of the Federal High Court on 14th day of March, 2011 promulgated new Admiralty Jurisdiction Procedure Rules 2011. The Rules replaced the Admiralty Jurisdiction Procedure Rules 1993⁹².

This 2011 Rules gave absolute power in respect of all Admiralty causes or matters to Federal High Court⁹³. This new Rule has twenty-three orders and schedule of forms, the rule covers all areas of procedure relating to:- the forms and commencement of admiralty actions in the Federal High Court; preliminary acts where collisions have occurred; parties; service of process; caveats; arrest of ships and other property; custody of ship for costs; reparation for needless arrest; payment of bail; limitation proceedings; valuation and sale; priorities; the general powers of the court and the effect of non-compliance with the rules.

The new rules do not form a complete code but will operate side by side with the existing Federal High Court (civil procedure) Rules. The schedule to the rules provides for nineteen forms.

Mode of Filing an Admiralty Actions

The modes of the enforcement of rights and the redressing of wrongs in admiralty matters are prescribed mainly by the ADMIRALTY JURISDICTION ACT and the ADMIRALTY JURISDICTION PROCEDURE RULES 2011.

Although the letter must be read subject to the former's specific provisions on admiralty. Generally, the writ or originating summons for the commencement of an action in Rem (apart from the particulars of claim which form the basis of its issuance) must show the

⁸⁶ Section 251 (i) (g) of 1999 Constitution of Federal Republic of Nigeria

⁸⁷ Section 1 op. cit

⁸⁸ Section 1 op. cit (26) Section 19 AJA CAPA5, LFN 2004

⁸⁹ Section 3 AAJA CAPA5 LFN 2004 (28) Section 4 AJA CAPA5 LFN 2004

⁹⁰ Section 257 (g) (3) Supra

⁹¹ Section 21 of the AJA CAPA5 LFN 2004

⁹² Section 1 of the Admiralty Jurisdiction Procedure Rules 2011

⁹³ Section 3 and 3 (1) – (2) of the Admiralty Jurisdiction Procedure Rules 2011

nature of the relief sought⁹⁴ such writ of summons or originating summons shall be accompanied by a statement of claim and a copy of every document to be relied upon at the trial⁹⁵. The Plaintiff who filed the writ shall within seven (7) days of filing the summons file written statements of his witnesses which shall be adopted on oath at the trial.

Also, another important things to be noted here is that Admiralty Marshall is only one empowered to issue such writ we are talking about. The service in this situation shall be served on the expected parties by the Admiralty Marshal⁹⁶. The heading of the writ shall contain the expression "ADMIRALTY ACTION IN REM"⁹⁷ and it must be in form 1 in the schedule to the Admiralty Jurisdiction Procedure Rules 2011.

Form 1

(Order 3 Rule 3 (1))

**WRIT OF SUMMONS IN ACTION IN REM
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE JUDICIAL DIVISION
SUIT NO:.....**

**ADMIRALTY IN REM
BETWEEN:**

AND

**To the Defendant (name) of _____
(address) _____**

Admiralty Action in Rem against: (The ship "X" or as the case may be describing the property against which action is brought).

Between the Owners of the Ship "X" or as the case may be describing the plaintiff (or name) _____ Plaintiffs.

And the Owners of the Ship "X" or as the case may be describing the property against which action is brought _____ Defendants.

To the Defendants and other persons interested I the Ship "X" (detailing registration of ship if known).

This writ of summons has been issued by the plaintiffs against the property described above in respect of the claim set out on the back.

⁹⁴ Order 3 Admiralty Jurisdiction Procedure Rules 2011

⁹⁵ Order 3 Rule 1 (a) – (b), Rule (3) AJPR 2011

⁹⁶ Order 6 Rule 9 of AJPR 2011

⁹⁷ Order 3 Rule 8 (2) of AJPR 2011

LEGAL APPRAISAL OF MARITIME LIENS IN ADMIRALTY BUSINESS: PRACTICE AND

Within (14) days after service of this Writ counting the day of service, you must either satisfy the claim or lodge in the Registry of this Court mentioned below an acknowledgement of service or file a memorandum of appearance.

If you fail to satisfy the claim or lodge an acknowledgement within the time stated, the plaintiff may proceed with the action and judgement may be given without further notice to you and if the property described in this Writ is under arrest of the Court it may be sold by order of the Court.

Issued from the Admiralty Registry of the Federal High Court this Day of 20.....

(Statement of Claim to be affixed to the back)

The plaintiff's claim is for etc. (b) _____

The writ was issued by G.H. of _____ whose address for service is _____ agent for _____ of _____ legal practitioner for the said plaintiff who resides at (d) _____ (mention the city/town or district and also the name of the street and number of the house of the plaintiff's residence, if any).

Endorsement to be made on copy of writ forthwith after service.

This writ was served by me at _____ on the defendant (here insert mode of service)

On the _____ day of _____ 20 _____

Endorsed the _____ day of _____ 20 _____

(Signed) _____

Address _____

Note:

- (a) Endorsement of claim – if the plaintiff sues, or the defendant is sued, in a representative capacity, the endorsement must state in what capacity the plaintiff sues or the defendant is sued. If the claim is for a debt or liquidated demand only, the endorsement, even though not special, must strictly comply with the provisions of the Act including a claim for four day's costs.
- (b) Address for Service – the address must be within the jurisdiction
- (c) Address of Plaintiff – in the case of a Company in liquidation the plaintiff's address should run – “ _____ plaintiffs, who are a company in liquidation. The liquidator is (name of liquidator, Address of liquidator)”.

