



MARITIME AND AVIATION LAW

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"Maritime law can be described as the body of laws governing international trade on the high seas"- Barrister B.V Enwesi.

In Nigeria the Federal High Court has jurisdiction in Admiralty disputes strictly speaking:

- The Supreme Court has decided in a variety of cases that the breach of simple contract or debt recovery cases should commence at the state high courts as the mere fact that goods at one stage in their movement had a voyage on a ship does not necessarily give rise to admiralty

EDITOR'S NOTE

In this quarter's newsletter we take a look at Maritime and Aviation law, highlighting the current developments and various issues in the two sectors individually and in relation to each other with special emphasis on the situation in Nigeria.

The governing laws for the Maritime industry in Nigeria include the Admiralty Jurisdiction Act 1991, the Coastal and Inland (Cabotage) Act 2003, the Ports Act 1990 Laws of the Federation. While the law governing the Aviation industry is Nigerian Civil Aviation Authority Act 2004 and Nigerian Airspace Management Agency Act 2004.

One common dispute that arises in both the maritime and aviation sector is the dispute between a cargo owner and a carrier (either by sea or air). Cargo includes goods and animals carried on board a ship or aircraft. When the cargo is undelivered, or mistakenly moved to another ship, or partly/entirely lost at sea, or delivered in a condition that is bad/no longer merchantable, or stolen at the port upon delivery, it may give rise to a claim by a dissatisfied cargo owner.

The Bill of Lading in the maritime sector and the Airway bill in the Aviation sector serve as both the receipt for goods accepted for carriage and the contract of carriage of cargo, that is between the carrier (either ship owner/or airline) and the cargo owner. Therefore it was formerly the case that in a dispute it is the endorsee of the bill, to whom the cargo is to be delivered to (that is the receiver) that has a right to sue, and not the agent or notify party.

The notify party is often an agent for the receiver of the cargo who pays for and arranges for the clearance and transport to the receivers premises. He is the one who the shipping company or its agent informs of the arrival of the cargo at the discharge port.

The Supreme Court of Nigeria's decision in *Basinco Motors Ltd. V. Woermann-Line* (2009) 13 NWLR (Prt. 1157) 149 which was decided in line with section 375 of the Merchant Shipping Act of 1990, was to the effect that a Notify Party is a stranger to the bill, and therefore had no right to sue.

However the reform to the rights of a cargo claimant effected by section 16(3) of the Admiralty Jurisdiction Act 1991 is to the effect that an agent of a disclosed principal can sue and be sued for his acts done within Nigeria, irrespective of the liability of his principal.

Note also that the liability of the carrier is strict, therefore the onus lies on the carrier to discharge the burden of proving it wasn't negligent in dealing with the cargo.

There are other cases where aviation and maritime sector interact and have laws that apply to them simultaneously.

Do have a pleasant read.

jurisdiction of the Federal High Court.

- Section 1(2) of the Admiralty Jurisdiction Act 1991 states in effect that the admiralty jurisdiction of the Federal High Court in respect of carriage and delivery of cargo extends from the time the cargo is placed on the ship to the time it is delivered to the cargo owner or notify party, whether the goods were transported on land during the process or not.
- Section 20 of the Admiralty Jurisdiction Act 1991 provides that any agreement which seeks to oust the jurisdiction of the court shall be null and void if the place of performance, execution, delivery, act or default is Nigeria or any of the parties

International Ship and Port Facility Security Code 2004

The International Ship and Port Facility Security (ISPS) Code, is an amendment to the International Convention for the Safety of Life at Sea (SOLAS), it is a document describing mandatory requirements and voluntary recommendations/guidelines on minimum security measures/arrangements for ships, ports facilities etc. to be undertaken as the responsibility of governments, shipping companies, shipboard personnel and port personnel, with the goal of detecting threats and preventing security breach of ships and port facilities.

It came into force on the 1st of July, 2004 and was developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States.

