

AN EXAMINATION OF ADMIRALTY JURISDICTION AND ENFORCEMENT OF MARITIME CLAIMS IN NIGERIA

ADEPOJU ADEBIYI ANTHONY

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

&

IRINYEMI ADEMOLA B.

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

Abstract

Many goods in admiralty actions have lost in time past, this is as a result in failure to take the right steps by the parties involved, for instance, failure to arrest a ship or cargo or freight (as a pre-trial and pre-judgement security for a successful action in enforcement of maritime claims because of ignorance on the part or the failure of counsel to realize the essence, implications and the roles of an action in 'Rem' in maritime claims and the difference between an action in 'Rem' and an action in 'Personam' or generally, enforcing the claims of litigants in admiralty matters, thus in Anchor Ltd. V. The Owners of the Ship Eleni, (1907–1979) INSC 42. The procedure taken out for the arrest of a ship was held not to be open to the plaintiff since the action proceeded in 'personam' and judgement was obtained against the defendant personally. However, this paper trace the history and origin of admiralty jurisdiction, classes of claims, distinguishes proprietary maritime claims from general maritime claims, actionable claims in maritime business, impact of Section 1 (i) (g) of Admiralty Jurisdiction Act 1991, Section 230, 1979 Constitution and Sections 249 – 252, 270 – 272 of Constitution of the Federal Republic of Nigeria 1999 (As amended) and Courts with jurisdiction in admiralty matters. The paper concludes with improvements which the concerned authorities need to make on admiralty business in Nigeria and recommends to the appropriate authority ways in which maritime business through court intervention can move to higher level.

Key words: admiralty, jurisdiction, enforcement, maritime, claims, Nigeria

Introduction

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 century. 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 1981.

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 act

specifically excluded the exercise of such jurisdiction. It thus provides as follows :- 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 admiralty which came into force on 25th July 1890 was passed by the British Imperial Parliament. The Act 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 Act 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 Act. The Supreme Court which hitherto lacked jurisdiction became vested with jurisdiction.

The Act 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 protectorates. 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 1943, 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 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 created. The new Act 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 Act, 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 constitution gave jurisdiction in respect admiralty matters to the federal high court, while the same constitution 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.; SAVANNAH BANK LIMITED VS PAN ATLANTIC SHIPPING & TRNASPORTAGENCIES LIMITED* that the High Courts of a state have concurrent jurisdiction with the Federal High Court over admiralty matters.

However, the controversy and confusion was resolved with promulgation of admiralty jurisdiction decree. This Decree, 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. 107 section 2 of the Act amended section 7 of the Federal High Court Act and substituted the list of matters upon which the Federal High Court can exercise jurisdiction to the exclusion of the court.

Thus, the Admiralty Jurisdiction Decree No. 59 of 1991 (now Admiralty Jurisdiction Act) 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 Act in conjunction with 1999 constitution gave exclusive jurisdiction in respect of Admiralty matters to Federal High Court.

Types of Actions in Maritime Claims

Under the Act 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 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 Act 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 any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or aircraft.

Chidi Ilogu of the maritime newsletter 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 *A.M.O. Akinsanya vs United Bank for Africa Ltd.* 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 Act 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 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.

Causes of Actions

It must be appreciated that not all actions within the admiralty jurisdiction are actions in rem. For instance, Section 1 (1) of the Administration of Justice Act 1956 lists all matters that fall within the Admiralty jurisdiction of the Federal High Court. The Section does not in any way indicate which of such matters as it enumerates will necessarily give rise to an action in rem or otherwise.

It is at best, a general statement of causes of action that might give rise to an action in rem. The Section does not justify an assumption that once a matter falls within one of its defined categories, such a matter is automatically an action in rem. The reason for this is that an admiralty action can either be enforced in rem or in personam and the action then takes on the format of its enforcement.

Locus Standi in Maritime Claims

Locus standi simply means the right of a person to sue another in a court of law. Bello JSC in *Senator Adesanya v. President of the Federal Republic of Nigeria & Ors* states that the right of a party to appear and be heard on the question before any court or tribunal.

The old position of the law was that a litigant had locus standi in a matter once such a person could show a special or personal interest in the subject matter, over and above the common interest of the general public. Mohammed JSC in *Olayomi v. Lagos State Development and Property Corporation* referred, the court held that such special interest must not be "vague" or intangible or speculative and not be an interest which is shared with other members of the society. But in recent times, a more liberal view has emerged. The criterion of standi is now simply the existence of sufficient interest of the litigant in the subject matter. See *Adediran v. Inter-Land Transport Ltd.*, *Badejo v. Federal Minister of Education* and "*K*" *Line Inc. v. K. R. International Ltd.* Where court held thus: one test of sufficient interest is whether the plaintiff who instituted the action could have been joined as a party to the suit if some other party commenced the action. Another test is whether the plaintiff seeking the redress or remedy will suffer some injury or hardship arising from the litigation if some other person instituted it.