In the case of a foreign corporation within the meaning of the Companies and Allied Matters Act, the plaintiffs' address should run thus:-

“ _____ Plaintiffs, who are a foreign corporation within the meaning of Companies and Allied Matters Act, the registered name and address of the person to be served are (here add registered name and address)”.

Endorsement of Service –

Before the writ is issued the following certificate must be indorsed on it.

The Registry, Federal High Court

In the _____ Judicial Division

A sufficient affidavit in verification of the endorsement on this writ to authorize the sealing thereof has been produced to me this _____ day of _____ 20_____

(Signature of Registrar)

However, the commencement of an action in personam shall be commenced by writ of summons as described in form (2)98 and such shall be accompanied by:

- (a) a statement of claim;
- (b) a copy of every document to be relied upon at the trial;
- (c) a list of non-documentary exhibits;
- (d) a list of witnesses to be called at the trial; and
- (e) written statement on oath of the witnesses⁹⁹;

provided that

- (i) the statements on oath of witnesses requiring subpoena from the court need not be filed at the commencement of the action; and
- (ii) the witnesses who requires subpoena or summons shall at the instance of the party calling them be served with form 3 before the filing of the statement of such witnesses.

Also, where a plaintiff fails to comply with sub-rule 1 of this rule, his originating processes shall not be accepted for filing by the Registry¹⁰⁰. Failure of the Plaintiff to accompany a writ in an action in Rem has been held to be wrong¹⁰¹

FORM 2

(Order 4 Rule 1)

WRIT OF SUMMONS IN ACTION IN PERSONAM IN THE FEDERAL HIGH COURT OF NIGERIA IN THE JUDICIAL DIVISION

IN ADMIRALTY

Suit No: _____

A.B. _____ PLAINTIFF

⁹⁸ Order 4 Rule 1 AJPR 2011

⁹⁹ Order 4 Rule 1 (a) – (e) AJPR 2011

¹⁰⁰ Sub Rule 2 of Order 3 Rule (4) of AJPR 2011

¹⁰¹ MVS. AVAZ vs. LPG Shipping S.A. (1996) 6 NWLR 720 at 734

AND

C.D. _____ DEFENDANT

To C.D. of _____ in the _____ of _____

You are hereby commanded that within thirty days after the service of this writ on you, inclusive of the day of such service you do cause an appearance to be entered for you in an action at the suit of A.B., and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Dated this _____ day of _____ 20_____

Registrar

Memorandum to be subscribed on the writ.

N.B.: This writ is to be served within twelve Calendar months from the date thereof or, if renewed, within six Calendar months from the date of the last renewal including the day of such date, and not afterwards. The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms duly completed at the Registry of the Federal High Court of the Judicial Division in which the action is brought or by sending them to the Registry by registered post.

Endorsement to be made on the writ before issue thereof

Description of Forms in Admiralty Action

The form of the writ of summons issued to start an admiralty action in Rem is directed to "owners and other persons interested in" the property proceeded against (except in co-ownership actions where the writ is directed to particular persons). Unlike in actions in personam where the writs are directed to the Defendants by name¹⁰² Limitation Proceedings can only be commenced in personam. Whilst a writ may be issued naming more than one ship or two or more writs issued each naming a different ship, where an action is started against a sister ship (albeit more than one sister ship may be named), the ship in relation to which it is a sister must also be named in the writ¹⁰³.

Action in Rem

An action in rem is instituted in the Federal High Court of Nigeria against a ship or other property and arrested only if it is within the limits of the territorial waters of Nigeria notwithstanding wherever the claim arose at or the default or wrong giving rise to the action occurred and even if the parties are foreigners and have no (business or residential) connection with the place (Nigeria) where the property is located or berthed.

¹⁰² Order 4 Rule 1 AJPR 2011

¹⁰³ Order 15 Rule 1 AJPR 201

In the case of Tawa Petroleum Product Co. Ltd. VS Owners of M.V. Sea Winner & Ors. "the Sea Winner"¹⁰⁴ all the parties were non-Nigerians and apart from the presence of the vessel "the Sea Winner" in Nigerian Territorial water, the claim had no connection with Nigeria and yet the Federal High Court assumed. Its admiralty jurisdiction over the vessel in an action in rem for its arrest.

Furthermore, when an action in rem is brought, the court's jurisdiction is invoked not when the writ of summons on the case is issued but when it is served on the ship or res and the warrant of arrest is executed, because it is an action in rem against the very thing itself and does not take effect until the thing is arrested¹⁰⁵. This is why as soon as the cause of action arises it is possible to issue one writ in rem against the offending ship and all other ships (all the ship being listed on one writ) which at the time of issuing the writ belong to the same owner and wait for the most suitable of the ship to come within jurisdiction and execute the warrant of arrest on it and strike out the names of the other ships.

Service of Court Processes

The admiralty marshal effect service of a writ in an action in rem against a ship or other property on any day of the week either by affixing a sealed copy of the process to the mast or some other conspicuous part of the ship or delivering the same to the master of the ship¹⁰⁶ or delivering same to the solicitor representing the defendant in the case or the owner of the ship or property who had undertaken in writing to accept service of the writ and on a caveat or where a caveat against the arrest of the ship or other property is in force¹⁰⁷. Also, the moment the writ in rem is issued, the Plaintiff's statutory right of action becomes effective and cannot be defeated by subsequent change of ownership even where writ has not been served seen in **Monica's** case¹⁰⁸.

It is the provision of the law that in an action commenced with an action in rem, the court are not permitted to issue substituted service of writ but a writ in an action in personam may, pursuant to a court order be served on a Defendant outside the jurisdiction by a reputable courier company¹⁰⁹.

