

## LAW AND PROCEDURE FOR SECURING AND ENFORCING MARITIME CLAIMS UNDER THE NIGERIAN LAW\*

### **Abstract**

*Among the traditional principles of international maritime still in use today are maritime insurance, general average and salvage. The welfare of the seaman, the ancient concept of maintenance and cure is also still in use. The reason for the continuation in the use of ancient principles is that the hazard of seafaring has not changed. In the last decades, however, naval architecture and cargo handling have changed in significant ways. The extensive use of crude oil carriers as well as carriers of liquefied natural gas posed new hazards and new questions for liability for oil pollution and damage to the marine ecology and the shorelines. This paper has examined the various types of claims and the procedure for filling such claims. The writers adopted doctrinal research method which methodology placed whole reliance on primary and secondary sources. Some observations and recommendations were made in line with the suggestions proffered by the writers in the course of the research.*

**Keywords:** Law, Procedure, Maritime Claims, Securing and Enforcing, Nigeria

### **1. Introduction**

Litigation in our courts in Nigeria today is known to be long, windy, and it is not uncommon for a case to remain in Courts of first instance for 5 years or more, while the pursuit of a case up to the Supreme Court may take a period of about 10 years. This state of affairs is detrimental not only to the litigant whose confidence in the judicial process may eventually wane, but also to the litigation counsel who earns his living from the practice of law as an advocate. The delays experienced in litigation can be most damaging where commercial disputes are involved. This is more so in maritime disputes where parties to litigation are more often international than local. This article is extremely wide and it would not be possible to completely discuss all areas of Maritime Claims: Practices, Procedures and Enforcements, within the margin and length allowed by the publishers of this work. In fact the practices and procedures of Maritime claims in itself can be the subject matter of a while textbook, while the Enforcement of Maritime Claims could be the subject of another textbook. Our hope is therefore, that with a reasonable grasp of the practice and procedure and enforcement of maritime claims, the maritime litigation counsel will be able to employ his skills to speed up the achievement of his clients and reduce the delays, which may arise as a result of faulty and inadequate understanding of the processes. However, in order to make an attempt to touch on all the important aspects of the article, we restricted ourselves to the very cogent areas especially as they affect the practical aspects with emphasis on guiding the litigation lawyer through formulation of the claims, choice of forum, the procedure applicable and finally the enforcement of awards either at the end of litigation or wherever there is a pre-emptive remedy available.

### **2. What are Maritime Claims?**

Maritime claims include: Claims relating to proprietary interest in a ship

- i. Any matter relating to a ship prior to 1991<sup>1</sup>
- ii. Any action on any law relating to a ship involving limitations of liability.
- iii. Claims involving liability for oil pollution damage.
- iv. Matters arising from shipping and navigation on any inland waters declared as national waterways.
- v. Matters arising within Federal Port including claims for loss of or damage to goods.
- vi. Any documentary credit arrangement involving importation and exportation of goods from and into Nigeria in a ship; the matters arising from the constitutions and powers of the Nigerian Ports Authority or National Maritime Authority.

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<sup>1</sup> Reference to 1991 means, that in 1991, the admiralty Jurisdiction Decree was promulgated, which repealed the Admiralty Jurisdiction Act of 1962 under which the state High Courts were conferred with admiralty Jurisdiction.

- vii. Criminal cases arising from any matter referred to above; and
- viii. Any monetary or non-monetary agreement relating to carriage of goods by sea.

Maritime Claims can be either proprietary or general in nature. Section 2(2) of the Admiralty Jurisdiction Decree No 59 of 1991 describes proprietary maritime claims as claims relating to:

- i. A claim for possession of a ship
- ii. Title or ownership of a ship or any share therein.
- iii. Mortgage of a ship or of any share therein.
- iv. Mortgage of a ship freight.

Proprietary Maritime claims are those, which directly affect the res or subject matter.