Sources of Locus Standi in Admiralty Matters

The locus standi in a particular area of the law may be derived from statute, or from judicial practice, or from the custom and practice of a particular trade, profession or community.

In admiralty matters however, the right to sue and to be sued on contracts of affreightment is purely statutory. The provision to this effect is Section 1 of the Bills of Lading Act 1855 and Article 11, Rule 6 of the schedule to the carriage of goods by Sea Act, Cap 44, Laws of the Federation of Nigeria 2004 and Section 357 of the Merchant Shipping Act Cap 224 Laws of the Federation 2004. For instance, Section 1 of the Bill of Lading Act 1855, provides that:- every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit to be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with him.

The above quoted provision is the statutory requirement of the right of action in respect of any goods carried under a bill of lading. A person who has locus standi to sue in respect of any goods named in a bill of lading can also be sued and held liable in respect of such goods. The category of persons who shall be referred to have had locus standi include any of the under mentioned person(s).

- (a) The consignee of goods in a bill of lading
- (b) The endorsee of the bill of lading

See the case of *Owners of M/V Bacoliner 3 v. Emmanuel Adeniji*, where the court of Appeal held that the respondent who was neither the endorsee nor consignee of the bill of lading could not sue in respect of goods carried under the bill of lading.

The Impact of Section 1 (1) (g) of Admiralty Jurisdiction Act 1991 on Petrojessica Enterprises Ltd and another Vs Leventis Technical Company Limited.

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

by sea contract. There are various types of Bill of Lading. A typical one is “shipped Bill of Lading” which may be caused 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 ENGLAND 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 court?

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 uninterminated 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*. 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.* the Supreme Court interpreted the extent of the Admiralty Jurisdiction narrowly, overruling Belgore C.J’s decision in the *INTERWORLD* case, 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. 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 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., 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 Act. 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 Manufacturing*.

State High Court under the Constitution

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 constitution 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 jurisdiction. 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.

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 nature of the relief sought 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 trial. 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 Marshal. The heading of the writ shall contain the expression "ADMIRALTY ACTION IN REM" and it must be in form 1 in the schedule to the Admiralty Jurisdiction Procedure Rules 2011.

However, the commencement of an action in personam shall be commenced by writ of summons as described in form (2) 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 witnesses; 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 Registry. Failure of the Plaintiff to accompany a writ in an action in Rem has been held to be wrong

Arrest of a Ship or other Properties

The aim of the arrest according to Lord Denning in Branco's case 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*". 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 days. 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 suit.

It is also worthy of note that arrest of ship or res can still be made after delivery of judgement. 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 person.

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.

Language of the Court

The language of the Nigerian Court is English language. 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) 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:- 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 matter. 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 discouraged because the Act 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 so.

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 provision where a matter arises in respect 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.

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 EGBO-EGBO in *SODIPO & BROTHERS LTD VS BOWEL ASSOCIATES LTD* held that there is no doubt Federal High Court Act allowed the State High Court to transfer a case over which it had no jurisdiction to the Federal High Court But Norrison Quakers 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, and 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.

Conclusion

In bringing an action in admiralty matters both the plaintiff and defendant must be given equal opportunity to present their matters or claims before the competent court irrespective of whether any of the party is a Government or Government agencies. Also, it is our humble opinion that the express use of the term "cause of action within the admiralty jurisdiction enforceable in rem" by Section 7 (3) of the limitation Decree excludes the possibility of the Limitation Decree applying to causes of action within the Admiralty jurisdiction enforceable in personam.

Recommendations

1. As earlier pointed out, all litigants in admiralty matters must be given equal opportunity to present their claims. Doing this will ensure that there is fair hearing between and to all the parties involved in maritime claims.

2. Time within which any party who wish to enforce his order claim or right must be increased from present six (6) years in an action against a person to possibly ten (10) years because of the nature of admiralty business. At time a ship who has left a soil of one country may not reach the place of destination two years after, if such is established, documents and all other evidences which may support one's claim may not be gotten before the expiration of time limit of six (6) years prescribed by the law.
3. A specialized court other than regular court is hereby recommended. Having a specialized court like Election Tribunal will aid speedy trial of any admiralty matters, be it action in 'Rem' or 'Personam'.
4. Admiralty laws like CABOTAGE and other relevant admiralty laws must subject to amendment from time to time, doing this will enable those in admiralty business to have hope in having their maritime claims or matters resolved within short period.
5. Time frame within which an admiralty matters or claims will be resolved from first court to final court must be stated so that party will not be discouraged having their matters resolved, because in many occasions, Admiralty matters here in Nigeria before it was decided upon by the Supreme Court at times takes up to ten (10) to twenty (20) years.

References

Textbooks

- British Shipping Laws by: Kenneth C. MCGUFFIE
 P.A. Fugeman, & P.V. Gray
- Maritime Law (5th edition) by: Christopher Hill
 Shipping Law (2nd 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>