Time for service: an originating process in a proceeding commenced as an action in rem may be served on any day¹¹⁰. And that as earlier stated, admiralty marshal shall effect the service of a writ in a proceeding commenced as an action in rem against a ship or other property¹¹¹.

Furthermore, where the writ has been amended, such amended in a proceeding commenced as an action in rem, the amended writ of summons shall, unless the court otherwise order, be served on each person on whom, and on each ship, or on the property, on which the writ of summons was served¹¹².

104 (1980) 2 NSC 25

105 Lord denning in *Banco* (supra) at 153

106 Order 6 Rule 1 AJPR 2011

107 Order 6 Rule (2) – (3) of AJPR 2011

108 (1976) 2 Lloyd's Rep. 11317

109 Order 6 Rule 10 of AJPR 2011

110 Order 6 Rule 11 of AJPR 2011

111 Order 6 Rule 9 of AJPR 2011

112 Order 6 Rule 12 of AJPR 2011

Where an action in rem is commenced against a ship or other property which has been abandoned in Nigeria or in an action in personam filed against a defendant who does not reside in or carry on business in Nigeria through an agent, the court may order service on such defendant or the owner of such ship or other property at the address of his last known place of business by a reputable courier company operating a courier service between Nigeria and the country of the place of business¹¹³.

Arrest of A Ship or other Properties

The aim of the arrest according to Lord Denning in Branco's case¹¹⁴ is to make the defendant put up a bail or provide in advance of the judgement, a fund for securing compliance with the judgement if and when obtained against him. The security may be in any form recognized by law, most especially the guarantee provide by either bank or letter of indemnity. Consequently, the plaintiff in an action in rem does not wait until after the trial of and judgement is the case before it can be sure of having his claim satisfied. The arrest in this situation constitute the ship or other property as security in the hands of the court for the claim, which security cannot be defeated by the subsequent bankruptcy of the owner of the arrested property because the rights of the parties are determined by the state of things at the time of filing the action.

Moreover, an arrest can be applied for after the issue of the writ in rem but it is usually applied for at the time of the issue of the writ in rem seen in "Cella"¹¹⁵. Application for the arrest of a ship or property in a proceeding commenced as an action in rem may be by a motion ex-parte supported by Affidavit provided that as at the time of filing this application the ship or property is within Nigeria territorial water or expected to arrive there within three days¹¹⁶. It must be noted that where the applicant wrongfully arrested a ship or res and if it is found out to be maliciously done damages may be awarded against such arrester if an application is made by the defendant and such is made within the time frame stipulated by this Rules which is specifically stated to be three months from the termination of the suit¹¹⁷.

It is also worthy of note that arrest of ship or res can still be made after delivery of judgement¹¹⁸. The Admiralty marshal or his representative execute an arrest warrant on a ship or other property in the same manner as the service of a writ in rem on any day either after or concurrently with the service of the writ unless the applicant informs him in writing or the court directs him, not to execute the warrant although the court may order an arrest warrant to be discharged or delay or not executed on the application of a caveat or who has a caveat in force against arrest or at the application of an interested person¹¹⁹.

Any interference with or removal of the property within or from jurisdiction without authority by a person who knows that the warrant of arrest has been issued, is contempt of the court and punishable by committal.

¹¹³ Order 6 Rule 14 (a) – (b) of AJPR 2011

¹¹⁴ (Supra) at 151

¹¹⁵ (888) 13 P.D. 82

¹¹⁶ Order 7 Rule (1) & (3) of the AJPR 2011

¹¹⁷ Order 11 Rule 2 (a) – (b) AJPR 2011

¹¹⁸ Order 7 Rule 4 (3) AJPR 2011

¹¹⁹ Order 7 Rules 4 & 5 AJPR 2011

Documents to Prove Claims

As it was already noted that we have proprietary maritime claims, general maritime claims, statutory maritime liens and host of other categories of claims. Each of the claim has its own specific features or characteristics or where Action in rem is instituted the documents which claimant will rely upon will be different from where Action in personam is instituted. The most important things we are concerned in this work is to itemize the one relevant with the purpose of this study.

Relevant documents in proof of claims for loss or damage where there is loss of items or goods are vital because goods traced by these documents so pin-point whether the loss occurred or not, better still, once there is loss, the owner of such items or goods or consignment otherwise called consignee must lodge price claims in writing directed it to the party or captain of the ship or the company responsible for the carriage. The essentiality of these prove documents is to establish claims against the party responsible for the carriage.

Types of the Documents

- (I) Notice of loss to Nigerian Port Authority such notice must be given within one year
- (II) Statement of claims and reliefs sought
- (III) Suppliers invoice which specifies the goods involved, price and weight specification
- (IV) The parking list which specifies how the consignment was packed
- (V) The contract of carriage which may be the Bill of Lading the Airway Bill or others like Charter Parties Agreement where there is Charter.
- (VI) Custom bill of entry (evidence that consignment had gone through customs)
- (VII) Nigeria Port Authority's importers landing tally sheet.

Where damage is noticed whilst cargo is still on board, a joint survey is necessary to determine extent of damage and a report issued by the Surveyors. Where there is doubt as to where loss occurred, NPA extra services would be required.

On several occasions, the issuance of the following documents will play a major roles in proving claims when the matters get to court or established Tribunal.

- (a) Delivery note
- (b) Road delivery way bills and
- (c) Approved survey report on condition of cargo at final destination

It is worthy to be noted at this juncture that all correspondences exchanged between the parties are also tenable documents at the trial. And where loss is the claim and such loss is by shortlanding, then the claim in must be filed within one year of the accrual of the cause of action, this is provided for by the contract of carriage of goods as evidenced by the bill of lading which is subject to the Hague Rules and Incorporated into our law by Virtue of Carriage of Goods by Sea Act¹²⁰.