**2.2** Section 2(3) of the same legislation describes General Maritime Claims as follows:

- i. Collision claims
- ii. Damage to a ship
- iii. Loss of life or personal injury caused by a ship loss of or damage to goods carried by a ship.
- iv. Claims arising from agreements for carriage of goods or persons by a ship or for the use or hire of a ship.
- v. Salvage claims, General average claims.
- vi. Pilotage
- vii. Towage of a ship or waterborne aircraft
- viii. Goods supplied or to be supplied to a ship.
- ix. Goods in respect of the instruction of a ship
- x. Claims for port charges or dues
- xi. Claims by a master, shipper, charterer or agent in respect of disbursement on account of a ship.
- xii. Claims for insurance premium due to a ship or its cargo.
- xiii. Claims for wages and crewmen
- xiv. Claims for forfeiture or condemnation of a ship or goods carried thereon.
- xv. Claims for enforcement of arbitral awards in proprietary maritime claims.
- xvi. Claims for interest in any proprietary maritime claims.

### **General Claims**

Unlike proprietary maritime claims do not directly affect the res or subject matter but arise out of operation of the res on any agreement relating to or connected with the res. The distinction between these two types of Maritime claims is important and relevant to the litigant in determining the procedure to adopt in prosecuting and enforcing his claims. It is also pertinent to note that a ship is considered to be real property and not personal property and thereby having a legal personality beyond that of her owners. Therefore, these are certain claims, which attach to the ship even where the ownership changes. These types of claims are known as Liens and the Admiralty Jurisdiction Decree No. 59 of 1991 recognizes two types of Lien and these are Maritime and Statutory Liens.

### **Maritime Claims include**

- i. Claims relating to salvage including life, cargo or wreck found on land;
- ii. Claims of damages caused by a ship.
- iii. Claims by the master or crew member of a ship for wages (Claims by the master in respect of disbursement on account of a ship A Maritime Lien attaches to the ship or RES and the rights of the plaintiff are not prejudiced or over reached by virtue of a subsequent sale to a third party or change of ownership)

### **Statutory Liens include:**

- i. Claims arising from the supply of necessities;
- ii. Claims for repairs to a ship
- iii. Mortgage claims, etc (the list is not exhaustive)

Once there is a claim for an enforcement of a Maritime Lien, such gives rise to an action in **rem** against the ship. It is not always so where the claims are for an action arising out of a statutory lien, unless the beneficial owner of the ship remains the relevant party. An action in rem is an action that can lie against the ship, Cargo or Freight. On the other hand, an action in personam is an action against a person. The jurisdiction is over the person and not his property. It is an action founded in personal liability.

Therefore, upon the occurrence of an event giving rise to a claim, that is, when a cause of action arises, the Counsel must be extremely careful in determining what type of claim is dealing with and where such claim will be prosecuted. It is trite law that the cause of action in a matter can only be discerned from the Statement of claim. Therefore, having determined what type of claim is at hand, the Counsel must appropriately draft the Statement of Claim so that the cause of action will be easily discernible.

### 3. Jurisdiction

The jurisdiction to hear and adjudicate over Maritime Claims is vested in the Federal High Court. Section 7(i) (g) of the Federal High Court Act 1973 reads:-

- 7(1) the Court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to-
- (g) Any admiralty matter, including shipping and navigation on the River Niger or River Benue and their affluent and on such inland waterways, all Federal Ports, including the constitution and powers of the ports authorities for Federal Ports and carriage by sea.

Also section 8(1) of the Federal High Court Act 1973 reads:

- 8(i) in so far as jurisdiction is conferred upon the court in respect of the causes or matters mentioned in the foregoing provisions of this part of this Act, the High Court or any other Court of the State or the Federal Capital Territory, Abuja shall, to the extent that jurisdiction is so conferred upon the Court, cease to have jurisdiction in relation to such causes or matters.

Again, section 3 of the Admiralty Jurisdiction Decree No. 59 of 1991 reads:

- '3 subject to the provisions of this Decree, the admiralty jurisdiction of the Court shall apply to-
- a. All ships, irrespective of the places of residence or domicile of their owners; and
  - b. All maritime claims, wherever arising.

