

INTRODUCTION TO MARITIME LAW AND ADMIRALTY JURISDICTION¹

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1.1 Salutation

1.2 One feels highly delighted and indeed honoured, to be found worthy, to be invited, by the organizers of the 14th International Maritime Seminar for Judges, to kick-start the seminar, with the topic: **"Introduction to Maritime law and Admiralty Jurisdiction"**: One must confess; there are experts and talented speakers, on the topic, in this great country of ours. In the course of the preparation of this paper, I stumbled on the topic **"Maritime law and Admiralty Jurisdiction in Nigeria"** by Louis N. Mbanefo, Esq, SAN (Legal Expert, author and consultant in Maritime Law)³; Which I thought the learned author should have presented in place of my paper or should have permitted me to exercise "a copy right." I think Louis Mbanefo Esq., SAN has paid his dues in maritime law matters and should not be troubled any further and allowed to rest. My compliments to the rare author in this country.

1.3 Having confessed that one is not an expert in the field; there is no exaggeration, if one says it is a rare privilege. In the circumstances, it is safer to enter a caveat from the onset, that whatever regrettable ignorance of the subject that is exhibited, stems from the fact that the speaker is not an expert.

1.4 However, and a fortiori, presiding on the bench of the Federal High Court of Nigeria, as a Federal Judge, for over a decade, one has been adjudicating on Admiralty cases. This must have informed the organizers to pick one as a presenter of this paper. Once more, thank you for the honour.

2.0 Prelude

2.1 Most of the planet earth, the third planet from the sun, is covered by water. Scholars say the earth planet, the largest terrestrial planet:

"About 75% of the earth's surface is water covered and the Ocean all about 96.5% of all earth water also exist in the air as water Vapour, in rivers and lakes, in icecaps and glaciers, in the ground As soil moisture and in aquifers and even in you and your dog" ⁴

2.2 In other words or:

"In simple terms, water makes up 71% of the earth surface Whilst the other 29% consist of continent and islands" ⁵

2.3 Therefore, as activities take place on the land, activities also take place in the oceans and waters of the world. Were activities not to take place, in the oceans, a major part of the earth would have been rendered useless. Indeed even though man has been able to make activities possible in the oceans and waters to take place, they are in small percentage of the oceans, for the human being compared to the portions not utilized. Man must therefore continue to search how to utilize our marine environment. The nations of the world and continents are involved in

the navigation of the oceans for huge commercial activities of import, export, trade, oil-exploration, exploitation of natural resources and fishing etc.

2.4 Consequently, there must be laws to regulate the peace and safety of activities in the oceans, in order to maintain a social equilibrium, within the nations of the world. Areas of sphere of authority and influence, within territorial waters and beyond, must be agreed by committee of nations through customs, legislation, conventions, municipal laws, private and public international law.

2.5 This being, an introductory paper or presentation, terms must be simplified without getting involved in technical legal jargons, except where necessary.

2.6 With this asa back ground, we must constantly remember as we drive and use mechanically propelled machines, on land, insure them, get involved in accidents, carry goods, so we also navigate the oceans using ships to carry cargo and undertake voyage from one part of the world to the other; undertaking other activities such as fishing etc. pollution, collision also at times take place, as we encounter robbery on land, we also encounter piracy at sea. While there is no free land on the continents, there may be a high sea that belongs to nobody. As we hold unto our boundaries on land and air space, we also have our territorial limit in the ocean. whilst at sea, we have customs, body of rules, treaties, conventions and agreements that regulate our conducts; within the domain of the law of the sea, maritime/admiralty law, private and public international law, to regulate our affairs loosely so to speak. Accordingly, we shall attempt to look at definitions of concepts in this interesting area of the law. It is important to explore, what are the limits of territorial waters of nations, contiguous zones, the exclusive economic zones, the continental shelf, the high sea which comprise of the water column, air space above the oceans, the area consisting of the seabed and sub-soil,in short, the maritime zones.⁶

2.7 It is in this area of the law, we hear and learn of concepts like voyage, a ship or vessel, what is a motor tanker MT, what is a motor vehicle MV, what is cargo, carrier, agent, what is cargo on board, what is the discharge of cargo, what is bill of lading, consignee, indosee, notify party, what is a charter, charter party, charterer, what is bare board charter, what is master, Master Mariner or captain of a ship or vessel, what is maritime claim, what is maritime lien, what is arrest of ship, what is caveat against arrest, intervener, limitation of liability, what is safety of navigation, what is AIS, channel 16, what is bond, what is crew, what is wages, what is deck, what is piracy, pollution, STS, ship log book, manifest, Lloyd's Register, Lloyd's list intelligence,

IMO, Admiralty martial, collision, Flagship, ship registration, Anchorage, drop anchor, dock, what is a port, port regulations, pilots within the port, Cabotage, ship ownership and registration, terminologies like fender, warranties of seaworthiness, lay time/ demurrage, towage, wreck, average, stowage, salvage, why ships are referred to in the feminine gender as "she", mother vessel, sister vessel, dead vessel, what are actions in rem, actions in personam etc. The terminologies will go on and on.

2.8 For the purpose of this presentation, we shall not forget Admiralty Jurisdiction Act, Admiralty Jurisdiction rules, Origin or historical evolution of Admiralty law and Admiralty jurisdiction versus common law and statute, conventions such as the law of the sea, Merchant Shipping Act, and International Maritime Organization.

2.9 It goes without saying that, we cannot pretend in an introductory paper, to do justice to all the legal nittygritties, in this vast area of the law. However, it is hoped that this introductory paper, will provoke and stimulate interest for further learning in this area of the law that is, not only very challenging and interesting but fascinating and ever evolving, with numerous conventions and regulations trying to meet up with human conduct.

2.9.1 There is no gainsaying; it is a special area of the law with, specialty or peculiarity, with its language or terminologies. Unlike municipal law, it is arguably one area of the law, you cannot leave it in the cocoon of the jurisdiction of municipal law, you must learn, to live and operate it within a committee of nations, after all the world is a global village. That statement is altruism in the area of maritime law and practice.

3.0 To the topic **"Introduction to Maritime law and Admiralty Jurisdiction"**

3.1 Perhaps there is no better starting point in this paper/presentation than to draw and remind this august gathering, the views expressed, by a former Chief Judge of the Federal High Court of Nigeria, The Hon. Justice Babatunde Belgore of blessed memory. Wherein his Lordship stated thus:

"My brother Judges, we are to discuss this morning "Admiralty". Admiralty is one of those aspects of law that is not common; hence it is not part of what is known as the common law. Some of us may not come across it throughout our judicial career whereas few of us may live with it all our judicial life and others may only pronounce on it in the later stage of their judicial ladder. This is so in Nigeria because the law at present, vests only in the Federal High Court the exclusive first instance jurisdiction on admiralty matters by virtue of Section 7 (1) (d) of the Federal High Court Act No 13 of 1973. (This provision is not inserted in Section 249 (1) (d) of the New Constitution). So if you start your

judicial career as a State High Court Judge or as a Khadi and you end your judicial life there, you may have nothing to do with admiralty matters. But if from a State High Court you are elevated to the Court of Appeal or the Supreme Court, then on a higher level you will meet Admiralty. Of course, if you are a Judge of the Federal High Court whether you retire there or you move up, you are always with admiralty matters."⁷

3.2 Since Nigeria has coastal boundary, it is not out of place to make a case for the study of admiralty law in our universities, if it is not already in the curriculum to further enhance and encourage maritime practitioners to have early contact with the law in their career.

4.0 ADMIRALTY AND MARITIME

4.1 Admiralty and Maritime, though elementary to some of us in this gathering, and often used interchangeably, the words are not difficult to discern for Admiralty Lawyers, Admiralty Practitioners and the Admiralty Courts.

4.2 The author of compendium of laws approached the nature of maritime law and practice in this fashion;

"Maritime law is that system of law which particularly relates to marine commerce and navigation, to ships and shipping, to seamen, to the transportation of persons and property at sea and to marine affairs generally. It is divided into a variety of subject areas, such as those concerning harbours, property of ships, duties and rights of masters and seamen, contract of freight, average, salvage, etc. it extends to civil marine torts and injuries, illegal dispossession or withholding of possession from the owners of ships, municipal seizures of ships etc.

- Black's Law Dictionary 6th Edition p.969

In Nigeria, maritime matters and services are covered by a considerable number of Federal Laws. These are but not limited to the following: (a) Carriage of Goods by Sea Act, 1926 Cap. C2 Laws of the Federation of Nigeria, 2004; (b) Admiralty Jurisdiction Act, 1991, Cap. A5, Law of the Federation of Nigeria, 2004; (c) Coastal and Inland Shipping (Cabotage) Act, 2003; (d) Nigerian Ports Authority Act 1999 Cap.N126, Laws of the Federation of Nigeria, 2004; (e) Merchant Shipping Act 1962, Cap. M11 Law of the Federation of Nigeria, 2004; (f) Nigerian Shippers Council Act, 1977, Cap. N133 Laws of the Federation of Nigeria 2004, etc.

- Federal Laws of Nigeria as listed above. April 2007

A contract for the carriage of goods in a ship is called a contract of freight or contract of carriage. In practice this contract is usually written and most often is expressed in one or other of two types of documents called respectively as a charter-party and a bill of lading. In some cases the terms of a contract of carriage are contained partly in a charter-party and partly in a bill of lading.

- Awolaja v. Seatrade G.B.V. (2002) 4 NWLR (Pt. 758) 520 SC
- Halsbury's Laws of England Vol. 43 (2) (4th Edition) para. 1410

A "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

- Article 1(a) The Hague Rules as amended by the Brussels Protocol 1968

"Goods" includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

A clearing agent is the agent of the owner of the goods and his primary duty is to clear the goods on behalf of the owner and further to ensure that the correct number of the goods imported as set out in the shipping documents are collected from the port and delivered safely to the owner at his destination.

- *Triana Ltd v. Polymakers Ltd* (2002) 4 NWLR (Pt. 759) 171, CA

An Agent authorized to conduct particular trades or business normally has the authority to do whatever is usually done by occupying such positions. He also has the authority to act in accordance with the custom and usage of the place or trade provided such customs and usages are reasonable.

- *Triana Ltd v. Polymakers Ltd* (2002) 4 NWLR (Pt. 759) 171, CA

A "ship" means any vessel used for the carriage of goods by sea.

- Article 1 of the Hague Rules as amended by the Brussels Protocol 1968

The "ship" includes all property on board, apart from that owned by persons other than the ship-owner.

- *The Silla* (1981) 2 Lloyd's Report 534⁸

4.3 ADMIRALTY: Again it is stated:

"A court that, exercises jurisdiction over all maritime contracts, torts, injuries, or offences. The Federal Courts are so called when exercising their admiralty jurisdiction, which is conferred by the U.S. Constitution (art. III, & 2, Cl.1). - Also termed admiralty court; maritime court. (Cases Admiralty I. C.J.S. Admiralty & 2-12, 33, 37, 41, 69-70, 83, 280). (2) The system of jurisprudence that has grown out of the practice of admiralty courts; MARITIME LAW. (3) Narrowly, the rules governing contract, tort, and workers' - compensation claims arising out of commerce on or over navigable water. Also termed (in senses 2 & 3) admiralty law. -admiralty, adj. ⁹

4.4 ADMIRALTY AND MARITIME JURISDICTION

"The exercise of authority over maritime cases by the U.S. district courts sitting in admiralty. See 28 USCA & 1333. Often shortened to admiralty jurisdiction; maritime jurisdiction. See ADMIRALTY (1) SUPPLEMENTAL RULES FOR CERTAIN ADMIRALTY AND MARITIME CLAIMS, (Cases; Admiralty 1-25. C.J.S. Admiralty & 2-86, 280; Conflict of Laws & 49."¹⁰

4.5" Admiralty law in ordinary parlance, often interchangeably referred to as maritime law, is a distinct legal regime which regulates maritime questions and offences. Its legal framework covers maritime activities at domestic levels, and in private international law, it applies to relationships between private entities which operate vessels on oceans. Thus, Admiralty law deals with matters relating to maritime commerce, marine navigation, ship sectors and the transportation of passengers and goods by sea. The list is however, not exhaustive".¹¹

4.6I think it is better to leave it not exhaustive. The origin of jurisdiction of Admiralty Court, its conflict with common law, advent of statutory jurisdiction in England, the law administered, the origin of action in rem, action in personam shall not be taken for granted as well.

4.7In the same vein the origin, the historical Evolution of doctrine of the received English Common Law together, with statutes of general application in Nigeria, shall not also be taken for granted, so also our local legislations and treaties or conventions on the vast topic of Admiralty or Maritime Claims and Law.

4.8Nigeria is by nature blessed with coastal boundary of 853 Kilometers, 3,122 Kilometers, navigable rivers and lakes. Therefore, coastal trade and Maritime activities has never been and cannot be alien to us. Indeed since the advent of colonialism, Admiralty Law or Maritime Law has come to stay with us.

4.9The above was the approach taken by the speaker in a paper titled "**The Essence of time in determining Admiralty Cases: The Nigerian Experience**"¹²we can improve on it without examining in detail maritime law generally, the law of the sea, the origin or evolution of Admiralty jurisdiction specifically the provisions of Section 251 of the Constitution of the Federal Republic of Nigeria 1999, Section 7 of the Federal High Court Act. We shall attempt to look at action in rem, action in personam, what are maritime claims, maritime lien, the arrest and detention of vessels in Nigeria, practice and procedure of the Admiralty Court, the various conventions albeit introductory and the criminal jurisdiction in Maritime matters as stated elsewhere.