The Hague Rules¹²¹ provides that action/suit to claim damages where there is loss must be instituted within one year of loss or delivery of the goods or the date when the goods ought to have been delivered, failure to do this within one year liability is discharged but where loss occurred while the goods is in custody of N.P.A., the owner or consignee is required¹²² to:

¹²⁰ Section 44 Law of the Federation of Nigeria 2004

¹²¹ Article 3 and 4

¹²² Section 72 and 73 of the NPA Decree No. 74 of 1993

- (1) Give one month pre-action notice in writing which must state
 - (a) The cause of action
 - (b) The name and address of the intending plaintiff,
 - (c) The relief sought
 - (d) It must be addressed to the chairman or the secretary of the N.P.A. and served by delivering same by hand at the registered address of the N.P.A. or by registered post.
- (2) And an action must be instituted within one year.

The compliant with the above steps is strict or otherwise look the right of action.

Note: It is a surprise that many of the claimants do normally fall victim of this procedure by using most of the available time to exchange correspondences and by the time they realize that they suppose to go to court they will be caught by lapse of time.

Litigant are however advised to shine their eyes and first institute legal action once loss or damage occurred before entertaining any negotiation so that they will not loose their goods as well as their rights of action (double jeopardize).

Choice of Law and Admiralty Jurisdiction Act

Mostly, the choice of law in any international contracts are being determined by the parties and such are normally incorporate into the terms of agreement that bind the parties. In most international contracts, parties are free to determine which law will guide their relationship/dealings once dispute erupt from such relationship or dealings or contract.

Although the position is said to be different in Nigeria where the relevant sections of our Admiralty Jurisdiction Act¹²³ oust "the jurisdiction of contracting parties" i.e. the freedom of the parties to any international contract of which one of the parties is a Nigerian to choose freely the type or kind of law or court that will govern their contracts.

The position is well circulated in the following cases:

The West African Drydocks Limited VS. the owners of the Tug "Zubr"¹²⁴. In this case the Defendants (tugowners) contracted, under a standard form international ocean, Towage Agreement ("Towcon") to tow a floating dock carrying cargo belonging to the Plaintiff (cargo receivers) from Kershon, Ukraine to Port-Harcourt, Nigeria. On October 18, 1996, the Plaintiff commenced action against the Defendants in the Federal High Court Port-Harcourt claiming damages for the defendants' delay in delivery of the tow and the cargo at Port-Harcourt. The Towcon agreement contained a clause stipulating that any dispute or difference which may arise out of or in connection therewith shall be referred to the High Court of Justice in England and shall not be litigated in any other jurisdiction. The Defendants have applied for stay of the proceedings on the basis of the foreign jurisdiction clause. The plaintiffs, in response, have indicated their intention to rely on section 20 of the Admiralty Jurisdiction Decree 1991, claiming that the foreign jurisdiction clause in the Towcon Agreement is void by virtue of the provision. The Plaintiff's argument is apparently that section 20 of the Admiralty Jurisdiction

¹²³ Section 20 Admiralty Jurisdiction Act CAPA5, LFN 2004 (formerly decree of 1991)

¹²⁴ FHC/PH/258/96

Decree 1991 has altered this legal position with regard to those cases that fall within any of the circumstances enumerated in paragraphs (a) – (h) of the section.

The Plaintiff argued that in any of those circumstances, the court no longer exercises discretion, but must assume jurisdiction to hear the suit on the merits since the foreign jurisdiction clause has been nullified by the provision.

It was argued by Mr. Tunde Fagbahunlu¹²⁵ that on its face section 20¹²⁶ seemed to vindicate the position of the Plaintiffs and he enumerated two primary considerations and called for caution in taking section 20¹²⁷ at its face value. The first thing he envisaged is the conceptual difficulty involved with regarding foreign jurisdiction clauses as “ousting” or “seeking to oust” the jurisdiction of the courts. The second thing was construction of section 20¹²⁸ as was canvassed by the Plaintiff in the case brings provisions into conflict with section 10 of the same Decree. Section 10¹²⁹ provides for the powers that may be exercised by the Federal High Court to preserve security given in an admiralty action where that court stays or dismisses such action on the ground that it ought to be determined by arbitration (whether in Nigeria or otherwise) or by the court of a foreign country; and a ship or other property is under arrest in the action, according to him, he said if the accepted the “nullification” of foreign jurisdiction clauses by section 20 of the decree, it means that Federal High Court must exercise jurisdiction to hear the merits of the matter and can no longer exercise a discretion (the contention of the plaintiff). The question that follows it was that, what are the circumstances in which the Federal High Court will stay or dismiss an action in favour of foreign arbitration or foreign adjudication under section 10?

In his argument¹³⁰ he emphasized that if section 10 applies only to these residual situations which fall outside the wide range of circumstances adumbrated in paragraphs (a) through (h) of section 20. He argued further that there is at least one situation in section 20 to which section 10 applies, where “a ship or other property is under arrest in the proceeding”, the case is one in which “the res is within Nigerian jurisdiction” (a circumstance in which section 20 (d) renders a foreign jurisdiction clause null and void). Yet section 10 of the Decree envisages that the Federal High Court may refer a matter to foreign adjudication where a ship or other property is under arrest on the proceedings¹³¹.