All references to 'the Court' in the above section mean the Federal High Court. Lastly section 251(i) (g) of the 1999 Constitution reads:

- 251(i) notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil cases and matters.
- (g) Any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluent and on such other inland waterways as may be designated by any enactment to be an international waterway the constitution and power of the port Authorities for Federal Ports) and carriage by sea'.

Sometime it is unclear to litigants and their Counsel whether a cause of action falls within the Admiralty jurisdiction of the Federal High Court as stated above. The cause of action in a suit means the fact of facts, which give a person a right of judicial redress or relief against another. It is also a situation or state of facts which would entitle a party to sustain an action and give him right to seek judicial remedy

The Supreme Court, Court of Appeal and Federal High Court have had to deal with cases where it had been unclear to the litigants and Counsel whether they could invoke the Admiralty jurisdiction of the Federal High Court. Let us look at some recent decisions. In *NV. Scheep v. MV. 'S. Araz'*<sup>2</sup>, the plaintiff claim was as follows:

The plaintiffs as agents to *Messrs N.V Scheeps v. Aatmij Unidor Willie Mstad of Curacao*, claim against the Defendants jointly and severally the sum of US\$300,000.00 (United States Dollars three Hundred Thousand only' as security for damages, interest and cost relating to a claim for demurrage and/or damages for detention for the 2<sup>nd</sup> Defendant's use or hire of the said M.V. CINDY A, pursuant to a charter dated 17<sup>th</sup> October, 1989, which claims is presently before arbitration in London, United

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<sup>2</sup> (2001) 15 NWLR Part 691) 622.

Kingdom. The Defendants filed an application challenging the jurisdiction of the Federal High Court to hear the case. The learned Trial Judge dismissed the application. The Court of Appeal felt otherwise and agreed with the Defendants that the Federal Court did not have jurisdiction. The matter was brought before the Supreme Court. The Supreme Court agreed with the Court of Appeal and unanimously dismissed the appeal. The court decided that the Federal High Court did not have jurisdiction to hear the matter. The lead judgment was by Ogundare JSC while the judgment delivered by Karibi-Whyte JSC was also very instructive. The claim of the appellant was for security for damages, interests and/or cost that may be awarded in proceedings before arbitration in London, United Kingdom. Ogundare, JSC has this to say page 635 of the report.

What is the plaintiff's cause of action in the present proceedings? Is security for damages, interest and/or costs that may be awarded in a proceeding, a cause of action? Certainly not. Security for damages, etc, belongs to the realms of adjectival law which prescribes methods of enforcing rights or obtaining redress for their invasion. It is essentially rules of Court, whether civil, criminal appellate. Laws, which fix duties, establish rights and responsibilities among and for persons-be they natural or corporate-are known as substantive laws. But those, which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court, are adjectival or procedural laws. Security for damages etc belongs to the latter group. It is usually required of a debtor or defendant to assure the payment or performance of his debt by furnishing the failure in the principal obligation. It is not a cause of action that can ground a claim, unless otherwise specifically provided by statute.

The thinking of the Court of Appeal and Supreme Court is very clear. The plaintiff's claims were themselves not Maritime Claims. There is no doubt that if the claims before the London Arbitration had been before the Federal High Court, same would be adjudged to be Maritime Claims and fall under the Admiralty jurisdiction of the Court. It is also certain that if an award had been made after arbitration in London, the claim could have been sustained in view of section 2(3) (xix) of the Admiralty Jurisdiction Decree No 59 of 1991.

In the case of *G & C Lines v. Hengrace (Nig) Ltd.*<sup>3</sup> the plaintiff's claims were as follows:

1. Against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, a waiver of all demurrage payable to them or any of them and release of the container to the plaintiff.
2. Alternatively, from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, damages in the sum of N390, 200.00 plus interest at 21% from 16<sup>th</sup> March, 1995, the date the consignment would have been cleared until final payment.
3. Against 4<sup>th</sup> and 5<sup>th</sup> Defendants, an order of injunction restraining them from auctioning the consignment or otherwise disposing of it'.