The ISPS code standardizes global security measures and risk management procedures to prevent attacks on maritime infrastructure, such as those that took place in Yemen and Iraq, and to also enhance global trade.

The ISPS code also requires contracting governments to gather information on security threats and exchange information with other contracting governments.

Upon compliance with the ISPS code an international ship security certificate is issued, non-compliance may result in a command being given to the ship owners to discontinue operations, until compliance is verified.

Under its provisions, it is responsibility of each government to carry out risk management activities that will ensure the security of ships and port facilities to determine what security measure will be appropriate in each particular case.

Each contracting state port has the discretion to detain at port, expel from port, refuse entry into port or curtail operations of the ship that has no certificate.

In Nigeria, compliance with and implementation of the ISPS code by owners of port facilities and ships ought to be verified by the Nigerian Maritime Administration and Safety Agency (NIMASA).

Noncompliance with the ISPS code is seen as a potential threat to international shipping as it implies lack of adequate measures being taken in the prevention or tackling of terrorist attacks, which would result in Cargo being diverted to safer neighboring ports to avoid vulnerability to terrorist attack.

Nigeria is a contracting member to SOLAS, and as such has the right to formally exercise control over ships, port facilities and water ways within its territory, in such a way as to deter acts which threaten security in the maritime transport sector.

Furthermore Nigeria ought to develop a national anti-terrorist plan based on the ISPS code, build capacity in the various administrative positions via training and conduct regular and intensive patrolling at the local level in identifying vulnerable sea port areas.

THE MARITIME LABOUR CONVENTION 2006

Nigeria ratified the Maritime Labour Convention (MLC) 2006 on the 18th of June, 2013, and it has come into force 12 months after. One of the benefits being that Nigerian sea farers, ship inspectors and the Nigerian Maritime Administration and Safety Agency (NIMASA) labour inspectors, now receive standard technical support and training from the International Labour Organisation (ILO), and the later ensures minimum working and living standards for all seafarers working on ships in the country.

Through its Maritime Labour Academy, based at its International Training Centre (ITC) in Turin Italy, the ILO provides a comprehensive range of training activities under the MLC,

reside in Nigeria, or is under any convention for the time being in force, to which Nigeria is a party, or in the opinion of the court the action should be adjudicated upon in Nigeria.

2006, as well as workshops to help train inspectors and to assist national legal counsel and officials involved with ratification and national legal implementation.

The MLC defines seafarers as “all persons who are employed or are engaged or work in any capacity on board a ship to which the Convention applies.” This includes not just the crew involved in navigating or operating the ship but also, for example, persons working in hotel positions that provide a range of services for passengers on cruise ships or yachts.

The MLC applies to a wide range of ships operating on international and national or domestic voyages. It covers all ships, except those which navigate exclusively in inland waters or areas where port regulations apply, whether publicly or privately owned, that are ordinarily engaged in commercial activities, except ships engaged in fishing, warships or naval auxiliaries.

The MLC is also known as the sea farers bill of rights, its provisions give seafarers the right to:

- Fair terms of employment
- A safe and secure workplace that complies with safety standards
- Decent working and living conditions on board ship
- Health protection, medical care and welfare measures.

The impact of enforcing its provisions is that, all Nigerian commercially operated ships of 500 plus gross tonnage, when operating on international voyages will be required to carry two documents, namely the Maritime Labour Certificate (MLC) and the Declaration of Maritime Labour Compliance (DMLC), which are inspected upon arrival at international ports. These documents will provide prima facie evidence that the ships are in compliance with the requirements of the MLC, in areas such as minimum age, seafarers' employment agreements, hours of work or rest, payment of wages, onboard medical care, the use of licensed private recruitment and placement services, accommodation, and food and catering and health and safety protection and accident prevention.



Aviation and Maritime Law

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"Cargo owners have a right of action where there is damage, partial or total loss of their cargo, they must therefore identify the correct person to sue, the correct court and act quickly before the action is statute barred"-Bankole Sodipo Ph.D. (London)
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