Another important thing to note is that section 20 deals with contractual stipulations for foreign adjudication. Section 10 contemplates only those situations where reference to foreign adjudication arises not from contractual stipulations, but from the operation of the English equivalent of the doctrine of forum non conveniences (i.e. the general principle that a court will stay proceedings in favour of foreign adjudication where the Defendant can show that continuation of the proceedings in Nigeria will cause injustice to him, and reference to foreign adjudication will not cause injustice to the plaintiff). However, section 10 provides not only for

¹²⁵ Maritime Newsletter Vol. 1, 1993 - 1998

¹²⁶ Admiralty Jurisdiction decree 1993

¹²⁷ Supra

¹²⁸ Supra

¹²⁹ Admiralty Jurisdiction Decree 1991

¹³⁰ Mr. Tunde Fagbohunlu page 106, maritime Newsletter Vol. 1, Supra

¹³¹ Section 10 (d) Admiralty Jurisdiction Decree 1991

to court of foreign countries but also for reference to foreign arbitration, and a reference to foreign arbitration can only arise from contractual stipulating.

It does not arise from the operation of the principle of forum non conveniences Mr. Tunde Fagbohunlu¹³² reiterated in his contribution.

Another expert opinion¹³³ examined section 20 Admiralty Jurisdiction Decree 1991 and described it "a derogation from the individual's freedom to contract". This is so in larger context because once a statement in agreement is confirmed to be authentic wishes of the parties, such must be respected by enforcing such in a court or tribunal stated in such contract.

Conclusively, I will add to the submissions of people who argued that section 20 Admiralty Jurisdiction Decree now Act, CAPA5 LFN 2004 is in conflict with the wishes of the people and such cannot in any way promote international contract but limiting the way in which people from the developed countries will contract with the people from Nigeria, especially where it has appeared clearly that ousting foreign jurisdiction may lead to injustice to the people involved such section of the sensitive 3 Act must not be interpreted to oust foreign court or tribunal, doing such will in no doubt promote harmonious trading life.

Language of the Court

The language of the Nigerian Court is English language¹³⁴. Where any of the party does not understand English language, interpreter must be provided.

Powers of the Court to Transfer Admiralty Matters

The application of the provisions of sections 236 (1) and (2); 230 (1) and (2) and 231 (1) and (2)¹³⁵ of the constitution as earlier stated created some confusion in the time past. The question that follows this proclamation is whether or not the Federal High Court and State High Courts did not have concurrent jurisdiction. It is important to note here that the conflict which 1979 Constitution created was resolved in two major instances.

The first instance was when it was settled when the Supreme Court laid it to rest in the case of Bronik Motors & WEMA Bank Ltd, when it affirmed that States' High Court and the Federal High Court had concurrent jurisdiction to hear and determine admiralty jurisdiction by virtue of the above mentioned sections 236, 230 and 231 of the 1979 Constitution.

The second instance was when the said controversy or confusion was brought to an end when Decree No. 60 of 1991 of the federal High Court (Amendment) Decree was promulgated which in it gave exclusive jurisdiction in respect of Admiralty matters/cases to only Federal High Court.

However, apart from controversy created by the then 1979 Constitution, there still remained the problem of how to specially identify, from a set of facts, whether the cause of action fall within the exclusive jurisdiction of the Federal High Court as opposed to that of a state. This is best represented in the following classical illustration:-

¹³² Tunde Fagbohunlu's Contribution titled section 20 of the Admiralty Jurisdiction Decree and Foreign Jurisdiction Clauses

¹³³ Mr. Stephen Onyejose titled section 20 of AJD 1991 Derogation from the individual's freedom to contract maritime newsletter vol. 1 pg 101

¹³⁴ Section 36 1999 Constitution of Federal republic of Nigeria

¹³⁵ 1979 Constitution of Federal Republic of Nigeria.

"received a loan of \$10 from the Y2 under the latter's Ship Building and Ship Acquisition Fund. The loan is secured by the personal guarantee of Captain 'B' who is a Director of A.A., has defaulted on the loan and Y2 sues to recover"

The question that one can ask from the above stated scenario is which Court has jurisdiction to hear and determine the legal issues which arose from the scenario? Is it Federal High Court or State High Court? The answer may not be as clear as it seems. It is clear that all admiralty matters fall within the competence of the Federal high court. And that the Y2's Ship Building and Ship Acquisition Fund is an admiralty matte. But what about the personal matters? Especially considering that a guarantee is a cause of action enforceable on its own is guaranteed.

The point we are trying to point out is that many cases of this nature will be instituted in the Federal High Court when they ought to have been commenced in the State High Courts. Conversely, there is a good possibility that a number of cases filed at the State High Court ought to have also filed at the Federal High Court, so in a situation like this the parties or litigant need not be confused or discourage because the Act136 provided thus:-

"Notwithstanding anything to the contrary, in any law, no cause or matter shall be struck out by the High Court of a State or of the Federal Capital Territory, Abuja on the ground that such cause or matter was taken in the High Court instead of the Court, and the Judge before whom such cause or matter is brought may cause or matter to be transferred to the appropriate Judicial Division of the Court in accordance with such rules of court as may be in force in that High Court or made under any enactment or law empowering the making of rules of court generally which enactment or law shall by virtue of this subsection be deemed also to include power to make rules of court for the purpose of this section".

The section envisages that any case wrongly commenced in the High Court of a state or of the Federal Capital Territory Abuja shall be transferred to the appropriate Judicial Division of the Federal High Court and not struck out and vice-versa but such transfer must be in accordance with such rules of court as may be in force in that High Court or made under any enactment or law empowering the making of rules of court generally,

Also, similar provision was in place before 1999 new rules were promulgated. Empowering the Federal High Court to transfer matter wrongly instituted before it to the State High Court but such transfer must be in accordance with provision or rules which say so¹³⁷. And it provides as follows:

"Where the Chief Judge or any Judge has in the exercise of the powers conferred by Section 22 (2) of the Act directed that any cause or matter be transferred to the High Court of a State, the Chief Judge, or as the case may be, the Judge shall make an order under his hand to that effect and shall specify in the order the High Court and THE Judicial Division thereof to which the cause or matter is to be transferred".