The Defendants subsequently filed an application for an order dismissing and or strike-out the action on the ground that the High Court of Lagos did not have the jurisdiction to hear the matter. The High Court ruled that it had jurisdiction and the Defendants appealed to the Court of Appeal. The Court of Appeal considered the provision of section 1(1)(a)(b)(c), 1(2), 2(3)(e) (f) and (n) of the Admiralty Jurisdiction Decree No. 59 of 1991 and held that the scope of the Admiralty Jurisdiction of the Federal High Court in respect of carriage and delivery of goods are placed on board a ship for the purpose of shipping to the time the goods are delivered to the consignee or whoever the goods were transported on land during process or not. The Honourable Justice Ige J.C. at page 62-63 of the report had this to say in her lead judgment.

When one examines carefully the above provisions of the Decree along the line of the plaintiff's claim in this case, the claim for a waiver and demurrage sprang from a contract of carriage of a container by sea<sup>4</sup>(See paragraph 7) of the Statement of Claim. In paragraph 8 of the statement of claim, the 1<sup>st</sup> defendant as a common carrier was alleged to have accepted the contain from Tilburg UK to Apapa Tin-Can Island for delivery to the plaintiff at Lagos. 1<sup>st</sup> Defendant was also quoted as having issued a Bill of Lading No TC 6012 evidencing the contract of carriage of goods by sea the container was identified as No. GR IU. 10795524 with seal No. 2479.

Before any court can decide the issue of waiver or demurrage as claimed by the plaintiff, the court has to look into the agreement relating and connected with carriage of goods by sea. I cannot but agree with the submission of the Appellant that his case comes clearly under the admiralty jurisdiction of the Federal High Court. The issue of Bill Lading is definitely under the contract of carriage of goods by sea. So also is the issue of demurrage....

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<sup>3</sup> (2001)7 NWLR part 711) 51

<sup>4</sup> See, Par 7. of the Statement of claim.

Issue 2, is mainly on the decision of the Supreme Court in the case of *AMC v NPA*<sup>5</sup> where the Supreme Court held that the claims of the plaintiff did not arise out of any agreement relating to carriage of goods in a ship. Afortiori, the Federal High Court could not exercise Admiralty jurisdiction to determine the claim. I wish to distinguish that case from the present one. In the case of *AMC v NPA*<sup>6</sup>, the claim before Federal High Court was with interest at the rate of 10% per annum for breach of a contract of bailment and or breach of duty as delivered to the Defendant. ex *MV River Aboine*. In the present case, the plaintiff's claims were for waiver of all demurrage payable to them or any of them and release of the containers to the plaintiff. The alternative claim was for the sum of N390,200 as damages with interest at 21% from 16<sup>th</sup> March, 1995 the date the consignment would have been delivered until final payment.

Upon a careful perusal of the above plaintiff's claims the goods referred to were not lost as in the case of *AMC v NPA* (supra). In the present case the goods had not yet been delivered to the owners though they had arrived Lagos. The issue of waiver of demurrage is still referable to the agreement of the carriage by sea. It is my humble view that this case is not on all fours with the case of *AMC v NPA*<sup>7</sup>. In this case, the plaintiff obviously felt that its claims did not directly relate to the contract of carriage but to events, which occurred thereafter such as payments on demurrage and preventing the Department of Customs and Excise from auctioning the plaintiff's containers. This informed the filing of its claims at the High Court. However, the Court of Appeal's decision in this case makes it very clear that such claims are maritime claims under the Admiralty Jurisdiction of the Federal High Court.

### ***Locus Standi***

Locus standi is the right of a person to sue another in a court of law, 'of the right of a party to appear and be heard on the questions before any court or tribunal'. It is now, the law that once a person can show sufficient interest in the subject matter of a suit, such a person would be entitled to bring an action. Locus Standi can be derived from the following:

- i. Statute
- ii. Judicial practice
- iii. Custom and practice of a particular trade, profession or community.

