

GENERAL OVERVIEW OF MARITIME LAW IN NIGERIA

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Abstract

This article presents a panoramic discussion of Maritime law in Nigeria. It identifies the nature of Maritime law, the jurisdiction of Nigerian courts in Maritime matters, the legal framework of Maritime law, as well as the terms and contracts associated with Maritime practice. The author goes ahead to expose recent developments in Maritime law and practice in Nigeria.

1.0. What is Maritime Law?

Maritime Law also known as admiralty law, is a body of laws, conventions, and treaties that govern private maritime business and other nautical matters, such as shipping or offenses occurring on open water.¹

It is that body of laws that govern marine commerce and navigation, the transportation of persons and property at sea and marine affairs in general which include; the regulations governing workers' compensation, claims, contract and tort proceedings arising out of business on or over water.

International rules that govern the use of the oceans and seas are known as the Law of the Sea.² In most developed nations, Maritime Law follows a separate code and is an independent jurisdiction from national laws.³ The United Nations (UN), through the International Maritime Organization (IMO) has issued numerous conventions that can be enforced by the navies and coast guards of countries that have signed the treaty outlining these rules.⁴

Maritime law governs many of the Insurance claims relating to ships and cargo, civil matters between ship owners, sea men, and passengers, and piracy. In addition to this Maritime law regulates registration, license, and inspection procedures for ships and shipping contracts, maritime insurance and the carriage of goods and passengers.⁵

¹ Julian Kagan, "What is Maritime (aka Admiralty) Law, and Why is it Important?" (2022) Investopedia <https://www.investopedia.com/terms/m/maritime-law.asp>

² Ibid

³ Ibid

⁴ ibid

⁵ ibid

2.0. Legal Framework of Maritime Law in Nigeria:

The legal framework of Maritime law in Nigeria comprises the following:

2.1. The constitution:

Section 251 (1) g of the Constitution of the Federal Republic of Nigeria, 1999 as amended (hereafter referred to as the Constitution)⁶ vests exclusive jurisdiction in civil causes and matters on the Federal High Court in respect of any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all federal ports,(including the constitution and powers of the ports authorities for federal Ports) and carriage by sea.

2.2 Admiralty Jurisdiction Act of 1991:

Pursuant to the constitutional provisions conferring jurisdiction on the Federal High Court in Admiralty matters, the Admiralty Jurisdiction Act provides for the extent of the jurisdiction conferred on the court.⁷

Section 1 (a)-(j) of the Act provides that the jurisdiction of the Federal High Court includes the following:

- (a) Jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of the Act;
- (b) Any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of the Act;
- (c) Any jurisdiction connected with any ship or aircraft which is vested in any other court in Nigeria immediately before the commencement of the Act;
- (d) Any action or application relating to any cause or matter by any ship owner or aircraft operator or any other person under the Merchant Shipping Act or any other enactment relating to a ship or an aircraft for the limitation of the amount of his liability in connection with the shipping or operation of aircraft or other property;
- (e) Any claim for liability incurred for oil pollution damage;
- (f) Any matter arising from shipping and navigation on any inland waters declared as national waterways;

⁶ Constitution of the Federal Republic of Nigeria, 1999 as amended

⁷Tiwalade Aderoju, "Legal Framework for Maritime Law in Nigeria"(2022) International Bar Association
<<https://www.ibanet.org/legal-framework-nigeria-maritime-law>>

- (g) Any manner arising within a Federal port or national airport and its precincts, including claims for loss or damage to goods occurring between the off-loading of goods across space from a ship or an aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee;
- (h) Any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer;
- (i) Any cause or matter arising from the constitution and powers of all ports authorities, airport authority and the National Maritime Authority;
- (j) Any criminal cause and matter arising out of or concerned with any of the matters in respect of which jurisdiction is conferred by paragraphs (a) to (i) of this subsection.