It is important to note that the provision of order VIII Rule 1 1976 Rules, are not replicated on the 1999 Rules, but by the omnibus provision¹³⁸ where a matter arises in respect

¹³⁶ Section 22(3) of the Federal High Court

¹³⁷ Order VIII Rule 1, Federal High Court (Civil Procedure) Rules 1976

of which no provision or no adequate provisions are made, the court shall adopt such similar procedure in the rules as will in its view do substantial justice between the parties concerned.

On the other hand, the answer as regards transfers from State to Federal High Court is not quite clear. The High Courts of each of the States are created by State legislation in that respect and the rules of procedure which they all are subsidiary to those which they apply are subsidiary to those legislations and so vary from state to state as argued and clarified by *Norrison Quakers*¹³⁹.

Analysis of High Court of Lagos State (Civil Procedure) Rules 1994 were made when he pointed out that the rules did not make clear provision for transfer from State High Court to Federal High Court but its omnibus provision to order 53 Rule 8 of 1999 Rules of the Federal High Court in its Order 50 Rule 14 which provides:

"where no provision is made by these rules or by any written laws, the procedure and practice in force for the time being in the High Court of Justice in England shall so far as they can be conveniently applied, be in force in the court: provided that no practice which is inconsistent with these rules shall be applied"

Justice EGBO-EGBO in *SODIPO & BROTHERS LTD VS BOWEL ASSOCIATES LTD*¹⁴⁰ held that there is no doubt Federal High Court Act¹⁴¹ allowed the State High Court to transfer a case over which it had no jurisdiction to the Federal High Court But *Norrison Quakers*¹⁴² disagreed with the judgement of Justice EGBO-EGBO when he said Section 22 (3) is hinged on the existence of any existing rule of law or enactment with which an order of transfer must accord, as it is, no such rule or enactment exist as regards the State High Courts. It therefore follows that the power of transfer from a state to a Federal High Court is, at best, inchoate and must await the promulgation of an enactment or rule of court to become applicable.

Accessibility to Courts in Maritime Claims

Maritime transactions like every commercial activity give rise to legal responsibilities, these may arise from maritime transactions or activities like a charterparty, a Bill of lading, a contract of Bailment and or an affraitship, in all of these instances someone may suffer loss, injury or damage as a result of the act, omission or negligence of the other. Ordinarily, a person who suffers loss in such manner ought to have free access to the court as it is legally represented in legal maxim *"ubi jus ibi Remedium"* meaning for every wrong there is a remedy.

Sometimes through requirements of the law an injured party is precluded from immediate access to the court, this so called delay tactics which otherwise called "PRE-ACTION NOTICE". The law requires that the defendant who is likely be taken to court is required to be given notice of intention to take him to court, this will undoubtedly ask us to explain or define what pre-action notice is.

¹³⁸ Order 53 Rule 8 of the 1999 Rules

¹³⁹ The Maritime News Letter Volume 2 (1999 – 2001) pg 44-45

¹⁴⁰ Suit No. FHC/L/CS/1250/98 (unreported)

¹⁴¹ Section 22(3)

¹⁴² *Supra*

The Pre-Action Notice

As the name implied, it's a notice which enable certain public corporations and authorities are required by law to be notified an intending suit before cases are instituted against them. The notice varies but in most occasions is either one month or three months, this depends on whom the suit is to be instituted against. The Nigerian Ports Authority¹⁴³ for instance provides that notice be given prior to the commencement of legal proceedings against the Nigerian Ports Authority¹⁴⁴. The Section provides thus:-

"No suit shall be commenced against the company until one month at least after written notice of intention to commence the suit has been served on the company by the intending plaintiff or his agent and the notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims".

One could probably suggest that if a prospective litigant fails to meet up with the above mentioned condition or requirement, it means such a litigant has lost the right of action to challenge the unjust action of somebody done to him. The start interpretation of it is that it is a condition precedent which must be fulfilled before the right of action could be permitted. It is a condition precedent which gives the court of law jurisdiction to hear and determine the cause of action. This was the position of the court in *Madukolu vs Nkemdilim*¹⁴⁵; *BRTC vs Egbuonu*¹⁴⁶. The pre-action notice was validated in the case of *Nigerian Cement Co. Ltd vs NRC*¹⁴⁷. The fact of the matter was that section 83 (2) of the Nigerian Railway Corporation Act provided that "three months" pre-action notice must be given before an action is instituted against the corporation. The plaintiff did not give this notice and obtained an ex-parte injunction. The court of Appeal per Kolawole J.C.A at page 761, paragraphs E – F held

"The intendment of section 83 (2) of the Act is to prevent the institution of any court process against the Corporation unless it has received an advance written notice of three months before the commencement of the process. I am of the view that whatever form the court process takes, once there is a claim for a remedy against the Corporation by an applicant who complains that his right has been invaded or violated the applicant must seek for such remedy within the purview of section 83 (2) of the Act".

The justification for strict adherent to doctrine of pre-action notice was pointed out by Belgore C.J. in *Fawehinmi vs Professor Jubril Aminu & Ors.*¹⁴⁸ when he said that certain agencies or corporations play key roles in our economy and they ought not to be surprised with a law suit.

However, the legal history revealed that the issue of pre-condition to be complied with before a statutory body is sued is a colonial heritage as it was contained in almost all the

¹⁴³ Decree No. 74 of 1993

¹⁴⁴ Section 72 (2) of Nigerian Port Decree 1993

¹⁴⁵ (1962) 2 SCNLR 341

¹⁴⁶ (1992) 2 NWLR (pt 171) 81

¹⁴⁷ (1992) 1 NWLR (pt 220) 747.