5.0 THE ORIGIN OR EVOLUTION OF ADMIRALTY JURISDICTION

5.1 In England, the jurisdiction of the high court on Admiralty is stated in Halsbury Laws of England 4th Edition, volume 1, paras 301-304 as follows:¹³

5.2 **“Origin and conflict with common law courts:** The jurisdiction of the Admiralty Court in respect of offences committed upon the high seas is of ancient origin. As a result of possessing this criminal jurisdiction the court of the Lord High Admiral began to hear disputes also in all civil matters connected with the sea and gradually usurped the jurisdiction of the common law courts in matters arising in Inland tidal waters, in consequence of which two statutes were passed in the reign of Richard II confining the jurisdiction of the Admirals and their deputies to things done upon the sea and in the main streams of great river to the seaward side of the bridges.

5.3 The criminal jurisdiction of the Admiralty as adjusted by these statutes continued until 1537, when it was to a great extent transferred to commissioners of oyer and terminer under the great seal, of whom one was the judge of the High Court of Admiralty. All proceedings on indictment for offences within the jurisdiction of the Admiralty of England are now to be brought before the Crown Court.

5.4 The civil jurisdiction of the Admiralty Court continued within the limits laid down by the statutes of Richard II, but its exercise involved the Admiralty court in a long struggle with the superior courts of common law. The Admiralty court asserted the highest and fullest jurisdiction over everything which might happen upon the high seas, but it was obliged to give way to the common law courts and ceased to exercise jurisdiction to the full extent which it had formally claimed. Nevertheless in the reign of William IV it still retained a curtailed jurisdiction which included a number of important subjects.

“**302** The Admiralty court Act of 1840 was passed to improve the practice and extend the jurisdiction of the high court of Admiralty in England. This was the first series of acts which enlarged or defined the jurisdiction, the latest of which is the Administration of Justice Act of 1956. Part I of that Act redefines the Admiralty jurisdiction of the High court so as, among other things, to give effect by domestic legislation to two international conventions. In addition to specifying in detail the questions or claims within the Admiralty jurisdiction, the Act expressly preserves any other jurisdiction vested in the high court of Admiralty immediately prior to the commencement of the Supreme court of Judicature Act 1873.

303 Law administered in Admiralty: Maritime law is the law developed and administered in the Admiralty court in exercising both its original jurisdiction and the jurisdiction derived from statute. Outside the special field of prize in times of hostilities there is no maritime law of the world, as distinct from the internal municipal laws of the individual countries, that is capable of giving rise to rights or liabilities enforceable in English courts; but, because of the subject matter and historic derivation from sources common to many maritime

nations, the internal municipal laws of different countries show greater similarity to one another than is found in law relating to what happens on land. Although maritime law was developed in a separate court, its development was nevertheless, related to the law being developed in other courts, and the effect of the merger, in 1875, of the High Court of Admiralty with the High Court of Justice has been to foster the development of common concepts between the common law courts and the Admiralty court, which began at least as early as 1840 with the passing of the Admiralty Court Act 1840. In the last hundred years the development of English Maritime law has continued to be greatly influenced by changes in concepts of the common law, and to regard it as constituting today a system of law entirely separate from the general law may lead to error.

304 Foreign aspects of Admiralty jurisdiction: The jurisdiction of the Admiralty court has long extended both to foreign ships on the high seas, except ships in the ownership or possession of a foreign sovereign state and used for public purposes, and over injurious acts done on the high seas. The Admiralty jurisdiction of the High court now extends to all ships or aircrafts, whether British or not and whether registered or not and wherever the residence or domicile of their owners may be, and in relation to all claims, how so ever arising.

The extent of jurisdiction is subject to rules governing the mode of exercise of jurisdiction. The jurisdiction of the court is also restricted in collision and other similar cases where the action is in personam."

6.0 Nigeria Historical Origins

6.1 Prior to the promulgation of the Admiralty jurisdiction Decree 1991, Nigeria relied on the colonial Admiralty Act of 1890 and the Nigerian courts also applied the Administration of Justice Act, 1956 referred to above in exercise of their in rem jurisdiction.

Louis MbanefoESQ. SAN "**Dealing in the development of Admiralty practice and procedure in Nigeria**"¹⁴ in the synopsis of his lecture captured the high points as follows:

- " - The entire concept was imported from Britain
- Britain a trading nation – ships sponsored by merchants navigated the globe – a risky venture.
- Goods manufactured in England were transported by ship and bartered for other goods around the world.
- In the event of problems- financial or physical, the ship itself was used as security or lien.
- Captain could raise money by using the ship as security for monies advanced (bottomry).
- If ship caused damage, it could be detained until the damage was made good or compensation paid.
- Detailed set of rules were evolved over centuries.

- Due to transient nature of ship's presence within each jurisdiction, a procedure for exercising a lien on the ship was developed.
- This was known as the "in rem" procedure. It involved the detention of a ship by a judicial process known as "arrest".
- Defined as "the detention of a ship by judicial process to secure a maritime claim"
- Once a ship is arrested, the owners or persons in charge of it had the choice either of abandoning her or depositing money (up to the value of the ship) pending the resolution of the dispute. The arrest warrant served both as notice of proceedings against the owners of the vessel and service of the writ on the said owners.
- The detailed English legislation and procedures on the matter were introduced to Nigeria through the Colonial Courts of Admiralty Act 1890.
- The Act empowered Colonial Courts to exercise the full extent of the Admiralty Jurisdiction of the High Court in England.
- In Nigeria, the powers were exercised by the Supreme Court.
- By the Admiralty Jurisdiction Act 1962, the Admiralty Jurisdiction was conferred on the High Courts.

6.2 The International Dimension

- By the mid-1900s, most countries had adopted and applied the *in rem* procedure.
- The need for harmonization of the rules was apparent.
- The International Maritime Law Association (CMI) exercised the initiative in preparing an "International Convention for the Unification of Certain Rules Relating to the Arrest of Sea Going Ships"
- Convention was finally concluded in 1952 and came into force on 24th February 1956, having been ratified by many countries.
- Britain ratified the Convention and incorporated its provisions into its Administration of Justice Act 1956.
- Nigeria acceded to the Convention after independence on the 7th November 1963.
- But no legislation was made giving effect to it.
- That was not a major problem because the few cases adjudicated here simply applied the English law.
- State affairs continued until the notorious "cement crisis" of the mid 1970s.
- That was the catalyst that ignited the quest for a Nigerian approach.

- An American International Insurance Co. V. Ceekay traders (1981)2 NSC 65, the Supreme Court sanctioned the practice of applying the English Administration of Justice Act 1956 to actions in rem in Nigeria.
- So, by adopting English legislation, we indirectly adopted the 1952 Arrest Convention.
- Following collaboration between the CMI and UNCTAD, a new Convention on Arrest of Ships was made on the 12th March 1999.
- It greatly expanded the list of maritime claims which give rise to a "statutory lien"
- Unfortunately, it has not garnered enough support and has never come into force internationally."

6.3 Similarly, In Halsbury Laws of England, in paras. 307 aforesaid It provides the present jurisdiction in general as follows:¹⁵

"The Admiralty jurisdiction of the High Court of Justice is derived partly from statute and partly from the inherent jurisdiction of the High court of Admiralty. The Administration of Justice Act 1959 lists the areas of jurisdiction of the High court under eighteen paragraphs. In addition the High court has any other jurisdiction which either was vested in the High court of Admiralty before 1st November 1875 or is conferred on the High court as being a court with Admiralty jurisdiction by or under any Act which came into operation on or after the date, and also any other jurisdiction connected with ships or aircraft vested in the Highcourt which is for the time being assigned by the rules of court to the Queen's Bench Division and directed by the rules to be exercised by the Admiralty court. Although the jurisdiction of the High court is concerned mainly with questions and claims arising in relation to ships, it extends to hovercraft and, in respect of certain questions and claims, also to aircraft.

Part I of the Administration of Justice Act 1956 is based, in part at least, on the international convention relating to the arrest of sea-going ships and the international convention of certain rules concerning civil jurisdiction in matters of collision both signed at Brussels on 10th May, 1952 and to both of which the United Kingdom is a signatory. Where the meaning of the Act is not clear the court may look to the terms of these conventions to assist in the construction of the Act."

6.4 In addition to Section 7 of the Federal High Court Act 1973 now 2004 LFN Sections 251(g) of the Constitution of The Federal Republic of Nigeria 1999, also provides:

251 (1) 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 matters and matters-

- (g) Any admiralty jurisdiction, including shipping and navigation on the River Niger or river Benue and their affluents and on such other inland waterways as maybe designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the port, authorities for Federal ports) and carriage by sea;"¹⁶

6.5 The jurisdiction of the Federal High Court upon creation as a Federal Revenue Court in Nigeria in 1973 had its own challenges too.

6.6 Sir T. A. Nwamara on the Encyclopedia of the practice and procedure of the Federal High Court of Nigeria 2nd Edition 2010 provides at page 184 dealing with Section 7 of the Federal High Court Act Provides thus:

“Before the date when the constitution came into force, the Federal Revenue Court was exercising Admiralty jurisdiction by virtue of section 7(1) of the Federal Revenue Court Act. From its ordinary and plain meaning, section 230(2) simply confers on the Federal High Court the same jurisdiction from the date when the constitution came into force: Savannah Bank v. Pan Atlantic, (1987) 1 S.C. 198; (1987) 1 N.W.L.R. (Pt.49) 212; (1987) 2 Q.L.R.N. 178, SCN

Where the claim in a case relates to a dispute between the holder of a bill of lading and a stevedore in respect of the loss of a cargo carried by a ship, the claim is a cause within the Admiralty jurisdiction, see the New Zealand Shipping Co. Ltd. v. A.M Satterthwaite & Co. Ltd, (1974) 1 All E.R 1015 and Park Jackson Stevedoring PTY Ltd. V. Salmond & Spraggon (Australia) PTY Ltd., (1980) 3 All E.R 257”: Savannah Bank v. Pan Atlantic, (1987) 1 S.C. 198; (1987) 1 N.W.L.R. (Pt.49) 212; (1987) 2 Q.L.R.N. 178, SCN

This court in Jammal Steel Structures Co. Ltd. V. African Continental Bank Ltd (1973) 1 All N.L.R. (Pt.2) 208 at 221, tried to resolve this question of the content of the Admiralty jurisdiction vested in the Federal High Court.....the majority opinion on the proper meaning of section 7 (1(a) of Act No.13 of 1973 (i.e. limiting the Admiralty jurisdiction to only such causes or matters as pertain to Federal Government vessel or property or revenue) is not only obiter dictum but is rather too restrictive an interpretation”: Lawson (Adeyinka) v. Lawson, (1984) 5 N.C.L.R. 576, HC Lagos State.”

6.7 Just as in England when the Admiralty courts were established and there were agitations and statute of Richard II of 1389 shows in its preamble and recites that:

“A great and common clamour and complain had been often times made before this time and yet it is for that, the Admirals and their deputies hold their sections within diverse places of this realm, as well within franchise as without accroaching to them greater authority than belongeth to their office.”

Then the Statute enacts that:

“The Admirals and their deputies shall not meddle from hence forward with anything done within the realm but only of a thing done upon the sea as it had been used in the time of King Edward grandfather of our Lord the King that now is”

The jurisdiction of the early Admiralty court was explained in an Act of 1931 thus:

“That of all manner of contracts, pleas, and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the Admirals court shall have no manner of cognizance, power nor jurisdiction,” but “Nevertheless, of the death of a man, and of a mayhem done in

great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same rivers nigh to the sea, and in none other places of the same rivers the Admiral shall have cognizance.”¹⁷

6.8In Nigeria, the establishment of Admiralty jurisdiction was lucidly stated by Uwais, J.S.C., in the case of *American International Insurance Co. v. Ceekey Traders Limited*. Since the passing by the British Parliament of the Offences (Admiralty jurisdiction) Act 1849, Admiralty matters had been introduced to Nigeria. Such Admiralty matters in accordance with the provisions of the Act, were being dealt with by specially appointed Judges by warrant from the Admiralty in England. By 1886, the Governor in Lagos was empowered by letters patents to constitute a court of Admiralty for the colony. The next enactment was “The colonial courts of Admiralty Act 1890. Sub-section (1) and (2) of the 1890 Act read:

“Every court of law in a British possession, which is for the time being declared in pursuance of this Act to be a Court of Admiralty, or which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a court of Admiralty, with the jurisdiction in this Act mentioned, and may for the purpose of that jurisdiction exercise all the powers which it possesses for the purpose of its other civil jurisdiction, and such court in reference to the jurisdiction conferred to as a colonial court of Admiralty...

“(2) The jurisdiction of a colonial court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things as the Admiralty jurisdiction of the High court in England whether existing by virtue of any statute or otherwise and the colonial court of Admiralty may exercise such jurisdiction in like and to as full an extent as the High court in England, and shall have the same regard as that court to international law and the comity of nations.”

6.9 It will be seen that from this Act of 1890 that the Colonial Court of admiralty was to administer Admiralty laws as were applicable in England. Section 12 of the 1890 Act empowered the English Sovereign to establish in the colonies Courts for Admiralty jurisdiction and it was not until 1928 that it was established for Nigeria. The law gave the Supreme Court then the jurisdiction. That was the position till the Supreme Court ordinance No. 33 of 1945 when a new Admiralty court which would be a division of the Supreme Court was created. Section 24 of it reads:-

“The court shall be a colonial court of Admiralty within the meaning of the colonial court of Admiralty Act, 1890 and shall have and exercise Admiralty jurisdiction in accordance with the provisions of the said Act in all matters arising upon the High seas or elsewhere or upon any lake, river or other navigable inland waters or otherwise relating to ships and shipping.”