2.3. Merchant Shipping Act:

The Merchant Shipping Act, 2007 generally regulates merchant shipping issues and other labour related matters. The Act established an agency for Maritime Safety Administration, responsible for maritime safety, administration and security.⁸ All ships operating commercially in or from the waters of Nigeria are required to obtain a certificate of licence under the Act.⁹

2.4. Nigerian Maritime Administration and Safety Agency Act (NIMASA) of 2007:

This Act provides for the promotion of maritime safety and security, protection in the marine environment, shipping registration and commercial shipping, maritime labour, the establishment of the Nigerian Maritime Administration and Safety Agency and related matters.¹⁰

2.5. Coastal and Inland Shipping ('Cabotage') Act of 2003:

This act regulates the activities of maritime transportation. The purpose of the Act includes; to restrict the use of foreign vessels in domestic coastal trade, promote the development of indigenous tonnage, establish a cabotage vessel financing fund and other related matters.¹¹

⁸ Tiwalade Aderoju (n 7)

⁹ S. 5(1) Merchant Shipping Act

¹⁰ Tiwalade Aderoju (n 7)

¹¹ *ibid*

Other maritime legislations include:

- *The Territorial Waters Act*
- *The Oil in Navigable Waters Act, 2004*
- *The Nigeria Port Authority Act 1999*
- *The Petroleum Act, 1969*
- *The Petroleum (Drilling and Production Regulation) Act*
- *The Inland Fisheries Act, 1992*
- *The Sea Fisheries Act, 2004*

2.6. Maritime Claims:

Maritime claims are those that occur in connection with the ownership, possession, mortgage, and general operation of a ship. Maritime claims can either be proprietary or general in character.¹²

According to Section 2(1) of The Admiralty Jurisdiction Act of 1991; proprietary maritime claims are those that have a direct impact on the subject matter, whereas general maritime claims are those that result from the functioning of the subject matter or any arrangement relating to or connected with the subject matter.

Proprietary marine claims are defined in Section 2(2) of the Admiralty Jurisdiction Act as claims relating to:

- Possession of a ship
- A title to or ownership of a ship or of any share in a ship, or a mortgage of a ship or of a share in a ship, or a mortgage of a ship's freight;
- A claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship;
- A claim for the satisfaction or enforcement of a judgment given by the court or any court (including a court of foreign country) against a ship or other property in an admiralty proceeding in subject matter;
- A claim for interest in respect of a claim referred to.¹³

By virtue of section 2(3) of the Admiralty Jurisdiction Act general maritime claims includes the following:

- A claim for damage done by a ship, whether by collision or otherwise;
- A claim for damage received by a ship;

¹² Section 2 Admiralty Jurisdiction Act, 1991

¹³ Femi Atoyebi, "Maritime Claims in Nigeria" < <https://femiatoyebi.com.ng/maritime-claims-in-nigeria-2/>>

- A claim for loss of life or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship arising out of an act or omission of:
 - i. The owner or charterer of a ship;
 - ii. A person in possession or control of a ship;
 - iii. A person for whose wrongful act or omission the owner, charterer or person in possession or control of the ship is liable.
- A claim for loss of or damage to goods carried by a ship
- A claim out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter-party or otherwise;
- A claim relating to salvage;
- A claim in respect of general average;
- A claim in respect of pilotage of a ship;
- A claim in respect of towage of a ship or an aircraft when it is waterborne;
- A claim in respect of goods, materials, or supplied or to be supplied to a ship for its operation or maintenance;
- A claim in respect of the construction of a ship, etc¹⁴
- A claim in respect of the revision, form or equipping of a boat or wharf charges or pretenses;
- A claim in respect of a liability for harborage, harbor, conduit or light sacrifices, charges or pretenses, or sacrifices, charges, or pretenses of any kind, in relation to a boat;
- A claim arising out of bottomry;
- A claim by a master, shipper, boon, or agent in respect of disbursements on account of a boat;
- A claim for an insurance decoration, or for a collective insurance call, in relation to a boat, or goods or loadings carried by a boat;
- A claim by a master, or a member of the crew, of a boat for stipend; or
- A quantum that a person, as employer, is under an obligation to pay to a person as hand, whether the obligation arose out of the contract of employment or by operation of law, including by operation of the law of a foreign country;
- A claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried, or have been attempted to be carried in a ship, or for the restoration of a ship or any such goods after seizure;

¹⁴ ibid

- A claim for the enforcement of or a claim arising out of an arbitral award, including a foreign award within the meaning of the Arbitration and Conciliation Act made in respect of a personal maritime claim or a claim appertained to in any of the antedating paragraphs;
- A claim for the enforcement of or a claim arising out of an arbitral award;

2.7. What is a ship?

A ship means a vessel of any kind used or constructed for use in navigation by water, however it is propelled or moved and includes-

- (a) a barge, lighter or other floating vessel, including a drilling rig;
- (b) a hovercraft;
- (c) an off-shore industry mobile unit; and
- (d) a vessel that has sunk or is stranded and the remains of such vessel, but does not include a vessel under construction that has not been launched.¹⁵