The right to sue on bills of lading which is the predominant document in a contract of carriage by sea is statutory. For example; section 375 of the Merchant Shipping Act, 1990 provides that: 'Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or endorsement, shall have transferred to the same liabilities in respect of such goods, as if the contract contained in the bill of lading had been made with him'. Thus, only a consignee of goods in a bill of lading or an endorsee of the bill of lading may sue.

A re-endorsee or any person to whom a bill of lading has been transferred to with or without actual endorsement may also sue. Section 375(1) and (3) Merchant Shipping Act provides as follows:

- i. Every consignee of goods named in a bill of lading, and every endorsee of a bill to whom the property therein mentioned shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.
- ii. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other persons signing the same, notwithstanding that such goods or some part thereof may not have been shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board.

Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

In a very recent decision, the Supreme Court spelt out the type of endorsements that may be on a bill of lading to wit: special endorsement in blank and restricted endorsement. The court also held that any endorsee or consignee to whom the property in the goods shall pass upon by reason of such consignment or endorsement and who has given valuable consideration shall be entitled to sue.

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<sup>5</sup> (1987)1 NWLR (pt. 51) 475.

<sup>6</sup> (1987)1 NWLR (pt. 51) 475

<sup>7</sup> (1987)1 NWLR (pt. 51) 475

In the case of *Sasegbon v. Fischer*<sup>8</sup> one Mr. Fola Sasegbon, a lawyer who has over many years distinguished himself in Admiralty practice undertook some work in connection with the sale of two ships namely M.V. 'Binta Yar' Adua' at the request of the 1<sup>st</sup> Defendant. The Defendants refused to pay the balance of N816,000.00 demanded by the plaintiff. In the Federal High Court, the plaintiff brought an Ex-parte Motion pursuant to section 335(1) of the Merchant Shipping Act 1962, and Order 47 Rule 2 of the Federal High Court (Civil Procedure) Rules, 1976, praying for an order to prohibit including but not limited to rights of sale, mortgage and/or transfer of the existing mortgage in the two Nigerian registered ships M.V. 'Atinuke Abiola and M.V. 'Abiola Yar' Adua' until the determination of the suit or until the Court otherwise orders. The Chief Judge of the Federal High court heard the application. He refused to grant the orders of injunction sought. The plaintiff was in the opinion of the court, 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. At the pages 322 to 323 of the report he said:

I am satisfied that there is evidence of a case between the plaintiff and the defendant, and if the injunction were against the defendant simpliciter, I would have no hesitation in granting it. What gives me the greatest concern is the involvement of the sale, mortgage or transfer of the Ocean Vessels. It may be true that the plaintiff drew up the document of sale or transfer of the vessels at the instance of the Defendant. The nature if this claim is not like that of Shipbroker or commission agent in purchasing or chartering a vessel in which contract expressed or implied between ship broker or commission agent on one side and the other or the seller on the other side, is directly related to sale or transfer of a ship where it can be claimed that the broker is involved in the sale or hire. But even in cases of claim by ship brokers or commission agents, I am not of the view that such a claim had been taken to be of such a nature to prevent completion of transfer or sale of the ship simply because there is a disagreement on the amount of commission to be paid.

#### **4. Practice and Procedure**

##### **The Claim is formulated**

It is a maritime claim and the counsel heads for the Federal High Court, files the claim and pays the requisite filing fees. While civil actions in the federal High Court are generally regulated by Civil Procedure Rules now the Federal High Court Civil Procedure Rules 2000, the practice and procedure relating to maritime claims is regulated in the main by the Admiralty Jurisdiction Procedure Rules of 1993. The commencement date of the Rules was 2<sup>nd</sup> August 1993. Order 11 deals with the form and commencement of suits. Specifically Order 11 Rule 1 (11) reads: 'Every admiralty action filed in the court shall be commenced by a Writ of Summons signed by a judge or other officer employed to sign summons'. While Order 11 Rule 2(1) and (2) provide that an action in rem shall be accomplished by a Statement of Claim while the plaintiff in an action in personam is expected to state his claim in his application for the Writ of Summons in order to give the Defendant sufficient information as to the details of the Claim. Respected author and Senior Advocate of Nigeria, L.N. Mbanefo SAN in his book 'Nigeria Shipping Practice Procedure' (1994) comments at paragraph 32.03, page 107 on Order 11 as follows:

This Rule bears the caption 'particulars of claims' and it is submitted its provision that every writ of summons in an action in rem should be accomplished by 'Statement of Claim'. It has never been the practice in Nigeria or in England to require that the writ of summons in an admiralty matter should be accomplished by a statement of claim. It should be borne in mind that in actions in rem, a motion for the arrest of the vessel (or res) is often filed simultaneously with the particulars of claim. The motion is always accomplished by an Affidavit, which gives details of the nature of the claim, and in addition it is doubtful whether the addition of a Statement of Claim is necessary. Furthermore, it is doubtful whether a distinction between action in rem and actions in personam as provided in sub-rules (1) and (2) of Rule 2 is relevant. It is submitted that the filing of particulars of claims is all that is necessary in both cases.

We are of the strong opinion that it is better and more expedient to file a Statement of Claim with the Writ in both actions in rem and in personam. This is especially so with actions in rem where the issue of a vessel may arise. It will be better to provide the court with all the details of the plaintiff's case.

The Rule also provides that an action in rem, the relevant person concerned as a Defendant shall be specified and this may be by reference to the ownership of, or other relevant relationship to the ship. Where the action is against a ship or a sister ship, the writ shall identify the ship or the sister ship. Order (v) provides for Rules relating to service of

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<sup>8</sup>(1988)NSC. vol. 3 page 317.

processes. As regards services of Court Orders on a ship at the port the following persons should ordinarily be served with Court Orders:

1. The Chief Controller/Area Administrator of Customs and Excise
2. The Port Manager, NPA
3. The Chief Harbor Master, NPA
4. the Chief Pilot, NPA
5. The Chief of Dock Superintendent NPA
6. The Commissioner of Police; and
7. The Commanding Officer, Navy.

Order 111 Rule 1 provides as follows: 'In an action to enforce a claim for damages arising from the loss of a ship or for damage done to or by a ship following a collision between two or more ships, each party shall file a preliminary action, unless the court otherwise orders'. The plaintiff shall file his preliminary acts within 7 days after the commencement of the proceedings and other parties shall file theirs before filing any pleadings. The preliminary acts shall contain:

- a. The names of the ships which came into collision and their ports of registry;
- b. The date and time of the collision;
- c. The place of the collision;
- d. The direction and force of the wind;
- e. The state of the weather;
- f. The state, direction and force of the tidal or other current;
- g. The course steered and the speed at which the ship was going when the other was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
- h. What light or combination of lights (if any) of the other ship was first seen.
- i. The distance and bearing of the other ship and when her echo was first observed by radar.
- j. The distance, bearing and approximate heading of the other ship when first seen;
- k. What other lights or combinations of lights (if any) of the other ship were subsequently seen before the collision and when;
- l. What alterations (if any) were made of the ship after the earlier of the two time referred to, in paragraph (k) up to the time of the collision, and what measures (if any), other than alteration of course or speed, were taken to avoid the collision, and when;
- m. The heading of the ship, the parts of each ship which came first into contact and the approximate angle between the two ships at the moment of contact;
- n. What sound signals (if any) were heard from the other ship and when'.

This is being the bedrock of his claim, a plaintiff must first of all file a preliminary Act before the service of pleadings in collision actions. It is to be noted that the Defendant might not be under serious pressure after securing the release of the ship to either conclude the case or settle the claim.

### **Caveat**

This is a notice addressed 'to whom it may concern'

There are 2 types: Caveat against arrest and Caveat against release. Order vi Rule 1-11 of the Rules deal with caveats. Basically, the filling of a Caveat by the Caveator implies that the Defendant accept to submit to jurisdiction or at least appear to the suit and the Defendant concedes to the furnishing of security up to an amount not less than the amount claimed or the amount in the caveat. It is an undertaking by the caveator to pay. A caveat may be filed after the order for arrest is made but before the arrest is made.