6.9.1The next development of law relating to Admiralty came in 1956 as a result of regionalization of the Judiciary. By the Supreme court (General provision) Act (Cap 68) jurisdiction in identical terms as those in section 24 of the 1945 Ordinance was vested in the Federal Supreme Court (as the present supreme court was then known). This provision was

repeated by section 17 of Federal Supreme Court Act No 12 of 1960 but by virtue of the Admiralty jurisdiction Act No. 34 of 1962, Admiralty jurisdiction was removed from the Supreme court and vested in the High court of Lagos. This was the position till 1973 when exclusive jurisdiction in Admiralty matters was given to the Federal High court by virtue of section 7 of the Federal High Court No.15 of 1973.¹⁸

7.0 ACTION IN REM, AND ACTION IN PERSONAM

7.1 Halsbury Laws of England 4th Edition paras. 305-306, 310-311¹⁹

305Origin of actions in rem: Originally a suit in Admiralty was commenced by the arrest either of the person of the Defendant or of his goods, whether or not the ship or goods in question constituted the subject matter of the offence, the purpose being to make the Defendant put up bail or provide a fund for securing compliance with the judgment, if any, when it was obtained against him. The result of the conflict between the court of Admiralty and the common law courts was that this method of procedure became obsolete, but the Admiralty court succeeded in establishing a right to arrest property which was the subject matter of a dispute, and to enforce its judgments against the property so arrested, on the theory that a maritime lien to the extent of the claim attached to the property from the moment of the creation of such claim. Such an action became known as an action in rem. The right to enforce a maritime lien by an action in rem was confined to the property by which the damage was caused or in relation to which the claim arose, and was enforceable against the property in the hands of an innocent purchaser.

The present law preserves the jurisdiction based upon the maritime lien and extend the right to proceed in rem to many claims which do not give rise to a maritime lien. In addition, in many cases jurisdiction may now be established by the commencement of proceedings against any other ship in the same beneficial ownership as the ship in connection with which the claim arose.

306Origin of action in personam:The inherent jurisdiction possessed by the Court of Admiralty was exercised not only by proceedings in rem brought to enforce the maritime liens attaching to the res in each case, but, where the ship was lost or for some other reason could not be arrested, a plaintiff having a claim cognizable by the court, other than a claim on bottomry or respondentia bond or to the possession of the ship, might take proceedings in personam against the owners of the property which would have been arrested if the proceedings had been in rem. Subsequently, in 1854, the High court of Admiralty was empowered by statute to institute proceedings by personal service of a monition upon the owners of the property the subject matter of the dispute.

The Admiralty jurisdiction of the High court may now in all cases be invoked by an action in personam, although the exercise of jurisdiction may be inhibited by the operation of rules of court relating to service of proceedings out of the jurisdiction, and in collision and other similar cases the jurisdiction of the court cannot in any event be exercised unless certain special conditions are fulfilled.

310 Nature of actions in rem and actions in personam

An action in rem is an action against the ship itself, but the view that if the owners of the vessel do not enter an appearance to the suit in order to defend their property no personal liability can be established against them has recently been questioned. It has been stated that, if the defendant enters an appearance, an action in rem becomes, or continues also as, an action in personam; but the Admiralty jurisdiction of the High Court may now in all cases be invoked by an action in personam, although this is subject to certain restrictions in the case of the collision and similar cases, except where the defendant submits or agrees to submit to the jurisdiction of the court.

The foundation of an action in rem is the lien resulting from the personal liability of the owner of the res. Thus an action in rem cannot be brought to recover damages for injury caused to a ship by the malicious act of the master of the defendant's ship, or for damage done at a time when the ship was in the control of third parties by reason of compulsory requisition. On the other hand, in several cases, ships allowed by their owners to be in the possession and control of charterers have been successfully proceeded against to enforce liens which arose whilst the ships were in control of such third parties.

The Defendant in an Admiralty action in personam is liable, as in other actions in the High court, for the full amount of the plaintiff's proved claim. Equally, in an action in rem a defendant who appears is now liable for the full amount of the judgment even damages may however be affected by the right of the defendant to the benefit of statutory provisions relating to limitation of liability.

311 When an action in rem lies

The Admiralty jurisdiction of the High court may be invoked by an action in rem against the ship or property in question in the case of claims to the possession of a ship or ownership of a ship or a share therein, questions arising between co-owners of a ship as to possession, employment or earnings of that ship, claims in respect of a mortgage or charge on a ship or any share therein and claims for the forfeiture or condemnation of a ship, or goods which are being or have been

carried or attempted to be carried therein, or for restoration of a ship or any such goods after seizure, or for droits of Admiralty.

In relation to a number of other claims the jurisdiction may be invoked by proceedings in rem against the ship in question, or against what is generally referred to as a "sister" ship. The claims are those in respect of (1) damage done by or to a ship, (2) loss of life or personal injury sustained in consequence of any defects in a ship or in her apparel or equipment or of certain acts, neglects or defaults of her owners or certain other persons, (3) loss of or damage to goods carried in a ship, (4) any agreement relating to the carriage of goods in a ship or for the use or hire of a ship, (5) salvage, (6) towage, (7) pilotage, (8) goods or materials supplied to a ship for her operation or maintenance, (9) construction, repair or equipment of a ship or dock charges or dues, (10) wages or amounts recoverable as wages by a master or member of the crew of a ship, (11) disbursements made on account of a ship, (12) general average, and (bottomry). In the case of any such claim, being a claim arising in connection with a ship, where the person who would be liable in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the jurisdiction may be invoked by an action in rem against (a) that ship, if at the time when action is brought it is beneficially owned by that person, or (b) against any other ship which, at the time when the action is brought, is beneficially so owned. This jurisdiction may be invoked by an action in rem whether the claim gives rise to a maritime lien on the ship or not.

A plaintiff is not entitled to arrest more than one ship belonging to the defendant, though he may issue, as soon as the cause of action arises, a writ in rem not only against the offending ship but against all other ships which at the time are in the ownership of the person who would be liable in an action in personam.

In the case of a claim in the nature of towage or pilotage in respect of an aircraft, the Admiralty jurisdiction may be invoked by an action in rem against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam.

In any case where there is a maritime lien or other charge on any ship, aircraft or other property of the amount claimed, the Admiralty jurisdiction may be invoked by an action in rem against the ship, aircraft or property. A maritime lien may be so invoked against the ship, aircraft or other property, even in the hands of an innocent purchaser.

Where, in the exercise of its Admiralty jurisdiction, the high court orders any ship, aircraft or other property to be sold, the court has jurisdiction to hear and determine any question arising as to the title to the proceeds of sale. No action in rem may be brought against the crown."

7.2 The Nigerian Court of Appeal in the case of **Deros Maritime Limited Vs MV MSC Apapa** (2015) 1 NWLR (Pt 1439) p 51 stated that:

"When then is an action said to be *in rem* and when is it said be *in personam*? The case of **Rhein Mass Und See GMBH Vs Rivway Lines Ltd.** is instructive. At page 277, para D – F, Ogundare, JSC delivering the judgment of the court observed:

"... It is conceded before us by Mr. Agbakoba that in the enforcement of this cause of action, Plaintiff could proceed either against the vessels concerned or against their owner(s) or both. Where Plaintiff proceeds against the vessel, the action is one *in rem* and where he proceeds against the owner, the action is one *in personam*."²⁰

7.3 See also the **Owners MV 'MSC Agata Vs Nestle (Nig.) Plc.** (2014) 1 NWLR (Pt 1388) p270 at 294 - 296 para C – F, the Court of Appeal held that:

The Black's Law Dictionary 9th Edition defines an action *in personam* as:

"An action *in personam* is an action brought against a person rather than property. Thus an *in personam* judgment is binding on the judgment debtor and can be enforced against all the property of the judgment debtor. The action *in personam* is a natural or legal person."
The Dictionary also defines action *in rem* as an action determining the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property. It is usually an action brought for the protection of possession, ownership or other real rights in immovable property. It is one in which the named defendant is real or personal property. In **Rhein Mass Und See GMBH Vs Rivway Lines Ltd.**, Ogundare, JSC turned his attention to this issue of the definition of "action *in rem*" and "action *in personam*".²¹

7.4 He held as follows at page 277 - 278: "Defining the expression "action brought against a person, an action *in personam*", Coker, JSC delivering the judgment of this court in **Nigeria Ports Authority Vs Panalpina** (1973) 5 SC 77 at Pp 96 – 97, (1973) ANLR 408, 422 observed:

"Etymologically an action *in personam* is an action brought against a person, an action to compel to do or not to do a particular thing or take or not to take a particular course of action or inaction.

An action for damages in tort or for breaches of contract are clearly directed against the person as opposed to actions which are brought for the purpose of declaring or challenging status, like proceedings under the matrimonial laws of the country or of legitimacy or an admiralty action directed against a ship or the *res* (and so known as an action *in rem*) or the like. Generally, therefore, all actions which are aimed at the person requiring him to do or not to do or to take or not to take an action or course of conduct must be and are actions *in personam*."²²

7.5 And in **Anchor Ltd Vs The Owners of the Ship Eleni**¹ PSC 14, 15; Nigerian Shipping Cases Vol. 1 p.42, Forster Sutton FCJ defined 'action *in rem*' as follows:

"An 'action *in rem*' is one in which the subject matter is itself sought to arrest and in which the claimant is enabled to arrest the ship or other property and to have it detained, until his claim has been adjudicated upon or until security by bail has been given for the amount or for the value of the property proceeded against, where that is less than the amount of the claim".²³

7.6 It follows that the Plaintiff's cause of action is one enforceable *in rem*. In my respectful view, the fact that this cause of action can be enforced by 'action *in personam*' where plaintiff proceeds, and in this case against the defendant, owner of the vessels concerned in the joint venture agreement, would not alter the nature of the cause of action. See **R Vs Judge of City of London Court** (1892) 1 QB 273, 295 where Lord Esher, M.R. observed:

"If there is a collision between two ships on the high seas, that the Admiralty Court has jurisdiction to deal with the liability of the owners of those ships is true and it can exercise that jurisdiction with by action *in rem* or by 'action *in personam*'. Given the jurisdiction, the question whether the action is to be *in rem* or *in personam* is one of mere procedure".²⁴

7.8 That being so, the conclusion I reach is that the cause in this case is one enforceable *in rem*".

Ogwuegbu, JSC also gave a very elucidating definition of both phrases. His lordship explained at page 281 of the NWLR as follows:

"This brings me to the definition of action *in rem* and action *in personam*. An action *in rem* is a piece of legal machinery directed against a ship alleged to have been the instrument of wrongdoing in cases where it is sought to enforce a maritime or statutory lien or in a possessory action against the ship whose possession is claimed. A judgment *in rem* is a judgment good against the whole world. This does not mean that the vessel is the wrong doer but that it is the means by which the wrongdoer (its owner) has done wrong to some other party. It is the means by which the wrongdoer is brought before the court as a defendant. It is an accepted legal theory that an action *in rem* is procedural. The purpose is to secure the defendant owner's personal appearance. An action *in personam* is directed against the person at fault and is dependent Entirely upon the plaintiff being able properly and effectively to serve a summons on the defendant in connection with the legal complaint against the defendant particularly where the parties are in different jurisdictions. Therefore, the maritime shipping industry contains within its sphere the concept of legal action available to an injured party through the machinery of the admiralty jurisdiction which allows under certain clearly defined circumstances, the vessels to be sued *in rem*. An action *in rem* can be concluded by a judgment *in rem*. The ship owner may take part in the proceedings if he considers it appropriate to defend his property. It is essentially an action against his property (*in rem*) not against him. Thus, it can be seen that the distinction between action *in rem* and action *in Personam* is procedural only. Except in certain claims, the same cause of action may give rise to both actions depending on which action the plaintiff initiates

having regard to the procedural difficulties involved”.

312 Action in personam

Subject to the important exception of claims in respect of collision and other similar cases, which is discussed below, the Admiralty jurisdiction of the high court may in all cases be invoked by an action in personam. The exercise of jurisdiction may, however, be inhibited by the operation of the rules of court relating to service of proceedings outside the jurisdiction.

The exception mentioned applies to claims for damages, loss of life or personal injury arising out of a collision between ships, out of the carrying out or omission to carry out a manoeuvre by one or more of two or more ships, or out of non-compliance with the collision regulation. No court in England or Wales may entertain an action in personam to enforce such a claim unless (1) the defendant has his habitual residence or place of business within England or Wales, or (2) the cause of action arose within inland waters of England and Wales or within the limits of a port of England or Wales, or (3) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court. Further, no court may entertain an action to enforce such a claim until any proceedings previously brought by the plaintiff in any court outside England and Wales against the same defendant in respect of the same incidents or series of incidents have been discontinued or otherwise come to an end. The foregoing restriction on jurisdiction in personam in respect of claims in collision and similar cases applies to counterclaims as it applies to actions, where the counterclaims are not in proceedings arising out of the same incident or series of incidents. It does not apply, however, to any action or counterclaim if the defendant submits or has agreed to submit to the jurisdiction of the court.

Where the requirement as to the discontinuance or termination of any previously brought proceedings has been complied with and any of the other prerequisite conditions is satisfied, the court has jurisdiction to entertain an action in personam to enforce claims to which the restriction applies.

Nothing in the foregoing provisions prevents an action or a counterclaim, brought in accordance with these provisions, being transferred, in accordance with the enactments in that behalf, to some other court. The provisions apply in relation to the jurisdiction of any court not being Admiralty, as well as in relation to its Admiralty jurisdiction, if any. Without belaboring the issue, the Supreme Court: **25**

8.0 MARITIME LIENS

8.1 What give rise to an action in rem, is the lien the plaintiff has on the property of the defendant. A maritime lien attaches to ship or cargo without regard to a person who has possession of it. Section 3 of the Administration of Justice Act 1956 had extended the right of action in rem to many claim listed in the sub-section which would normally not give rise to a maritime lien. A claim arising in connection with a ship where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in control of the ship, see section 3(4) of the 1956 Act.