¹⁴⁸ Suit No: FHC/C/CS/54/92

legislations of all statutory bodies created by the Colonialist as a copy of what was obtained in England. Abiola Oyero¹⁴⁹ in her contribution pointed out clearly that it is characteristic of Nigerian legal system that British Colonial creation was followed without due regard to the different realities and constitution at home. The Supreme Court held the same view that pre-trial Notices must be considered before instituting legal process in law court in the case of Nigerian Port Authority vs Construzioni Generali¹⁵⁰. But the applicability of the notices does not extend to contractual relationship, as such a shipper can maintain an action against the Nigerian Port Authority for breach of contract of bailment, being for a contract for delivery of goods by a person, the bailor to another bailee.

The Obaseki J.S.C reiterated same in the case of Aluminium Manufacturing Co. Nig. Ltd vs NPA¹⁵¹ and the situation will definitely include virtually all maritime claims like carriage of goods or charterparties. The Decree¹⁵² provided guide on transaction which falls within the purview of contractual nature of NPA which does not require pre-action notice. These are statutory duties of NPA:

- (a) Provide and operate in the ports, such port facilities as appear to it best calculated to serve the public interest,
- (b) Maintain, improve and regulate the use of the ports,
- (c) Provide for the ports, the approaches to the ports and territorial waters of Nigeria, such pilotage services and lights, marks and other navigational services and aids as appear to it best calculated to serve the public interest and
- (d) Provide such other services as the minister may from time to time require.

The difficulty here is how to differentiate between statutory duties of NPA and contractual functions because both the two are interwoven. If it is in pursuance of statutory duties that the NPA for example enters into contracts of bailment with shippers and carriers, practical problem that would arise is how to distinguish a statutory from contractual duty so as to be exempted from the requirement of pre-action notice. A guide in this situation seems to be in the question as to whether the Defendant is being sued for non-feasance or mis-feasance of a statutory duty or rather for what was done or omitted to be done under a contract. In the latter case, the defendant cannot rely on the non-issuance of a pre-action notice to deny the court jurisdiction seen in "De commarmud S.P.J in Salako vs L.E.D.B¹⁵³ while constructing section 2 of the Public Officers Protection Ordinance which is similar to section 97 of the Nigerian Ports Decree. They further held that pre-action notice does not apply to the cases that has to do with "recovery of land, breaches of contract, claims for work and labour done".

Dan Ibekwe followed the same view when he based his differentiation in the NPA case on the views of Brett, M.R. in the Midland Railway Company vs The Local Board for the District of Whittington¹⁵⁴ on the applicability of section 264 of the Public Health Act¹⁵⁵, similarly to section 74 of the Ports Decree.

¹⁴⁹ The Maritime Newsletter (1993-1998) pg 82

¹⁵⁰ (1974) 12 SC 81

¹⁵¹ (1987) 1 NSCC p 232

¹⁵² Section 3 of the Nigerian Ports Decree

¹⁵³ 20 NLR 169

¹⁵⁴ (1882 -3 - 11) Q.B.D. 788 at 794

"It has been contended that this is an action in contract and that whenever an action is brought upon a contract, the section does not apply. I think that where an action has been brought for something done or omitted to be done under an express contract, the section does not apply, according to the cases cited an enactment of this kind does not apply to specific contracts. Again, when goods have been sold, and the price is to be paid upon aquantum meruit, the section will not apply to an action for the price, because the refusal to comply with the terms of the contract and not with the provisions of the statute".

This will in no doubt covers virtually all maritime claims as they arise from Bills of Lading, contracts of carriage, charterparties or Bailment. It will be a little difficult therefore to successfully raise the issue of pre-action notice requirement as bar to the prosecution of a maritime claim.

Pre-Action Notices and the Constitution Via 1979 And 1999 Constitution of Federal Republic of Nigeria Respectively

In this heading, we want to consider the constitutionality of pre-action notices requirement, whether this requirement is constitutional in view of the individual or private company's right of access to judicial tribunals and fair hearing.

In my own view, pre-action notice requirement in an enforcement of maritime claims means partial or logical means of denying rights to non governmental agencies who are parties to any action in Nigeria as was pointed out by Abiola Oyero (Mrs) that the requirement that an advance notice of an action be given to a party in an action is a restriction of the right of access to court. And sadly as she put it, many judicial precedents in this regard were though decided before the enactment of 1979 constitution but the court has failed to address its constitutionality.

In *NPA vs construzioni Generali F.C.S & Ors*,¹⁵⁶ Provisional Council, Ogun State University & Ors vs *Iyabode Alami Makinde (Mrs)*¹⁵⁷, *Nigeria Cement Company Limited Vs Nigeria Railway Corporation & Ors*¹⁵⁸ The court held that non-compliance with pre-action notice will automatically invalidate the action but some human Right Activist have argued that all those decisions of the court were in contradiction of the constitution¹⁵⁹ because it was against fair hearing guaranteed by the Section 33 of the 1979 constitution and 36 of 1999 constitution and section 6(1)(b) of 1979 constitution which grants court the power to determine any question as to the civil rights and obligations of any person in respect of any matter between him and the government or any other person, also, African Charter on human and People's Right¹⁶⁰ guarantees every individual rights before the law and equal protection of the law.