A ship is considered to be real property and not personal property therefore it has a legal personality beyond that of its owners. Thus, there are certain claims which attach to the ship even where the ownership changes. These claims are known as liens and they are either Maritime or Statutory Liens.¹⁶

2.7.1 Maritime Liens:

A maritime lien attaches to the ship or res and the rights of the Plaintiff are not prejudiced or overreached by virtue of a subsequent sale to a third party or change of ownership.¹⁷

By virtue of section 5(3) of the Admiralty Jurisdiction act, Maritime Liens means a lien for:

- a) Claims relating to salvage including life, cargo or wreck found on land.
- b) Claims of damages caused by a ship
- c) Claims by the master or crew member of a ship for wages;
- d) Claims by the master in respect of disbursement on account of a ship.

2.7.2. Statutory Liens:

Statutory liens are claims which are created pursuant to a law or statute and arise from the day of the arrest of the ship.¹⁸

¹⁵ Section 25 Admiralty Jurisdiction Act of 1991

¹⁶ B Ayorinde & Co, "Nigeria: Maritime Claims–Practices, Procedures And Enforcements" (2014) <<https://www.mondaq.com/nigeria/marine-shipping/293392/maritime-claimspractices-procedures-and-enforcements>>

¹⁷ ibid

¹⁸ Gbadebo Anthony Olagunju and Bose Lawal, "A Comparative Analysis of Maritime and Statutory Liens Under Canadian and Nigerian Admiralty Law – Suggestions for Improving the Nigerian Regime"(2013) CanLII Docs 654 <<https://www.canlii.org/en/commentary/doc/2013CanLII Docs654#!fragment/zoupio-Toc2Page1->

Statutory Liens include:

- a) Claims arising from the supply of necessaries;
- b) Claims for repairs to a ship;
- c) Mortgage claims, etc, [the list is not exhaustive]¹⁹

2.8 LOCUS STANDI

Locus standi is the right of a party to sue another party. “It is the right of a party to appear and be heard on the questions before any court of bench”. Once a person can show that they have a sufficient and a valid reason in the subject matter of a suit; such a person would be entitled to bring an action.

In *Adesanya v. President of the Federal Republic of Nigeria*²⁰, Fatayi-Williams, C. J. N held that:

Admittedly, in cases where a plaintiff seeks to establish a “private right” or “special damage”, either under the common law or administrative law, in non-constitutional litigation, by way of an application for certiorari, prohibition, or mandamus or for a declaratory and injunctive relief, the law is now well settled that the plaintiff will have locus standi in the matter only if he has a special legal right or alternatively, if he has sufficient or special interest in the performance of the duty sought to be enforced, or where his interest is adversely affected. What constitutes a legal right, sufficient or special interest, or interest adversely affected, will, of course, depend on the facts of each case. Whether an interest is worthy of protection is a matter of judicial discretion which may vary according to the remedy asked for.²¹

Locus standi can be deduced from enactment, judicial practice or the custom and practice of a certain trade, profession or community. In *Sasegbon v Fischer*,²² the court held that the plaintiff was not a person interested in the ship and therefore could not sustain the action and/or obtain orders of injunction under the Merchant Shipping Act.

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¹⁹ (n 15)

²⁰ (1981) 2 NCLR 358

²¹ <https://www.thelawlane.com/adesanya-v-president-frn>

²² [1988] N.S.C. VOL. 3

3.0. Carriage of goods by sea in Nigeria:

In Nigeria, the Hague Rules of 1924 and the Hamburg Rules of 1978 are concurrently in force. The Carriage of Goods by Sea Act 2004 (COGSA) domesticated the Hague Rules.

COGSA basically covers only outgoing cargo and excludes import. Imports were governed by the contractually agreed carriage regime usually contained in the bill of lading.

Nigeria domesticated the Hamburg rule as the UN convention on the carriage of Goods by sea (Ratification and enforcement) Act 2005 without a formal repeal of COGSA.

The Hamburg Rules attempted to form a uniform legal base for transportation of goods by sea and it applied to all carriage by sea contract between two states provided the ports of loading and discharge or the place where the bills of lading or other transport document was issued are in a contracting state, thus the Hamburg Rules covers both inward and outward shipments of cargo.²³

3.1. Parties to a contract of carriage:

(a) The Shipper:

This is the party who contracts for the carriage of his goods by sea and delivers the goods into the care of the ship owner. (i.e he could be the seller or buyers of the goods).

(b) The Carrier:

This is the party who contracts with the shipper for the transport of goods by sea. He undertakes to ship the goods for the owner of the goods.