8.2 Under section 2 of the Admiralty jurisdiction Act 1991, there are only four categories of maritime lien (1) salvage see section 2(3) (g) (2) damage done by ship see section 2(3)(a) (3) wages of the master and crew and (4) masters disbursement. See section 5(4) on the importance of maritime lien as it relates to the arrest of a vessel. There's also the distinction between maritime liens and statutory liens.²⁶

9.0 ARREST AND DETENTION OF VESSELS

9.1 Arrest of ship may arise for obtaining a pre-judgment security or in the execution or satisfaction of a court judgment, see the case of PrinsBernhand (1963) 3 All E.R. 735 of the saliver 1965 2 Lloyds Rep. 350. There may be arrest or detention by government agencies such as, the Nigerian ports authority Article 1(2) of the 1952 Convention on Arrest of Ships defines "arrest" as:

"The detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment"²⁷

9.2 Section 2 provides for proprietary maritime claims while section 2(3) provides for general maritime claims.

Apart statutory powers of detention of vessels granted to government functionaries, the procedure for arrest of vessel is by a motion exparte supported by affidavit verifying facts with an affidavit of urgency with an affidavit verifying facts which requires the judge to act immediately. If the arrest is wrongful, the party causing the arrest will be liable in damages.²⁸

9.3 Once a vessel is arrested, it should be in the custody of the Admiralty marshal and where a vessel is arrested and detained, the case must be heard expeditiously because time is of the essence as the consequences of arrest may lead to untold hardship and damages to the ship owners, the charterers and even cargo owners. The courts should not allow ships to be turned into floating warehouses. Our jurisprudence is replete with cases in which time has not been taking into account in determining Admiralty case in the case of **FHC/PH/CS/89/2006 BANK PLATINUM HABIB PLC & IBETO CEMENT COMPANY V. MV JORITA; OWNERS OF THE VESSEL MV**

“JORITA” & MASTER OF THE VESSEL M/V “JORITA” Buba J. Whilst sitting at Port Harcourt division was confronted with a situation where the Federal Government of Nigeria after approving and allowing the Plaintiffs/Applicants to import cement and after the ship load cargo arrived Port Harcourt. The Federal Government refused the Plaintiff to off load the cargo. The vessel was arrested and detained. Subsequently, the vessel was released. Learned counsel applied for:

“An order staying the execution of the order releasing the 1st Defendant /Respondent vessel from arrest unconditionally which order is contained In the ruling of this Honourable court delivered on the 11th day of May 2006 Pending the determination of the Appeal already lodge against the said ruling”

In a considered ruling of 25/5/2005 I.N. Buba held that:

From the totality of the depositions and submissions before me, I have no doubt whatsoever that the 1st defendant, the vessel had been in Nigerian territorial waters since on or about the 12th November, 2005, till date waiting to discharge its cargo to the Plaintiffs. According to the depositions, the 1st Defendant was supposed to spend 9 days by the contract between the parties.

It was also deposed that if this application is granted, the 1st Defendant will suffer irreparable damage and it will be impossible for the Defendants to discharge the cargo of cement as the cargo will deteriorate and cake into solid material that will damage the vessel and render it useless and unfit for any purpose. The 1st Defendant vessel is said to be ready to discharge the cement cargo and is not claiming ownership, but the truth of the matter is the Plaintiffs who were not allowed by the Federal Government to discharge the cement cargo are not ready to discharge the vessel.

If truly the cargo is about to cake and solidify into a material that would destroy the ship or vessel, it is then very easy to liken the case of the 1st Defendant to that of a pregnant woman who after undergoing the period of gestation is not allowed to deliver the baby. Certainly, in that situation the risk of losing both the mother and the baby cannot be ruled out.

It therefore goes without saying this, Court in balancing the interest of justice must reconcile preserving the Applicants’ “res” i.e. the cargo whose ownership or claim is not in dispute with losing both the cargo and the vessel.

In other words, should this Court grant the Applicants’ application for stay and allow the vessel to sink with the cargo in the name of preserving the res? Would that accord with justice to the parties?

In the case of **WARRINGTON STEPHENSON BLAKE & CO.-V- GRANT LEGROS & CO, (1917) 86 ch. 439 at 440** Warrington LJ said:

"The function of the Court is not to decide abstract question of law, but to decide questions of law when arising between the parties as the result of a certain state of facts".

See also the case of **MV DAQURING SHAN & ORS-V- ASSAN OIL MILLS LTD. VOL V NSC (1990-1993) P.163 at 170.**

As stated elsewhere in this ruling, if an order for stay is made and the vessel sinks with the cargo that will not be justice to all the parties. Indeed the whole essence of stay of execution will be defeated and the purpose not achieved. In the same vein, no Court of law should make an order that is capable of aiding injustice when it is apparent. In the circumstance, it is my findings and conclusions that the Applicants have not supplied the Court with sufficient materials to justify the grant of this application. I do not find the grounds of Appeal constituting exceptional and special circumstances in this case, even if arguable, they are not recondite or novel in my respectful view. And indeed the Applicants did not frontally deny the Respondents' averments and depositions.

I agree with Mr. Okodiya, Learned Counsel for the Respondents that the grant of stay of execution in this case would turn the 1st Defendant/Respondent, the vessel M/V "Jorita" into a floating ware house and indeed, I dare add a dangerous floating ware house with undischarged cargo. On the whole, this application ought to be refused, it is hereby refused and accordingly dismissed.

Arrest of ship must not be mischievous see the case of **PHONIC MARINE SERVICES LIMITED & Anor Vs THE VESSEL MT POMAH EXPRESS NOW NOW (TIGER FISH 2) & 4 others** when Buba J. held as follows:

"in the instant suit the 2nd Plaintiff and Defendant to the counter claim left the Nigeria soil went to Bua in the Republic of Cameroun and deceived the 2nd Defendant through surreptitious means of false identity as a Ghanian and took their vessel to Nigeria in Calabar and subsequently changed its name twice in clear contravention of the charter party agreement and leased it to a 3rd party, came to this court removed pages of the charter party agreement and secured the arrest of the vessel. In the course of hearing an application for the release of the vessel, all the issues of lies and misrepresentation were brought out to the ray of light the saying is that, lies are like bats once they are in the dark they swiftly elude everyone but once exposed to the ray of light they hang stupidly as one of the ugliest creatures for anyone to pick and choose.

Since the exposure of the lies and the con behaviour, the Plaintiff and counsel did not only abandon this case contrary to their undertaking, they also did not file any defence

to their counter-claim. Having dismissed their abandoned claim and from the evidence of PW1 and PW2 and exhibit P1-P4 and indeed all the process before this court, there can be no better case of fraud than this case. Indeed this court will not only act upon unchallenged, uncontradicted and uncontested evidence but shall give it full weight. The Defendant/counter-claimant has proved all the allegations. The Plaintiffs and Defendants to the counter-claim are now run-away con men without a defence to the counter-claim in terms of the counter-claim. Judgment therefore be and is hereby entered for the Defendant/counter-claimant in terms of the counter-claim."

9.4 Other incidences of arrest: includes but not limited to caveat against arrest, intervener and limitation of liability etc.

9.5 Caveat:In the case of **MegaPlastics Industry Ltd v. MV "Kota Halus" &Anor Suit no. FHC/L/CS/1436/2012** unreported ruling of I.N. Buba J. of 17/12/2012 explains what a caveat is all about:

"The defendant through their solicitors M/S A.B Sulu Gambari & Co filed a praecipe for caveat against arrest of "Kota Halus" dated the 30th of October 2012 and pursuant to order 8 of the Admiralty Jurisdiction Procedure Rules 2011 (hereinafter called the AJPR 2011).

The defendant undertook to accept and acknowledge the service of an "in rem" Cargo claim writ and to appear in any cargo claim writ, and to appear in any cargo action that may be commenced in the Federal High Court against the said MV "Kota Halus" or her owners and/or any person sued on their behalf within three (3) working days after receiving formal notice that such an action has been commenced, and an application to arrest her is lodged in Court while the vessel is within the jurisdiction, and to furnish by way of a letter of undertaking (LOU) to be issued by a PROTECTION & INDEMNITY CLUB (being a member of the INTERNATIONAL GROUP of P & I clubs). In the action to the tune of the sum of US\$500,000 (Five Hundred Thousand United States Dollars only) and in the event of a claim exceeding the said sum of US\$500,000 (Five Hundred Thousand Dollars Only) we further undertake on behalf of the said owners to furnish security as aforesaid that will cover the plaintiff's claim to the value of its reasonably arguable best case.

We consent that the writ of summons and all other processes of Court in the action may be served on the said owners through us at 35 Simpson Street Lagos Island, Lagos and this would be deemed to be good and proper service.

On the 30th of November 2012, the Plaintiff/Respondent took out a writ of Summons simultaneously with a Motion Exparte dated the 30/11/12 for the arrest and/or detention of the MV Kota Halus now lying at Berth 15 Apapa Lagos or anywhere within the limits of Nigerian territorial waters pending the deposit of \$300,000 USA or the provision of an acceptable Bank guarantee from a first class Nigerian Bank to cover the claim herein.

At the hearing of the Motion Exparte and pursuant to the Caveat, Learned counsel to the Plaintiff Mrs I. Uduojie prayed the Court to make an order for the Plaintiff to serve the arrest papers on the caveator.

The Court proceeded to order the arrest process shall be served on M/S A.B Sulu Gambari, the Caveator. The Caveator shall bring or post the Indemnity within 3 working days and the case was adjourned to 10/12/12.

On the 10/12/12 Mr. A.B. Sulu Gambari Learned Counsel to the defendant/Applicant informed the Court that an application to set aside the orders of 4th December 2012 was filed. Mr. Kola Olapoju, learned counsel to the Plaintiff/ Applicant asked for adjournment to enable him react. The case was then adjourned to the following day being 11/12/12.

At the resumed hearing of the case on the 11/12/12 Mr A.B. Sulu Gambari, learned counsel for the defendant referred the court to a motion on notice dated 10/12/12, adopted all the processes and urged the court to grant the application to set aside the orders of 4/12/12 as the vessel set sail on the 20/11/12 as the vessel set sail on the 29/11/12, a day before the proceedings were taken, that in such a situation the plaintiff would not have been able to arrest the vessel even if there was no caveat. That is essentially the case of the defendant/applicant.

Learned counsel to the Plaintiff/respondent Mr. Kola Olapoju referred the Court to a Counter Affidavit dated 10/12/12 of 11 paragraphs and an address and contended that the defendant applicant "surreptitiously" inserted a clause not found in the praecipe in form 8 to the AJPR 2011. Learned Counsel referred the Court to Order 7(1) of AJPR that the Caveat can be kept for 6 months and Nigerian Shipping practice and procedure by L.N. Mbanefor SAN revised edition 2012 @ page 128 and order 8 of the AJPR 2011 and the case of the Owners of MV. Arabella V N A I C (2008) 11 NWLR (pt 1097) 182 @ 216 paragraph E and Nigel Mcson, Admiralty Jurisdiction 2nd Edition P. 138, paragraph 4.40 and that the notice must be in prescribed form 8.

In reply Mr Sulu Gambari contended that Order 7 of the AJPR deals with incoming vessels and not outgoing vessels, that if the Court had been told that the vessel is not within jurisdiction the court would not have made the order, that the praecipe form is only a guide.

The Court read all the process filed, the assignments of learned counsel, the cases cited and relied upon.

Let me quickly say that M/S A.B. Sulu Gambari accepted service as undertaken by them in the Caveat and entered a conditional appearance dated 10/12/12. If they had posted the Bail Bond and furnished the security as stated in the caveat dated 30/10/12, they would have been deemed to have submitted to the jurisdiction of the Court.

That aside; what is a caveat and what is the purpose of a caveat? And what is the effect of insertion of the phrase "while the vessel is within the jurisdiction" as the Applicant did in the present caveat before the Court.

In an Article in International Law Office in Shipping and Transport act in Malaysia, an Article titled "Pre-empting Arrest: when ship owners resort to lodging caveat against arrest, February 10, 2010. The law was expressed as follows:-

"A ship-owner may find itself faced with a claim against its ship. If its attempts to negotiate a settlement are unsuccessful, it is alive to the possibility of the claimant availing itself of the option to arrest the ship. The ship-owner knows that an arrest of the ship or any of its sister ships will severely disrupt its commercial operations and may even expose it to possible claims by the cargo interest. In such a situation the ship-owner could resort to lodging a caveat against arrest.

In simple terms, a caveat against arrest is an undertaking on the part of the ship-owner in a prescribed form to enter an appearance to an action that may be commenced against its ship and to furnish bail or pay the Court an amount specified in the caveat within three days of notice that an action has been commenced. The caveat is lodged at the High Court registry. Once lodged, the caveat will be noted in the caveat book maintained by the High Court. Any claimant wishing to arrest the ship to which the caveat relates is obliged by rules of procedure to undertake a search of the caveat book to ascertain whether a caveat against arrest is in force with respect to that property.

Any claimant intending to arrest a ship is required to state in its affidavit leading to the issuance of the warrant of arrest not only that it has undertaken a search of the caveat book, but also the results of that search. While a caveat against arrest will not prevent the issue of a warrant to arrest the ship to which the caveat relates, the lodging of a caveat against arrest is of practical service to the ship-owner that wishes to thwart an arrest of its ship. A claimant that comes across the caveat against arrest will most likely call upon the ship owner's undertaking to enter an appearance and to furnish bail as security for the claimant's claim. Once security is provided, the claimant will have no cause to arrest the ship and in the process disrupt the ship owner's operation.

The rules provide that where a ship in respect of which a caveat against arrest is in force is arrested, the party at whose insistence the caveat was entered may apply to the court to discharge the warrant of arrest. Unless it is satisfied that the claimant had a good and sufficient reason for arresting the ship, the court may discharge the warrant of arrest and further order the claimant to pay the ship-owner damages for the loss suffered as a result of the arrest. This would deter any claimant from arresting the ship. From the claimant's point of view, the decision as to whether to call on the undertaking in the caveat will depend mostly on the quantum offered and the ship-owners financial ability.

Another aspect of a caveat against arrest is the issue of submission to the court's jurisdiction. A ship owner that intends to contest the court's jurisdiction to try the claimant's claim would be cautious of taking steps in that proceeding which could be deemed as submission to the court's jurisdiction. Does the act of lodging a caveat against arrest amount to the ship owner's submission to the court's in personam jurisdiction?