### **Pleadings**

The plaintiff must carefully formulate the Statement of Claim in order to successfully prosecute a maritime claim. It is pertinent to mention a few ingredients of such pleadings when it concerns different maritime claims. In a claim for possession or ownership of a ship, the plaintiff's claims would be for a declaration that he is the beneficial owner of a certain amount of shares which entitle him to be registered legal owner of such shares and also for orders that the Defendant be compelled to execute a bill of sales transferring the shares in the ship to the plaintiff. Here the claims must state clearly:

- i. How the plaintiff becomes the owner of the shares, proof of consideration that the defendant has failed to execute the bill of sale despite demand.
- ii. If possession is claimed, indicate the location of the vessel and its documents such as the Certificate of Registration.

- iii. The reason for seeking possession.
- iv. The plaintiff could also state how the ship had hitherto been managed and the issue of proper accounts of the proceedings from the ship's earnings could be raised.

In a claim relating to mortgage of ship, the claim will include the amount of the plaintiff's claim and that the amount was served by a legal mortgage of a ship, particulars of the mortgage which would have the following:

- i. Date of mortgage
- ii. Whether the mortgage was registered in accordance with the provisions of the Merchant Shipping Act. If so, time and date of Registration. (This is important in the case of priorities, which rank equally). That the Defendants are the lawful and duly registered owners of the shares in the ship.
- iii. That those shares were mortgaged to the plaintiffs and Defendants.
- iv. Whether the deed or a Covenant that is filed with the legal mortgage said anything regarding events of default. Have any of those events now occurred.
- v. The interest provision and the rate.
- vi. That the Defendants have failed to pay the installments on the day payment was due and this failure is an event of default.
- vii. If the ship has been arrested by other claimants, this should be indicated because this is a further act of 'Events of Default'.
- viii. When was notice of default given? Was there a demand of the repayments of balance outstanding?
- ix. The amount now due and outstanding on the mortgage and particulars or schedule of the debts.
- x. The interest due.
- xi. That the mortgage is valid and interest is due thereon pursuant to the mortgage.
- xii. That the vessel be appraised (valued) and sold'.

**8.3** In a claim for damages received by a ship as where the ship has sustained damages at the port, the plaintiff in suing the Nigerian Ports Plc must give the pre-requisite pre-action notice. The claim could be in negligence or in contract such as providing defective berth. The pleading here must include the actual time of the damage (particulars) and the amount of damages specifically claimed.

A claim for personal injuries sustained and loss incurred on board a Defendant's ship must include the plaintiff's status on the ship, how the accident occurred, description of the part of the ship (or equipment). If the plaintiff works on the ship he must describe his duties and mode of carrying out same, he must state the safety measures if any on the ship. This type of claim can be brought against the owners or charterer of the ship; a person in possession or control of a ship and a person in possession of the ship is liable. The act or omission must be related to the management of the ship including when loading and unloading the ship, embarkation and disembarkation of the persons from the ship and carriage of goods or persons on the ship. In case where death occurs as a result of the personal injuries incurred on board a ship, the personal representatives of the estate of the deceased would claim damages on behalf of the defendants. Claim for loss of or damage to goods carried by a ship. Such claims could be for negligence and/or breach of contract. In *Exquisite Industries (Nig.) Bacoliner 1-3 & Anor. Per Ayoola JCA* (as he then was), it was held as follows: 'The right of action for damages for loss of and damage to cargo can be founded in contract or in tort. When the action is in contract the persons who can sue include a shipper of goods under the bill of lading or his principal when such shipper was acting as an agent'.