(c) Other Parties Include:

1. The Consignee:

The party to whom the goods are consigned or sent by the shipper, he may be the buyer or an agent for the buyer.

2. Freight Forwarder:

The clearing agent that assists in preparing customs document and clearance papers.²⁴

²³ Ebinimi and Oputa: ‘A Reappraisal of the Contract for Carriage of Goods By Sea Applicable to Nigeria and the Global Commercial Community’ (2020) 2 JOCLLEP p. 104 file:///C:/Users/MB_2/Downloads/989-1955-1-SM.pdf

²⁴ (n 12)

3.2. Contracts of Carriage of goods by sea:

The most important documents governing the commercial and legal relationships between the parties in international sea transport are Bills of Lading and Charterparties. However, there are also documents, such as booking notes, delivery orders, mate's receipts, cargo manifests, sea waybills etc. which play a very important role in sea trade.²⁵

3.2.1. Charterparty:

A charter party is a private agreement between two parties, individuals or corporate. Like any other contract, only those who entered into it can sue or be sued upon it. The person entitled to use the ship is the charterer and the ship is said to be under charter.²⁶

Charterparties can be divided into:

(a) Voyage Charterparty:

The voyage charter is one of the oldest forms of contract for the carriage of goods. In a voyage (trip) Charterparty, freight is paid by the charterer. The amount of freight payable can be agreed as a lump sum, but more usually depends on the quantity of cargo carried²⁷.

(b) Time Charter:

A time charter party is a contract (between ship owners and the charterers) for the hire of a ship owned by the ship owners, and the services of its crew for a period of time. The consideration moving from the charterer is the payment of 'hire'.²⁸

(c) Demise Charterparties:

This is in many respects similar to time Charterparties. Demise Charterparty are also for a period, the hire payable depending upon the period, rather than the number of voyages made, or the tonnage of cargo carried²⁹.

²⁵ Plomaritou and Voudouris; "The Relationships of Bill of Lading, Charterparty and Other Transport Documents" (2019) 24 Journal of Economics, Management and Trade p. 2 file:///C:/Users/MB_2/Downloads/SSRN-id3528584.pdf

²⁶ Funke Aje Famuyide; *Maritime Law I* (National Open University of Nigeria) p 14

²⁷ Ibid at 15

²⁸ Ibid at 16

²⁹ (n 15) at 18

(d) Contract of Affreightment:

The contract of affreightment (also known as a quantity contract or volume contract) is a variation on the voyage Charterparty. The Contract of affreightment arises where an interested party e.g., a pool of tonnage or an operator of a time-chartered vessel undertakes to transport a given quantity of some specified goods or general goods from place to place over an agreed period of time and on basic terms and conditions.³⁰

3.2.2. Bill of Lading:

This is a document that records certain goods as having been loaded on board a ship. It is issued by a carrier which acknowledges the receipt of cargo, containing terms of carriage and may operate as a document of title.³¹

4.0. Development of Maritime Law in Nigeria

4.1. Maritime bills before National Assembly:

The following bills are before the House of Representatives of the National Assembly³²:

- *Merchant Shipping Act (Repeal and Re-enactment) Bill, 2021*
- *Coastal and Inland Shipping (Cabotage) Act Amendment Bill, 2020*
- *Nigerian Maritime Administration and Safety Agency Bill, 2022*
- *Maritime Development Bank Bill, 2019*

4.1. Investigation of Maritime Casualties:

Aside from the Nigerian Ports Authority (NPA) and the National Oil Spill Detection and Response (NOSDRA) that are concerned with maritime casualties' investigations, the Senate of the National Assembly on February 15, 2022 passed a Bill for the establishment of the Nigerian Safety Investigation Bureau (NSIB)³³. This agency once established will be responsible for maritime, aviation and rail safety in Nigeria³⁴.

³⁰ Ibid at 19

³¹ (n 15) at 21

³² Adedoyin Adedoyin Afun and Michael Abiiba, 'Shipping Laws and Regulations Nigeria 2022-2023' (2022)ICLG <https://iclg.com/practice-areas/shipping-laws-and-regulations/nigeria>

³³ Ibid

³⁴ Ibid

Conclusion:

Transportation by water, is by far one of the largest means of transportation. Due to its international nature involving the crossing of countries' borders, there are several international regulations. Nigerian laws on Maritime have developed in tune with these international laws. The maritime sector is a major boost to Nigerian's economy hence there is need for government's provision of enhanced security at the nation's ports.