In the *Anna H* it was held that the filing of the praecipe for the issuance of the caveat against arrest could not itself amount to submission to the Court's jurisdiction. The Court observed that a caveat against arrest is simply a document which contains revocable undertakings to take certain steps in the future. However, the court held that the subsequent provision of a bail bond by sureties on behalf of the defendants amounted to submission to its jurisdiction by the sureties and the defendants.

Defendants and the sureties were submitting to the Court's jurisdiction. The defendants were submitting to the court's jurisdiction to hear and determine the action on its merits, while the sureties were submitting to the court's jurisdiction and promising to pay the amount of any unsatisfied judgment in the action up to the specified limits."

In Malaysia, the prescribed form for bail bonds expressly states that there is to be submission to the court's jurisdiction.

Coming back home to Nigeria to our own AJPR 2011. By dint of Order 7 Rule 1 (i) of the AJPR 2011 a warrant of arrest in respect of a ship or property against which the proceedings was commenced, can issue provided the ship or other property is within Nigeria territorial waters or is expected to arrive there within three days.

Indeed by Rule (2) The party applying is duty bound to procure a search to be made in the caveat book before applying for arrest.

It is in the light of order 7 Rule 1 (i) that the learned authors L.N. Mbanefo SAN made the observation in his book at paragraph 5.64 @ page 128 that:

"To declare an arrest order invalid on the grounds that the vessel was not actually within Nigerian Territorial waters would be unjust, 1st because there is no way that counsel can fix the exact geographical location of the vessel at the moment of arrest and second because some vessel (notably oil tankers) stay within the jurisdiction for only a few hours whilst high speed pumping of oil takes place. It may then be desirable to obtain the order of arrest just before the arrival of the vessel"

One issue or point that must be made very clear is that whether a warrant was procured before the vessel arrives Nigeria within 3 days or whilst the vessel is within Nigerian territorial water, one issue is very clear. The jurisdiction of the Nigerian court to arrest a vessel is limited to when the vessel is within 12.N miles of the Nigerian territorial waters. To that extent this court is really at loss as to the

attempt by the defendant applicant trying to put an innovation or introducing the phrase "while the vessel is within jurisdiction" in the caveat. To the mind of the Court that is an attempt to have a feeble exemption clause within the provisions of order 8 of the AJPR and completely being oblivious of the Order 8 Rules 3(i)(a) (b) and (2), Order 8 Rule 8 (i) (2) and order 8 (a) of the AJPR 2011.

By dint of Order 8 Rule 3 (i) the filing of a Caveat constitutes an undertaking by the caveator.

(a) To appear in any proceedings at a kind specified in the caveat that is commenced as an action in rem against the ship or other property specified in the caveat and;

(b) Provide bail or pay the amount claimed into Court in the name of the Admiralty Marshall

2 The undertaking shall be enforceable by the Court in which the proceeding is commenced.

Again by dint of order 8(8) (l), a caveat expires one year after the day on which it was filed except it is withdrawn or set aside. Indeed Rule (9) provides that:

A caveator may withdraw a caveat by filing an instrument of withdrawal of the caveat as in form 11.

There is no evidence that the caveat filed on 30/11/12 has expired or is withdrawn. It has not been set aside either. Consequently the attempt by the defendant applicant to put a clause which learned counsel to the Plaintiff-Respondent calls "surreptitious" is of no moment, it amounts to nothing in the face of the valid caveat filed not expressed and not withdrawn. The issue before the court is not whether if there was no caveat, will the plaintiff have been able to arrest MV Kota Halus?. The issue is whether a caveat had been entered. Is the caveat valid and subsisting and has not been withdrawn. To accept the phrase inserted by the defendant-Applicant is a dangerous invitation to equate a situation of an undertaking to the whole world with no undertaking.

Indeed and as rightly pointed out by learned counsel to the Plaintiff Respondent the defendant will be estopped from saying he made an undertaking and trying to rely on a clause that is not in the praecipe in Form 8 pursuant to Order 8 Rule 1 of the AJPR 2011. See the Statement of Lord Denning in the famous case of Hightree Case. (Central London Trust Ltd V High Tree house Ltd. (1947) IKBD 130.

"They are cases in which a promise was made which was intended to create legal relationship and which to the

knowledge of the person making the promise was going to be acted on by the person to whom it was made and which was in fact so acted on. In Such case the courts have said that promise must be honoured."

Form 8 in the praecipe cannot be modified by the defendant –applicant in complete disregard of the Rules and the law. The rules of Court shall be obeyed. If the defendant/applicant knew the vessel had left and knew their caveat was no longer applicable and it was running within the time allowed by the Rules of Court it behoves on them to file Form 11 and withdraw the caveat. The Court will not allow the defendant Applicant to have a "Greek Caveat". The undertakings in the caveat are alike as soon as accepted by the Admiralty Marshall and filed. What is left is the compliance. The representation was made to the whole world and not only to the present plaintiff respondent.

I think the court has attempted to say what is caveat and the purpose within the AJPR 2011. The insertion of the word "within jurisdiction" will not add any value to the defendant/Applicant's case. The Caveat shall remain a caveat so long as not withdrawn within the time allowed by the Rules. The issue of whether the vessel has left the shores of Nigeria is misconceived and irrelevant so long as the caveat is not withdrawn. Indeed the purpose of the caveat is for the ship/vessel not to be arrested so that it can leave Nigerian territorial waters. If one may ask in the face of the caveat if the plaintiff/respondent caused a warrant of arrest to issue against the vessel of the defendant/applicant, wouldn't the caveator ask for the arrest to be set aside because of the caveat and damages within the time the caveat is filed and pending?.

In sum this court resolves all the issues against the defendant/applicant. The Court refused to set aside the order of 4/12/12. The words "while within jurisdiction" are of no moment. The defendant shall forthwith furnish the security by way of letter of undertaking to be issued by a protection and indemnity club (being a member of the International Court of P & I Clubs) to the tune of the sum of stated i.e. \$500,000.00 USD. The defendant cannot file a caveat, get the benefit of no arrest for the period in the caveat and turn round to say that the vessel left jurisdiction a day before the process were issued and rely on a clause inserted by them without withdrawing the caveat. The defendant shall take all the benefits and the liability in the caveat. They cannot renege. See the case of the Vessel St. Roland V Oshinloye (1997)4NWLR (pt 500) P. 387 @ 408-409. Where after securing an advantage a notice of discontinuance was filed and the Court held that it was an abuse of the court process. I think in the present circumstances of this case, the defendant who knew that the only condition for the operation of their caveat is if the vessel is within jurisdiction and knew the

vessel left, and without withdrawing the caveat cannot ask the court to set aside the order to post the Bond or provide the Indemnity.

In any case vessels are not known to remain within the jurisdiction for ever or for such long period. The motion is devoid of any merits and is accordingly hereby dismissed. The defendant shall comply with the orders of the Court of 4/12/12 and bond by their undertaking in the spirit of Order 8 Rule 3(2) of the AJPR 2011."²⁹

9.6 Intervener:

See also the case of **MONJASA A/S Vs. MV "ST VANESSA"** Suit no. FHC/L/CS/1018/2014 unreported ruling of I.N. Buba J. of 10/04/2014 the court explained what an intervener is in the following terms:

"This court too has not lost sight of the fact that the Applicant came in as an intervener i.e. a late entrant in the matter. It can be said the Applicant came in *media-re* as an intervener. The law again seems to be settled on the position of an intervener. For instance see Halbury's laws of England 4th edition at page 252 paragraph 375 to the effect that.

Persons who may appear; the owners of the property proceeded against and all persons directly interested therein may appear and defend without filing an affidavit and showing their interest at any time before judgment. Further, any person not named in the writ may intervene in an Admiralty action in rem and appear by leave of the court, obtained on application by affidavit showing that he is interested in the res under arrest or in the fund in the registry. Examples of persons having an interest are mortgagees, trustees in bankruptcy, underwriters who have accepted abandonment, charterers, persons who have possessory liens, or competing maritime liens, and generally persons who are Plaintiffs in other actions in rem against the same property." If, however, the intervention is unnecessary to protect the intervener's rights he will be refused his costs. Persons who intervene in order to defend the action cannot set up defenses which are not open to the owner of the res.

An Admiralty action in rem was begun against the owners of a vessel to recover certain agents' fees. The vessel was arrested by the Admiralty marshal while in harbor. The Applicants were the Port authority and owned the berth in which the vessel was lying. Her presence there caused serious inconvenience to the running of the Port, and financial loss to the Applicants. Accordingly they applied to an Admiralty registrar for leave to intervene in the action so that they might make the application for a direction to the Admiralty Marshal to remove the ship. The Registrar refused the application, taking the view that RSC Order 75, R17(f)", precluded him from granting it as the Applicants did not have an interest in the vessel. On appeal.

Although the Applicants did not have an interest in the vessel within RSC Ord 75, r 17(l), that rule was not exhaustive of the powers of the Court to do justice in particular cases. The Court had an inherent jurisdiction to allow a party to intervene if the effect of the arrest was to cause that party serious hardship, difficulty or danger. Accordingly, the Applicants were entitled to leave to intervene and the appeal would be allowed accordingly (see P 750 J and P 751 a and b post).

On the evidence, the situation caused by the presence of the vessel was extremely harmful to the commerce of the port.

Accordingly the substantive application would be granted and an order would be made directing the marshal to move the vessel to a safe berth in such other place as he should think appropriate, provided that the expenses incurred did not exceed £5,000. The marshal would have leave to apply should it prove necessary to incur greater expense.

The expenses were so to be part of the Marshall's expenses of arrest and would be dealt with accordingly, it being left to the parties to insure their interests in the vessel for the purposes of the move.

The reason of the Court as can be seen in the judgment suit of Brandon J. is that this an application by the British Railways Board as interveners in an Admiralty action in rem for a direction to the Admiralty marshal to move a ship from the place where she is at present under arrest to another place, certain agents fees, and the ship was arrested on 14th May in that action. The ship is a comparatively large vessel, the Mardina Merchant, which was at the time of the arrest lying at a deep-water berth in New haven harbor, that is to say, no 2 berth at East Quay. The arrest has since been maintained in this action, and the ship has also been arrested in certain other actions, and it appears that, including the present action, there are some ten actions pending against the ship. It seems likely, therefore, that the ship will remain under arrest until she is sold in one or other of the actions against her.

The boards are interested in this way. They are the port authority at Newhaven and they are the owners of the berth at which the ship is lying and the presence of the ship under arrest at that berth is causing serious interference to the working of the port.

The interference is such as to cause financial loss to the board and to persons who have rights of use of the jetties and berths in the harbor, and it is also resulting in ships being turned away from the port which would otherwise discharge there and because of this causing harm to the reputation of the port.

In these circumstances the board on and July applied to the Admiralty registrar for leave to intervene in the action so that they might make the application for a direction to the Admiralty marshal which is before me today.

The Admiralty registrar took the view that he had no power to grant the application to intervene and accordingly refused the

application. There was an appeal to me, which I heard on 10th July and which I allowed giving the board leave to intervene. I can well understand the Admiralty registrar taking the view he did, having regard to what is said in the textbooks about these matters and having regard also to the form of RSC Ord. 75, f17. Paragraph (1) of that rule provides.

'Where property against which an action In rem is brought is under arrest or money representing the proceeds of sale of that Property is in court, a person who has an Interest in that property or money but who is Not a Defendant in the action may, with the Leave of the Court, intervene in the action.'

That rule covers and covers only, I think cases where the person who seeks to intervene has an interest in the property arrested or in the money which represents it. I do not think it could be said that the board has an interest within the meaning of that rule, and, as I have mentioned, there are passages in textbooks which seem to suggest that the right to intervene is dependent on the proposed intervener having an interest of that kind.

The view which I take, however, is that the rule is not exhaustive of the powers of the court to do justice in particular cases. I am of the opinion that there must be an inherent jurisdiction in the court to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. One can visualize cases where the presence of a ship in a particular place might cause not merely financial loss or commercial difficulty but even danger to persons or property.

In such cases it seems to me that the court must have power to allow the party who is affected by the working of the system of law used in Admiralty actions in rem, to apply to the court for some mitigation of the hardship or the difficulty or the danger.

If it were not so then there would be no remedy available for such persons at all. It is on this basis that I allowed the appeal from the registrar's decision and gave leave to the board to intervene in this case and gave directions as to how any substantive application by the board should be dealt with.

The substantive application has come before me today and having read the evidence which has been put before me in support of it and having heard the Admiralty marshal on the matter and having, given an opportunity to the representatives of the Plaintiffs in other action to be heard and to raise any objection which they might think fit, I have come to the conclusion that the situation is one that needs to be remedied. The present situation is extremely harmful to the commence of the Port of Newhaven. Provided that the ship can be moved to a place where she would safe without the incurring of excessive costs, I think that it is in the interests of justice that should be done.

There has been some discussion before me as to what is an appropriate place for the ship to be moved to. The interveners suggested another port, such as Falmouth or Portsmouth, and the marshal has suggested a lay up berth in the Black water estuary. I do not think that it is for the court at any rate at this stage, to give precise directions as to the place to which the ship should be moved or as to the method by which the ship should be moved. I think these matters can and should be properly left to the discretion of the Admiralty Marshal and that the court need do no more than take a policy decision as to what should in principle be done.

That being so, and with the agreement of all parties who are represented before me. I shall direct the marshal to remove the ship from the place where she is presently under arrest to a safe berth in such other place as he shall thin appropriate, provided that he is able to do so without incurring expenses exceeding £5,000. In the event of his finding that a greater expense needs to be incurred, then he will be at liberty to apply to the court on notice to the other parties for further directions.

As regards the burden of those expenses. I shall direct that they be part of the marshal's expenses of arrest and that they be dealt with in the same way as all other such expenses are dealt with.

A question was raised whether the marshal should insure the ship for the purposes of this move. I have heard argument on that matter and the conclusion which I have come to is that there is no reason to depart from the ordinary principle which has been established in recent years, that the marshal does not insure a ship under arrest but that it is on the contrary for the parties who have interests in the ship, because they have claims against her to insure their interest in such a way and to such extent as they are minded to do.