There was victory for the people and people felt the sign of relief when *Karibi Whyte JSC in Adediran Vs Interland Transport Ltd*¹⁶¹ gave resounding judgement to that effect and held

"The constitution has vested the courts with the power for the determination of any questions as to the civil rights and obligations between government or its authority and any person in Nigeria – see Section 6(6)(b). Accordingly, where the determination of the civil rights and obligations of a person is in

¹⁵⁵ 1897

¹⁵⁶ Supra

¹⁵⁷ (1991) 2 NWLR (Pt 175) 613

¹⁵⁸ Supra

¹⁵⁹ 1979 constitution

¹⁶⁰ Article 3

¹⁶¹ (1991) 9 NWLR (Pt 214) 155 at 180

issue, any law which imposes conditions inconsistent with the free and unrestrained exercises to that right, is void to the extent of such inconsistency."

The issue in the above mentioned case was the applicability of the common law requirement of the Attorney General's fiat in suit for public nuisance. The Supreme Court held that such requirement of fiat was unconstitutional.

In a later case, it was also held that section 3 and 4 of the petitions of Right Act which make it mandatory that the consent of Attorney General must be obtained before any action can be brought against the government or its agencies. The Supreme Court held that in *Ransome Kuti vs. A.G. of the Federation and ors*¹⁶²

Limitation of Action in Maritime Causes or Claims

Limitation of action simply means that claims can not be litigated in court for reason of lapse of time. It is a matter of statute. Statute stipulates that the rights to prosecute certain claims is foreclosed after a certain period of time has lapsed. It does not matter if the plaintiff has a good chance to succeed in the matter at hand. For instance the Limitation Act Laws of Lagos State set out limitations for various actions. The law¹⁶³ bars actions founded on simple contract after the expiration of six years from the date the cause of action accrued.

This was incorporated into section 18 of the Admiralty Jurisdiction Decree of 1999 which provides that proceedings in maritime matters will be subject to limitation as provided under any law if they could have been brought under that other law or otherwise limited to a period of 3 years but subsection 2 provides that the section does not apply if the limitation has been fixed by any law or enactment.

Carriage of Goods by Sea Act,¹⁶⁴ Article III Rule 6 of the schedule provides

"the carrier and the shipper shall be discharged from all liability in respect of all loss or damage unless the suit is brought with one year after delivery of the goods should have been delivered."

Section 37 (1) of the Merchant Shipping Act requires that personal injury action recommended within 2 years from the date the cause of action arose. Section 72 of the Ports Decree No 74 of 1993 provides for one year limitation. It is important to note here the time in which an action will be statute barred, it will be statute barred from the period the cause of action arose. A cause of action arises when acts complained of become so complete that an action can be maintained.

Limitation of Action in Admiralty Proceedings

This is of two kinds. In an action in Rem is simply an action against the "Res" or "Thing". This type of action is enforceable against the property sued. The "Res" in admiralty is usually a ship. The time limit to bring proceeding is provided in the limitation Act¹⁶⁵ not to be operational, this was confirmed in the case of *Rivway Line Ltd Vs Rhein Mass*¹⁶⁶ by Mr. Justice Ukeje.

¹⁶² (1985) 2 NWLR (Pt 6) 211

¹⁶³ Section 7

¹⁶⁴ Cap 44, Laws of the Federation of Nigeria 1990

¹⁶⁵ Section 7(3) Limitation Act

¹⁶⁶ Suit No. FHC/L/114/86

In PERSONAM however, action is maintained against a person and most claim under this type of action have a limitation period of 6 years. This action is founded on personal service and if successful would lead to judgement against that person. Its object is to reach and dispose of property owned by a person. It should be noted that, it is quite different from a proceeding in REM in that the latter is taken directly against property in which case the court is "required" to have control of the "thing" a "res" and not the interest of the parties to the proceeding.

Above all, both the plaintiff and Defendant must be given equal opportunity to present their matters before the competent court irrespective of whether any of the party is a Government or its agency, doing that will give justice to all parties as it is enshrined in constitution of federal Republic of Nigeria 1999.

Also, like Election Petition Tribunal, as its stipulated in Electoral Act, time frame within which admiralty matters would be adjudicated must be stated or spelt out in any repeal which would take place in the nearest future. In order to give or create a favourable atmosphere to both local and foreign investor especially in maritime business, our Admiralty laws must be drawn in such a way that will not conflict with any international law and Admiralty jurisdiction of Federal High Court must be maintained so as to guarantee continuance specially of the Federal High Court in the Admiralty causes, and finally in order not to deny litigant fruit of his judgement the right of appeal in any Admiralty matters is suggested to end at the Court of Appeal in order to put an end to unnecessary long years in which admiralty matters takes before it is concluded, doing that will enable and attract many people both at local i.e. within the country and many people across different boundaries to participate in Admiralty business or contract.

Bibliography

Textbooks

- | | |
|--|--|
| British Shipping Laws by: | Kenneth C. MCGUFFIE |
| P.A. Fugeman, & P.V. Gray | |
| Maritime Law (5 th edition) by: | Christopher Hill |
| Shipping Law (2 nd Edition) by: | Simon Baughen |
| Olisa Agbakoba & Associates: | The Maritime Newsletter vol.1 (1993-1998) |
| Olisa Agbakoba & Associates: | The Maritime Newsletter vol. II(1999-2001) |

Journals

- Modern Practice Journal of Finance & Investment Law
Quarterly Comparative review of Law & Practice April, 2000 MPJFIL Vo. 4, No. (2000).
Constitution of Federal Republic of Nigeria 1999
Constitution of Federal Republic of Nigeria 1979

Act

- Amorally Jurisdiction Decree 1993
Admiralty Jurisdiction Procedure Rules 2011 LFN CAP 15, (2004);
National Open University of Nigeria Compilation Note on Maritime Law II via internet – <http://www.unesco.org>