## **5. Enforcement of Foreign Judgments**

Where the judgment to be enforced was delivered outside Nigeria, the judgment creditor may enforce such judgment in Nigeria by applying to a Superior Court in Nigeria. The application must be brought within 6 years after the date of the judgment. The application must also satisfy the Court that the Judgment has not been wholly satisfied and that the judgment is enforceable by execution in the Country of the original Court. The application for registration of a foreign judgment is usually made at the High Court. However, the effect of section 64(2) of the Federal High Court Act<sup>9</sup>, is to make registration of foreign judgments on matters which fall under the jurisdiction of the Federal High Court to be registerable only at the Federal High Court. Thus, any judgment on maritime claims in a foreign country will be registerable only in the Federal High Court. However as regards Foreign Arbitral Awards, the Federal High Court may register such awards whether same relate to maritime claims (or other matters specifically mentioned as

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<sup>9</sup> Cap 14 Laws of the Federation of Nigeria, 1990



falling under the jurisdiction of the Federal High Court). Section 57 Arbitration and Conciliation Act<sup>10</sup>, provides as follows:

Arbitration means a commercial arbitration, whether or not administered by a permanent arbitral institution 'Commercial', means all relationships of a commercial nature including any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representative of works, consulting, engineering, licensing, investment; financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road. 'Court' means the High Courts of a State, the High Court of Federal Capital Territory, Abuja or the Federal High Court.

The Admiralty Jurisdiction Decree No. 59 of 1991 also makes provisions for the Enforcement of Foreign Judgments and Arbitral Awards by the Federal High Court. 'Section 2(2) (c) thereof, provides that a 'proprietary maritime claim' includes a claim for the enforcement of a judgment given by a foreign Court. Section 2(3) (c) provides that a general maritime claim includes a claim for the enforcement of a foreign arbitral award within the meaning of the Arbitration and Conciliation Decree'.<sup>11</sup> Once the judgment is registered, it is to be treated as a judgment of the Federal High Court and it may be enforced in the way and manner enumerated herein.

## **6. Conclusion**

The trend of law making in the law of the sea or the International Maritime and Shipping law now reflect changes in the international legal system itself and moves towards an increasing institutionalization of the law making process. However, the subject finds its origin in the practice of individual states that contributed to the gradual formation of customary international law through a process of claims and counter-claim. Until the steam Navigation Act, 1846, there were no statutory rules of practice in Navigation, but rules of practice exist. For example, as early as the 1780's it was understood that a ship on the port tack should give way to the one on the star board. It was also known that a ship with the wind should give way, and perhaps pass to the lee ward of a ship that was close bailed. In the courts, such rule were regarded as the practice of the sea farers and is taken into account in civil claims for damages. Today, this is no longer reliable because of the complexities and the colossal nature of legal issues accompanying maritime navigation across the shipping nations. The practice has changed to the extent that any court which ran into difficulty in entertaining maritime claims should seek the provisions of the various International Conventions and in the case of Nigeria, the Merchant Shipping Act of Nigeria including IMO Regulations. Ordinarily in Nigeria, exclusive Jurisdiction in entertaining admiralty matters is by the Constitution of Nigeria today vested in the Federal High Court and the Federal Appellate system; and S.20 of the Admiralty Jurisdiction Act<sup>12</sup> renders null and void any agreement, 'which seeks to oust the Jurisdiction of the court' in specified circumstances. Also S.1 of the AJA provides that admiralty Jurisdiction of the court include jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim as specified in S.2 of the Act. S.2 of the AJA categorises maritime claims into those of a proprietary or general nature. This paper is by no means, exhaustive. It only attempts to provide an over view of useful hints that will guide the maritime counsel. Each of the laws mentioned in the work can be very technical and will require further extensive research into their different characteristics. The writers have deliberately utilized case laws and the various quotes from the decisions of the Nigerian courts referred, to showcase the importance of precedents in litigation. Although, the rule of courts, are the vehicle by which one wades through issues of procedure, the interpretation of such rules and indeed, the substantive law by the courts provide the ultimate guide to counsel in deciding how to go about his clients claims.

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<sup>10</sup> Cap 19 Laws of the Federation of Nigeria, 1990

<sup>11</sup> Cap 19 Laws of the Federation of Nigeria, 1990

<sup>12</sup> (1991)