It does appear to the Court that the issue of locus standi was central. See also paragraph 15/6/08 at page 186 of the White Book 1988 Edition at Vol. 1 at P. 186 where it was held that:

In addition to the powers contained in this rule or under 0.75, R.17(1) the court has an inherent jurisdiction to enable it to do justice in particular cases to allow a person not a party to intervene in proceedings if the effect of such proceedings has been, or is likely to be, to cause such a person serious hardship, difficulty or damage, e.g a person whose property is adversely affected by the presence of an arrested vessel in an Admiralty action in rem even though he has no interest in the vessel to entitle him to intervene under 0.75, R.17(1) (The Mardina, Merchant (1975) 1 E.L.R. 147 ; (1974) 3 ALL E.R. 749)."

Persons interested may by consent, and on submitting to the jurisdiction attend on a summons in an actions in to which they are not parties, and they will be bound thereby (**Re-Marsh-field (1887) 34; Ch. D. 721; Re-Greson (1887) 36 Ch. D. 223**). See also Atkin Court forms Vol. 3, 2nd edition where it is provided that Intervention in action in rem. The purpose of the provision allowing intervention in an action in rem is to enable a person with an interest in the res to intervene and protect that interest. The rights of an intervener are limited to the protection of his interest in the res. Interveners may be refused costs where their intervention is unnecessary.

Any person who wishes to resist payment out in an action in rem must either intervene or enter a caveat against payment. **The Byzantion (1922), 16 Asp. M.I.C. 19. The Athenic (1931) P 421 I R7, The Eva, (1921) P**

See also order 75 R 17 of the Admiralty proceedings which provides that:

1. Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a Defendant to the action may, with the leave of the court, intervene in the action.
2. An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the Applicant in the property against which the action is brought or in the money in court.
3. A person to whom leave is granted under this rule shall thereupon become a party to the action.
4. The court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleading as may be so specified.

The object of this rule is to enable a person who has a substantial interest in the res to intervene, if this interest may be injuriously affected by the action against the res and to protect his interests (**The Dowthorpe (1843) 2 W, Rob. 73, 77**). The rights of an intervener are limited to the protection of his interest in the res and he has no locus standi to raise issues which are not material to his purpose. (**The Lord Strathcoma (1925) P. 143; see also the Byzantion (1922) 16 Asp. 19.75**) to defenses which an intervener may and those which he may not set up.

The court has inherent jurisdiction to allow a person who has no interest in the property under arrest to intervene, if the effect of the arrest is to cause him serious hardship, difficulty or danger (**The Mardina Merchant (1975) 1 W.I.R., 147; (1974) 3 All E.R. 749; (1974) 2 Lloyd's Repl, 424**, in which the interests of a harbor authority were adversely affected by the presence of the arrested ship at one of their quays) as stated elsewhere in this ruling.

As to intervention for the purpose of applying to be added as a Defendant or for other purposes see para 15/6/7.

As stated the object of the Rule is tangled and/or connected and or appertains to locus standi. The reasons are discernable and not farfetched, because where the release is ordered as in the instant case. The Applicant for release is deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim which includes any claim to possession or ownership of a ship or to the ownership of any share therein.

In the instant case the Applicant clearly stated that it came in late that the 7 days will not apply to it, this is where the parties must be very careful of injustice though not mischievously intended it could happen.

In one case of **CURTNER V CIRCUIT (1968) All E.R. 328** particularly at 332-333 Denning M.R. said.

"In my opinion, we should make an order allowing the Motor Insurers' Bureau to be added as Defendants. They are prepared to undertake to pay any damages that may be awarded. This undertaking should be embodied in the order. On being added, they should be entitled to defend the action and to exercise all the rights of the Defendant therein.

Once they are added as Defendants, they would be in a position to urge that the order for substituted service was not properly made and should be set aside. It seems to me not to have been properly made. The affidavit in support was insufficient to warrant the order, for the simple reason that it did not show that the writ was likely to reach the Defendant, nor to come to his knowledge. All that it showed was that, if the writ were sent to the Royal Insurance Co., Ltd., it would reach the Motor Insurers Bureau; but the Motor Insurers' Bureau were not Defendant at that time. So that would not suffice. It would be different if the Defendant were insured with Royal Insurance Co., Ltd., but that was not suggested. In my opinion, therefore, the order for substituted service made on June 22, 1967 could be set aside if that would serve any useful purpose. If there were any possibility of tracing the Defendant in Canada, substituted service should be ordered by advertisement; but that seems to be a useless procedure here. The practical course is to allow the order for substituted service to stand without incurring any further costs; and to allow the service to stand.

Next, the Motor Insurers' Bureau wish to set aside the renewals of the writ made on June 25, 1965 (for a second twelve months): on June 23, 1966 (for a third twelve months) and on June 15, 1967 (for a further three months). I do not think that those renewals should be set aside. The

Defendant was away in Canada and could not be traced so as to be served. That is a good reason for renewing a writ.

Lord Goddard said in *BUTTERSBY V. ANGLO-AMERICAN OIL CO., LTD.* (8)

“The best reason, of course, would be that the Defendant has been avoiding service, or his address is unknown, and there may well be others.”

Finally, the Motor Insurers’ Bureau wish to lodge a counterclaim. They wish to say that, if the Defendant is liable, they are exempted. They say that the condition in cl. 5 (1) (^) of their agreement with the Minister of Transport was not fulfilled in that the Defendant was an uninsured person: and that they were not given notice of proceedings against him within twenty-four days, as required by the condition. I do not think that there is anything in this point. The Defendant showed his certificate of insurance to the police. He was plainly an insured person, even though the insurers cannot now be found. So cl. 5 (1) (A) does not apply. The bureau should not be allowed to put in this counterclaim.

I would, therefore, allow the appeal. The Motor Insurers’ Bureau should be added as Defendants and be entitled to defend the action and to exercise all the rights of the Defendants therein. The Motor Insurer’ Bureau undertake to pay rights of the Defendant therein. The Motor Insurer’s Bureau undertake to pay to the Plaintiff any damages that may be awarded against the Defendant.”

Whilst *Diplock L.J.* also stated at page 33.

“The bureau also desire, however, to raise in the Plaintiff’s action is counterclaim for a declaration that, even though judgment be recovered by the Plaintiff against the Defendant, they are relieved from liability to satisfy it, because the Defendant was an uninsured person, and the notice, which, under cl. 5 (1) (A) of their contract with the Minister, is a condition precedent to their liability, was not served. Counsel for the Motor Insurers’ Bureau has frankly conceded that the issue to be raised by the proposed counterclaim is one of construction of that contract. I do not think that it would be right to allow him to raise it without joining the Minister as Defendant to the counterclaim. There may possibly be cases where it would be proper to allow the bureau to raise is counter claim for a declaration that the conditions precedent in cl.5 (1) of the contract have not been fulfilled but, if counsel will forgive my saying so, I think that, on the facts of the present case, there is so little merit in the argument which he wishes to advance in the proposed counterclaim that it would not be right to increase the costs of the action by permitting its ambit to be extended by the inclusion of the counterclaim.”

In the instant case the intervener stated in the process before the Court that they are late, however, the rules did not exempt late comers as later comers will not take the benefit of the 7 days rules. They will equally be bound by the provision of order 20 of the Admiralty Jurisdiction Rules 2011 which provides to the effect that:

“An application to set aside for irregularity any proceeding, any step taken in any proceeding or any document, judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step in the proceedings.

Any application under sub-rule (1) of this rule may be made by summons or motion on notice and the grounds of objection shall be stated in the summons or motion on notice.

Where a matter arises in respect of which no provision or no adequate provisions are made in these Rules or in the Federal High Court (Civil Procedure) Rules the Court shall adopt such similar procedure in other Rules as will in its view do substantial justice between the parties concerned.”

See also, to that extent Order 51 of **the Federal High Court Rules 2009**. The failure to comply with requirements whether with regards to time, place, manner, form or content or in any other respect is to be treated as an irregularity and if so treated will not nullify the documents or the proceedings.

It is now trite law that the appropriate time at which a party to a proceeding should raise an objection based on procedural irregularity is at the commencement of the proceedings or at the time when the irregularity arises. If the party allows the proceedings to continue on the irregularity to finality, he would be deemed to have waived his right to complain at the concluded stage of the proceedings or on appeal that there was a procedural irregularity. See the Supreme Court case of **G. O. DUKE V AKPABUYO LOCAL GOVERNMENT 2005 19 NWLR (PT 959) at page 130 at page 143.** See also the case of **UCHENDU V OGBONI 1999 5 NWLR (Pt 603) page 337 at page 357.**

This court has no doubt that clearly in this case, the Applicant intervened not because of his legal right but because of their pocket. See the ruling of this court joining them to intervene on 2/12/13.

The Applicant guarantee dated 29/8/13 is to get the vessel released, but did not apply to intervene or to discharge the arrest until 10th December 2013. That time is not reasonable within

admiralty practice accordingly the application by order **20 Rules 8 of the Admiralty Jurisdiction Rules 2011**, even though the motion for intervention was filed on 28/8/13 but certainly not the motion to discharge the arrest.

In any case when you release on the provision of the guarantee, the Court and the parties should be wary or revisiting the issue of arrest because the Applicant is already released on guarantee.

Therefore, the court should not re-open the issue of arrest with the attendant consequences of determining matters for either the substantive matter or matters that ought to have been taken before the release, it suffices to state that there is submission, there is a release, and a guaranty posted, the energy should now be dissipated towards the merits of the case as one of the implication of release as stated elsewhere is the submission to the jurisdiction.

To this court by asking that the arrest be discharged is to cleverly or wittingly wanting to be out of the jurisdiction already submitted to. No admiralty Court should be dragged into making stupendous orders that are capable of deciding the merits of a case at an interlocutory stage or making bank guarantee posted meaningless or worthless whilst the case is pending. Posting the guarantee, it seems to me, there is a concession that the arrest was proper even if not properly made it is waived. The application lacks merit and is hereby dismissed.³⁰

10.0 Limitation of Liability:

See also the case of **DREDGING ENVIRONMENTAL & MARINE ENGINEERING NV (Owners of MV "BREUGHEL" Vs. MONDIVEST LTD** Suit No. FHC/L/CS/1018/2014 unreported judgment of I.N. Buba J. of 16/02/2016 explains what limitation of liability is:

"Having quoted from treatise of learned authors both dead and living and having promised not to follow the footsteps of Mrs. Agbor. Let me also quickly take the liberty to restate some of the historical perspective as expressed by Lord **Evershed in Atkins** court from 2nd Edition of **Atkin** court forms Volume 3 on Admiralty at PP. 48

- "44. Absolute limitation of liability, liability in respect of loss or damage arising in connection with a British ship is excluded in respect of certain persons:**
- (h)** **is excluded in respect of certain persons:**
 - (i) Where any goods, merchandise or other things taken in or put on board his ship are lost or damaged by first on board**
 - (j) or**
 - (2) Where gold, silver, watches or precious stones taken in or on board his ship the true nature and value of which were not at the time of shipment declared by the owner of shipper**

to the shipowner or master in the bills of lading or otherwise in writing are lost or damaged by robbery, theft or secreting thereof (k).

In the above circumstances of the following persons are not liable to make good to any extent whatsoever any loss or damage so happening without their actual fault or privity:

1. The owner of the ship or any share in it (l);
 2. Any charterer of the ship (m);
 3. Any person interested in or in possession of the ship (m).
 4. Any manager or operator of the ship (m);
 5. In relation to a claim arising from the act or omission of any person either in his capacity as master or member of the crew or in the course of his employment as a servant of any of the persons named above; the master, member of the crew or servant, and (where he would not otherwise be protected) the person whose servant he is (n).
45. Partial Limitation of Liability. The owners of a British or foreign ship, and other protected persons (p), are not liable for damages beyond a certain amount where, without their actual fault or privity (q);
- (1) Any loss of life or personal injury is caused to any person being carried in the ship (r);
 - (2) Any damage or loss is caused to any goods, merchandise or other things on board (s);
 - (3) Any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo, or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board (t);
 - (3) Any loss or damage is caused to any property (other than goods, merchandise or other things on board) or any rights infringed through any such act or omission as is specified in (3), supra (u).

Where any obligations or liability arises in respect of any damage (however caused) to harbour works, basins or navigable waterways the occurrence giving rise to the obligation or liability is treated as one mentioned in (2) and (4), supra(x).

The amounts to which the liability is limited are:

1. In respect of loss of life or personal injury, either alone or together with any such loss, damage or infringement as is mentioned in(2) and (4), supra.

An aggregate not exceeding 3,100 gold francs (a) for each ton of the ship's tonnage (b);

2. In respect of any such loss, damage or infringement as is mentioned in (2) and (4), supra, whether or not there is also loss of life or personal injury; and aggregate not exceeding 1,000 gold francs for each ton of the ship's tonnage (c).

46. Limitation actions. The right of a party to limit his liability

(d) May be pleaded by way of defence in a liability action.

(e) But if so pleaded it only protects the limiting party against the other parties to the action upon whom the defence was served, and not against the whole world. Consequently, the usual practice is to wait until liability is admitted or proved and then to bring separate limitation proceedings by writ.

(f) The writ must contain the actual names

(g) Of the plaintiff and not merely describe him as the owner of, or as bearing some other relation to, a ship or other property.

(h) Since the right to limit is a personal right. It must also contain the name of one at least of the defendants, but the reminder may be described only and not named by their names

(j) And it must be served on one or more of the named defendants, but need not be served on any other defendant (k).

The usual practice has been for the plaintiffs to claim declarations that all further proceedings in any action or arbitration arising out of the same event be stayed, except

for the purpose of taxation and payment of costs, that they be entitled to relief under the Merchant Shipping Act and the Judicature Acts against any action in respect of the same

event in the High Court, and that all persons interested be restrained from proceeding in any court other than the High Court(l). In a recent case the endorsement of the writ was in substantially the above terms, but the judge doubted whether

he had power to order such a stay, on the ground that he had no power to stay actions in other divisions of the High Court, and that he thought he had no power, except perhaps by consent, to stay an action in the Admiralty division unless an application was made in that action(m).

It is respectfully submitted that, in the light of the earlier authorities(n) and having regard to the statutory power to consolidate and stay claims (p), it is arguable that the court does have power at least to stay to stay actions which are pending in another court. It may therefore be prudent to claim such a declaration in the writ and in the summons for a decree.

Where a limitation action is already proceeding, however, the correct procedure for a person having a claim against the limitation fund is not to bring separate proceedings but to enter an appearance in the action. If he so desires he may then contest the plaintiff's right to limit and may file a claim against the fund(q). Even if he is not aware of the limitation action until after decree he should enter an appearance within the time limited by the decree. He may then apply to set aside the decree or file a claim against the fund (r).

49. Procedure. Unless the plaintiff's right to limit is disputed they may obtain a decree quickly before the Registrar by summons supported by affidavit (c). In most cases the plaintiffs' claim to limit their liability will not be disputed. The real purpose of the summons before the Registrar is to provide a summary method of obtaining a decree in a case where there is no dispute, and to give the defendants an opportunity to decide whether or not they intend to dispute the claim and to ask for any further information which they may need in order to make the decision (d). The affidavit in support of the summons should set out clearly the plaintiffs' case so that the defendants may see precisely what it is. If the defendants decide to dispute the claim it is sufficient for them merely to say so on the hearing of the summons. The Registrar then has no power to make the decree. He will give directions for the future conduct of the action, and the action will proceed with pleadings in the ordinary way (e).

The burden of proving their right to limit their liability lies on the plaintiffs. The facts upon which they rely in support of their case that the damage was caused without their actual fault or privity and that the case that the damage was caused without their actual fault or privity and that the occurrence which took place falls within the relevant statute must, therefore, be clearly pleaded in the statement of claim (f). In practice the statement of claim will be very similar to the affidavit in support of the summons(g). After service of the statement of claim the action proceeds in the ordinary way.

Once the decree (h) has been obtained and advertised (i) and all persons with claims against the fund have been given an opportunity of entering an appearance all questions as to the validity and quantum of the claims are referred to the Registrar(j).

Having stated the facts and the position of the law let me then quickly go to the crux of the matter, it must not be understood by any means that this court is dealing with the issues before Hon. Justice Dugat J. not at all, far from it.

However the issue of the acts and omission of the plaintiff is on the front burner, in that the defendant posits within the ambit of the law that plaintiff had no permit and had no **pilotage**. The vessel has no Sea Worthiness Certificate etc. etal. At this stage the court must pause to ask what is it that the plaintiff has done or omitted to do that has caused the alleged damage that will disentitle the plaintiff from limiting liability as provided by law? i.e. what is the **causa? The causacausans, causa sine qua non causa** of the plaintiff that lead to the action before Hon. Justice Dugat J. The answer is simple Mrs.Agbor nailed the coffin on the head when Learned Counsel submitted that:

“Assuming without conceding that the Plaintiff has the responsibility of obtaining the said permits and approvals and failed to do so, it is an age old principle of law that he who acts through another acts for himself. This is traditionally expressed in the Latin maxim *qui facit per alium facit per se*. The law is that a contract made by an agent, acting within the scope of his authority for a disclosed principal, is in law, the contract of his principal, and the principal and not the agent is liable to be sued upon such contract. See the cases of **CARLEN V. UNIJOS (1994) 1 NWLR (Pt. 323) 631 at 659 paras, F – G; OSIGWE V. PSPLS MANAGEMENT CONSORTIUM LIMITED (2009) 3 NWLR (pt. 1128) 378 at 399 – 400, paras, F-A**. An agent of a disclosed principal therefore incurs no personal liability on a contract he enters on behalf of his principal. See also the cases of **OKAFOR V. EZENWA (2002) 13 NWLR (PT. 784) 319 AT 340 PARAS. A – E; NIGER PROGRESS LTD. V. N.E.L CORPORATION (1989) 3 NWLR (PT. 107) 68 AT 84 PARA A**.

Perhaps more importantly, the Defendant has not established any causal link between failure to secure permits, licenses and approvals and the alleged loss. It remains unclear how a failure to obtain permits licenses and approvals would have *caused* the loss in any event. There is no evidence before the Court that, the permits would not have been given as a matter of course and/or retrospectively if required, nor therefore that these particular failures caused the loss. On this basis, this unwarranted attempt to bar the right of the Plaintiff to limit its liability must fail.

The Defendant is aware that the Eko Atlantic City Project is a public private partnership initiative aimed at reclaiming the Lagos shoreline. The Defendant is also aware that the Plaintiff is a mere contractor and agent of the actual developer of the project. The identities of the developers of the Eko Atlantic City Project and principal of the Plaintiff are known to the Defendant. We are

therefore bereft of any idea as to why the Defendant instituted Suit No. FHC/L/CS/1329/2015 against the Plaintiff, one of which claims this limitation action is intended to limit. What is more, the principal of the Plaintiff has applied to be joined in Suit No. FHC/L/CS/1329/2015 but the Defendant has for reasons best known to it opposed the application.

In **Fortunato**, the Supreme Court stated that the right of the owner of a ship to limit liability is statutory and the reason for the legislation is to relieve ship owners of the grave consequences of the negligence of their servants, agents or privies. The term "privity" as defined in the **Black's Law Dictionary, Ninth Edition, at page 1320** is *"a person having a legal interest of privity in any action, matter or property; a person who is in privity with another"*. It is submitted that the Plaintiff's principal under the contract for the reclamation works is a privy within the meaning of the decision in **Fortunato** and that the Plaintiff is entitled to limit its liability for the acts of SENL. The argument that the Plaintiff is barred from limiting its liability because of a failure to obtain regulatory permits and approvals should be discarded by this Court for the above reason and also because the Defendant has admitted through Exhibits "NA3" and "NA4" attached to its Counter-Affidavit that it is not the responsibility of the Plaintiff to obtain the relevant permits and authorisations from governmental departments. It is trite law that an admitted fact needs no further proof.

Cabotage certificate or Ministerial Waiver certificate

The Plaintiff applied for and obtained the necessary waiver for the MV "Breughel". Exhibit "BR2" attached to the Reply Affidavit shows that the Plaintiff applied for and obtained a cabotage waiver from NIMASA. It is therefore misplaced for the Defendant to contend that there is no cabotage certificate or ministerial waiver for the MV "Breughel". The Court was urged to disregard that contention without further ado.

The Plaintiff vehemently denies liability and is indeed protected by section 351(6) of the Merchant Shipping Act which provides that an act of invoking liability shall not constitute an admission of liability. In any event, the substantive issue before this Court is not the liability of the Plaintiff but its right to limit its liability.

Indeed this court agrees by virtue of section 42 of the Nigerian Ports Authority Act, the Plaintiff's vessel, the MV "Breughel" is exempted from the requirements of compulsory pilotage. Compulsory Pilotage is only required for sailing in and out of the harbour, which the MV "Breughel" does not do for the works performed at the Eko Atlantic site. **For the purpose of clarity and ease of reference, we proceed to set out the section here:**

Section 42 Obligations where pilotage is compulsory

- (1) A ship, other than an excepted ship, shall, while navigating in a pilotage district in which pilotage is compulsory, be under the pilotage of-
- (a) an Authority pilot; or
 - (b) a licensed pilot of the district, for the purpose of entering, leaving or making use of the port in the district.
- (2) A ship being moved within a port which is or forms part of a pilotage district, shall be deemed to be a ship navigating in a pilotage district, except so far as may be provided by regulations made by the Authority under this Part of this Act.
- (3) For the purposes of subsection (1) of this section, the following ships are excepted ships-
- (a) Ships belonging to any of the armed forces of the Federation;
 - (b) Ships owned or operated by the Authority;
 - (c) Pleasure yachts;
 - (d) Ferry boats plying as such exclusively within the limits of a port;
 - (e) Ships not exceeding ten tons gross tonnage;
 - (f) Tugs, dredgers, barges or similar vessels, the ordinary course of navigation of which does not extend beyond the limits of a port;
 - (g) **And ships exempted from compulsory pilotage by regulations made by the Authority under this Part of this Act. Emphasis supplied.**

The MV "Breughel" is a trailing suction hopper dredger which comes within the contemplation of section 42(2) (f) of the NPA Act. It is therefore exempted from the compulsory pilotage and the Defendant's argument on this issue ought also to be discountenanced. **Fortunato** is distinguishable from the facts of this case with respect to this point since the MT "African Hyacinth" owned by the Appellants in that case was not a dredger.

Having said that, a passage in Sasegbon reads at Pp 1373-74 where the court held that:

"Damages. The general principles for the award of damages in cases of breach of contract are applicable here. Thus where, for example, goods are lost by a carrier, the amount of damages is prima facie the value of the goods. However the liability of shipowners is subject to statutory limitations and exemptions. The owner shall not be liable to make good to any extent whatsoever any loss or damage happening without his actual fault or privity where any goods, merchandise or anything taken in or put on board his ship are lost or damaged by reason of fire on board the ship or where any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading, or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with or secreting thereof. In addition, in the case of both commonwealth and foreign ships, the owner is entitled to limit his liability in respect of loss of life or personal injury caused to any person carried in the ship and for loss of or damage to goods on board. The limitation here is also extended to cover liability for loss of life or personal injury to persons not carried in the ship and liability for damages to goods not on board. The owner must, however, show that the occurrence took place without his actual fault or privity. See Sections 362 and 363 of the Merchant Shipping Act, see also Section 3 and the Schedule to the Carriage of Goods By Sea Act Cap, 44 of 1990.

In *THE RED RIVER* (1972) N.C.L.R. 397;

The plaintiff brought an action against the defendants to recover damages for the defendants' negligence whereby the first defendant's tug towing the second defendant's barge collided with the plaintiff's vessel. The second defendant chartered the first defendant's tug to tow the second defendant's barge in waters where pilotage was compulsory and which were described in evidence as "tricky". It was the responsibility of the second defendant to make the arrangements for the operation, including arrangements for a pilot and for any necessary assistance from other tugs. The tug towed the barge without a pilot and with no other tug to assist. The second defendant had a crew on board the barge, but the barge was under the control of the tug. The master of the tug had little or no idea where he was to take the barge. During the hours of darkness there was a collision with the plaintiff's fishing vessel as a result of the negligent navigation of the tug, and in consequence the plaintiff's vessel was damaged and had to be laid up for repairs.

The plaintiff instituted the present proceedings and claimed damages for, inter alia, loss of fishing profits, and deterioration

of ship's gear, in the period during which his vessel was laid up.

The court held, inter alia, that the owner of a vessel in waters where pilotage is compulsory has the duty of ensuring that under no circumstances will the vessel navigate without a pilot; and allowing the vessel to navigate without a pilot amounts to actual fault or privity within the meaning of Section 383 (1) of the Merchant Shipping Act, 1962 (now Section 363 (1) Merchant Shipping Act, Cap. 224, Laws of the Federation of Nigeria, 1990), disentitling the owner from limiting his liability as provided in the section."

Fortunato must be distinguished from the facts and the circumstances of this case before me and the relief on Limitation of Liabilities or the right and remedy to limit liability.

The instant case is not one of Maritime Contract, but Maritime Tort. The wordings of the Act 'recklessly with intent' must be given their ordinary and natural meaning. Reckless is a high degree from Negligence. In negligence, a man does not foresee, but as a reasonable man he ought to have foreseen. In recklessly, he foresees and takes the risk, but does not desire the consequences.

In the circumstances of the facts of this case, there is nothing before the court that is done with reckless intent to deny the plaintiff from applying to this court to limit liability. Indeed Cheshire and North in private International Law 10th Edition dealing with Maritime Tort Posited at Pp 291-292.

"There is no doubt that the commonest kind of external act, namely, one that causes a collision, is governed solely by the general maritime law as administered in England, and not by that combination of English and foreign law which is required by the general principle laid down in PHILLIPS V EYRE. All questions of collision are questions communis iuris' and must be decided by the law maritime.

The natural inference to draw from the expression 'general maritime law' is that there exists a body of law which is universally recognised as being upon all nations in respect of acts occurring at sea. There is, however, no such law. The expression, in truth, means nothing more than that part of English law which, either by statute or by reiterated decisions, has been evolved for the determination of maritime disputes. It is the law which, despite the animadversions of Westlake, must be applied to all questions of collision unless international regulations have been laid down by a convention between states. It may be asked, indeed, whether the bewildering number of laws that might require consideration would not make it impossible to apply

the general rule as laid down in PHILIPS V EYRE.

If, for instance, an action were brought in England in respect of a collision between two foreign ships of different nationality, the almost impossible feat of referring to three laws would impede any attempt to apply the ordinary rule. The impediment would become insuperable if a third ship of yet another nationality had contributed to the collision.

The question that now arises is whether this maritime law must be applied to all external acts, i.e. to all cases where the alleged wrong to the property of another, as, for example, where a submarine cable is fouled or where possession is seized of a wreck that is being saved by a third party. In many such cases, unlike the case of a collision, there would be little difficulty in applying the principle of PHILIPS V EYRE, but in others it would be almost impossible. If, for instance, two or more foreign ship carrying different flags were involved in a dispute concerning the capture of whales it might be virtually impossible to refer to each law, since the act might be innocent in one of the countries and wrongful in the others. Again, it seems a little strained to treat the law of the flag in maritime wrongs as being equivalent to the *lex loci delicti commissi* in the case of torts on land. The reason why English Law requires proof that a wrong committed in a foreign country is actionable by the *lex loci* is that the offending act has been committed within the exclusive jurisdiction of a foreign sovereign, but as BRETT, L.J. has shown, there is no such thing as exclusive jurisdiction over the high seas. If the place where a wrong is committed is subject to no exclusive jurisdiction, it is surely a misnomer to speak of a *lex loci*. It is possible to speak of a *lex loci* only where all the acts have occurred on board a single foreign ship. Finally, the sphere of authority possessed by the general maritime law has been described in such comprehensive terms by the judges that it would appear to cover all torts committed on the high seas; including an action under the Fatal Accidents Acts arising from a collision between a Latvian trawler and a Panamanian tanker off the coast of the U.S.A.

In conclusion, therefore, the rules adopted by English courts for the choice of law, so far as regards torts committed at sea, may be stated as follows; First, a plaintiff who sues in England in respect of acts, all of which have occurred on board a single foreign vessel, must prove that the conduct of the

defendant was actionable by the law of the flat, and that it would have been actionable had it occurred in this country.

Secondly, all other acts occurring on the high seas and later put in suit in England must be tested solely by English maritime law."

This court upon a calm reflection on the sole question for determination the affidavit evidence, the Exhibits attached to which this court is at liberty to use as a hanger with which to evaluate the averments and depositions within the principles in the case of **KIMDEY V. THE MILITARY GOVERNOR of GONGOLASTATE (1998)** 2 NWLR (PT 77) 445 has come to the inevitable conclusion that the Originating Summons has merits.

The court will not dabble into other academic submissions. Accordingly the case of the plaintiff succeeds, the question for determination is answered in the affirmative in favour of the plaintiff and the reliefs sought at the inception of this judgment are granted as prayed to wit...."³¹

10.1 Detention of Ship by Authorities:

10.2A ship is deemed detained by the decision of the Court of Appeal in the case of **NIMASA VsHemsorNig Ltd** (2015) 5 NWLR (Pt 1452 278 at 317 – 18 para. G – H and A – G. see the case of **Narumal& Sons Ltd Vs NBTC Ltd** (1989) 2 NSCC 147 at 157 paragraph 25, (1989) 2 NWLR (Pt 106) 730 at 747 para B, it was held that:

"A ship is not seaworthy if there is a defect in the equipment or appliances sufficient to render it unfit for the due and safe carrying of the crew or the cargo, not being a defect which can be readily cured during the voyage".³²

10.3"The Nigerian Navy, the Nigerian Port Authority and indeed NIMASA can also statutorily detain a vessel. However, a look at the case will reveal that seaworthiness was being considered in that case in the light of implied warranty of seaworthiness into which the owner of a ship enters with the owner of her cargo being conveyed. The implied warranty of seaworthiness attaches at the time when the perils of the intended voyage commence, that is, when she sets sail with the cargo on board for her port of destination and that warranty is broken if she is unfit to encounter these perils, although she may have been seaworthy whilst lying in the port of loading. See **Cohn Vs Davidson** (1877) 2 QBD 455 at 461 – 462 which was considered in the **Narumal case**. Therefore, the definition of seaworthiness as given in the Narumal case must be understood in that context. The provisions of the Merchant Shipping Act were not considered.

Section 388 of the Merchant Shipping Act provides:

Where a ship is held under any provision of this Act requiring detention until the happening of a certain event, the ship shall be deemed to be finally detained for the purpose of Chapter 50 of this Act (which relates to unseaworthy ships); and the owner of the ship shall be liable to pay to the Government of the Federation the costs of and incidental to the detention and survey if any, of such ship and those costs shall without prejudice to any other remedy, be recoverable as salvage is recoverable.”³³

10.4“By virtue of section 135(1) (2) and (3) of the Merchant Shipping Act, the appellants may detain a vessel sailing without valid certificates. Subsection (4) of the section makes it a criminal offence to sail without valid or with expired certificates. By exhibit H, the appellants have shown that the vessel M.T. Agbomien at all material times to this case had no valid certificates. The 2nd appellant in his evidence has maintained that he issued exhibit H along with exhibit B upon inspection which revealed that the vessel has expired certificates. I find that that is a valid ground for detaining the vessel which the trial judge also acknowledged.” See the cases of **FRN vs. M.T. ASTERIS Suit No. FHC/L/239^c/15** decided on 15/12/15, **FRN vs. M.T. ANUKET Suit No. FHC/L/209^c/15** decided on 18/3/16, **FRN vs. M.V. LONG ISLAND Suit No. FHC/L/38^c/2015** decided on 26/4/16, **FRN vs. M.V. ZAHRA Suit No. FHC/L/310^c/2014** decided on 15/12/15, **FRN vs. EBIZUGBE KENNEDY Suit No. FHC/L/06^c/10** decided on 23/3/16 are all unreported cases of I.N. Buba J. decided at the Federal High court of Nigeria. Where the Nigerian Navy arrested both Nigerian and foreign vessels for illegal bunkering and oil theft.

11.0 PRACTICE AND PROCEDURE OF THE ADMIRALTY COURT

See the Federal High Court of Nigeria Admiralty Jurisdiction Procedure Rules 2011, Orders 1 to 23 and the various decisions of the Nigerian courts.

12.0 CONVENTIONS

In Maritime law and practice, international conventions are numerous some are domesticated and incorporated into our laws while others are not. Among the conventions are:

12.1One of the oldest of these conventions is the International convention for the Unification of certain rules of law relating to Bills of Lading, Brussels dated August 25, 1924 otherwise known as the **“Hague Rules”**. Subsequently, a number of similar international conventions have been introduced since the inception of the Hague Rules. These are:

- (i) The Hague Rules as amended by the Brussels Protocol of 1968 (Otherwise called the **“Hague-Visby Rules”**);
- (ii) The United Nations Convention on the Carriage of Goods by Sea 1978 (otherwise known as the **“Hamburg Rules”**);

- (iii) The United Nations Convention for the International Carriage of Goods wholly or partly by sea, 2009 (otherwise known as the "**Rotterdam Rules**")
- (iv) The International convention on Facilitation of international Maritime Traffic 1965 (Amendments 1973-1996). Nigeria acceded on January 24, 1967.
- (v) The International Regulations for Prevention of Collisions at sea 1972 (Amendments 1981-1993). Nigeria acceded on January 17, 1974.
- (vi) The International Convention on prevention of marine pollution by dumping of wastes and other matter 1972. Nigeria acceded on March 19, 1976.
- (vii) The safety of Life at sea (SOLAS) Convention 1974 as regularly amended up to the present time. Nigeria acceded on May 7, 1981.
- (viii) The International Convention on civil liability for oil pollution Damage 1969 (1976 and 1992 protocols). Nigeria acceded on August 5, 1981.
- (ix) The International convention on Tonnage measurement of ships 1969, Nigeria acceded on November 13, 1984.
- (x) The international convention on standards of training, certification and watchkeeping for seafarers 1978 amended. This is known as the STCW convention and Nigeria acceded to it on November 13, 1984
- (xi) The international convention on salvage 1989. Nigeria acceded on October 11, 1990.
- (xii) The international convention on oil pollution compensation fund (IOPC) 1971 (Protocols of 1992), Nigeria acceded in May 2002
- (xiii) The international convention for the prevention of pollution from ships (MARPOL) 1973 (1978 Protocol and 1984-1997 Amendments). Nigeria acceded in May 2002
- (xiv) The International convention on maritime search and rescue 1979 (1998 amendments). Nigeria acceded in May 2002.
- (xv) The international convention relating to intervention on the high seas in cases of oil pollution 1969.
- (xvi) The international convention on limitation of liability for maritime claims 1976 (1996 protocol)
- (xvii) The international convention on maritime liens and mortgages 1993.³⁴

13.0 LEGISLATIONS IN NIGERIA³⁵

In Nigeria, we also have various legislations some were referred to at the inception of this presentation but not limited to those listed. The laws and regulation are numerous.

We must read the laws understand them. We must understand the facts of our case. We must understand the pigeon hole under which cases are brought to court. We must read and understand the Rules of court and evidence. Every Admiralty Practitioner and judge must read everything from scratch to finish A-Z. In order not to exhibit regrettable ignorance, we must read everything in other parts of the world. We must also come home and read conventions acceded to by Nigeria and regulations which includes amongst others:

- (1) The International convention on Tonnage Measurement of ships 1969 (accession on 13/11/84)
- (2) The safety of life at sea convention (SOLAS) 1974 as amended in 1978,1981 and 1983 (accessions on 7/5/81, 1/9/84 and 1/7/86).
- (3) The Torremolinos convention on the safety of fishing vessels 1977 (accession on 13/11/84).
- (4) The International Regulations for the prevention of collision at sea 1972 as amended in 1981 (accession on 1/6/83 and 17/1/84)
- (5) The international convention on facilitation of international maritime traffic 1965 as amended in 1960, 1973, 1977 and 1986 (accession on 24/1/67).
- (6) ILO Convention No.134 of 1970 concerning prevention of occupational accidents to seafarers (accession on 30/10/70)
- (7) ILO Convention No.32 of 1932 concerning the protection against accidents of workers employed in loading or unloading ships (ratified on behalf of Nigeria 1932)
- (8) The international convention for the prevention of pollution of sea by oil 1954 as amended in 1962, 1969 and 1971 (accession on 22/1/81)
- (9) The international convention on civil liability for oil pollution damage 1969 together with its protocols of 1976 and 1984 (accession on 10/12/87).
- (10) The convention on international oil pollution compensation fund 1971 (accession on 10/12/87)
- (11) The convention on prevention of marine pollution by dumping of wastes and other matters 1972 as amended in 1978 and 1980 (accessions on 19/3/76, 11/3/79 and 11/3/81)
- (12) The international convention on load lines 1966 as amended in 1971,1975, 1979 and 1983 (accession on 14/11/68)
- (13) The international convention on standards of training, certification and watchkeeping for seafarers (accession on 13/11/84)

- (14) The Hamburg rules of 1978 (accession on 12/88).
- (15) The international convention for safe containers 1972 as amended
- (16) The international convention on maritime search and rescue 1979.
- (17) The ILO convention No.22 of 1926 concerning seamen's articles of agreement.
- (18) The ILO convention No. 146 of 1976 concerning annual leave pay for seafarers.
- (19) The international convention for the prevention of pollution from ships (MARPOL) 1973 together with its 1978 protocol and amendments of 1984 and 1985.
- (20) The international convention relating to intervention on the high seas in cases of oil pollution casualties 1969.
- (21) The convention on maritime liens and mortgages 1967
- (22) The convention on Multimodal Transport of goods 1980.
- (23) The Athens convention relating to the Carriage of Passengers and their luggage by sea 1974 and its Protocol of 1976.
- (24) The convention for the suppression of unlawful Acts against the safety of maritime Navigation which was concluded in Rome on March 10, 1988.
- (25) Merchant Shipping (Tonnage) Regulations, 2010
- (26) Merchant Shipping (Timber Cargo) Regulations, 2010
- (27) Merchant Shipping (Safe Manning, Hours of Work and Watching Keeping) Regulations, 2010
- (28) Merchant Shipping (Pilot Ladders) Regulations, 2010
- (29) Merchant Shipping (Masters) Regulations, 2010
- (30) Merchant Shipping (Medical Examination of Seafarers) Regulations, 2010
- (31) Merchant Shipping (Marine Boards) Regulations, 2010
- (32) Merchant Shipping (Manning) Regulations, 2010
- (33) Merchant Shipping (Health Protection and Medical Care for Seafarers) Regulations, 2010
- (34) Merchant Shipping (Disqualification Holder of Seafarer's Certificates) Regulations, 2010
- (35) Merchant Shipping (Crew Accommodation) Regulations, 2010
- (36) Merchant Shipping (Civil Liability for Oil Pollution
- (37) Damage and Compensation) Regulations, 2010
- (38) Merchant Shipping (Certificate Holders Inquires) Regulations, 2010.
- (39) Merchant Shipping (Board of Survey) Regulations, 2010
- (40) Merchant Shipping (Wrecks and Salvage) Regulations, 2010

- (41) Merchant Shipping (Training Institutions) Regulations, 2010
- (42) Merchant Shipping (Training and Certification of Seafarers) Regulations, 2010
- (43) Merchant Shipping (Accepted Load Line Convention Certificate) Regulations, 2010
- (44) Merchant Shipping (Search and Rescue) Regulations, 2010
- (45) Merchant Shipping (Collision) Regulations, 2010

We must know the historical antecedent of each legislation or convention; we must know which law is repealed and which one is the extant law and how did the courts interpret those laws.

CONCLUSION

We have attempted to explain the core definitions of maritime law, origin and source of admiralty law and admiralty jurisdiction in Nigeria. Nigeria is a signatory to the UNCLOS. Nigeria has coastal and inland waterways or navigable rivers, maritime activities have been going on for decades, Nigeria is a major importer currently without a national shipping line. Nigeria is a signatory to many conventions; Nigeria is one of the world's largest oil producers. There is no reason on earth why Nigeria cannot also be a major exporter. There is also no reason why ports in the neighboring countries should be preferred for business than our ports. Consequently, it is imperative in the competitive world where resources are very scarce and the world is scrambling for the scarce resources to harmonize the existing domestic laws on the Nigerian ports authority, shipper's council, NIMASA, and afortiori the Cabotage Act. The need to domesticate conventions for which Nigeria is a signatory cannot be over emphasized. The Nigerian custom must live up to its mandate as provided under the custom and excise management Act.

The Anti-piracy law should be promulgated immediately, Maritime Academy, Maritime Arbitration Centre should be established if it does not already exist. Admiralty courts and practitioners should be up and doing. The regulatory agencies should be enhanced with full capacity through sound information of what is happening in other parts of the globe in order to take care of issues like pollution, crude oil theft, piracy, terror and other sharp practices in the maritime industry. The Nigerian Navy cannot be abandoned, for the security of our coastal states in preference for untrained private bodies; the committee on ISPS code implementation should adhere strictly to its mandate because terrorism is a threat to every nation. National interest should be paramount and should be over and above political and other extraneous considerations. If the industry is properly handled, it is a huge source of employment and a joy for any nation. There are many nations that are not endowed with the benefits of being a coastal state. We cannot afford to waste ours.

Thank you.

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