DEROGATION OF ADMIRALTY JURISDICTION[1]

It is of grave concern that a new dimension is emerging in Nigerian Admiralty Jurisprudence. These issues are gradually eroding the admiralty and other jurisdictions of the Federal High Court in Nigeria. It is inadvertently returning admiralty jurisdiction to the **State of flux** reminiscent of jurisdictional wars between Federal High Court and State High Courts in the 1980s. It seems to be resurrecting the "ghost" of **Savanah Bank v. Pan Atlantic Shipping & Anor**[2], which heralded the definitive pronouncement of the Supreme Court that the Federal High Court had exclusive jurisdiction in admiralty matters to the exclusion of the State High Courts. This position was further confirmed by the enactment of the Admiralty Jurisdiction Act 1991 (AJA), the Federal High Court Act 1973 as amended in 1991 and consolidated by Section 251 (1)(g) of the amended 1999 Constitution of the Federation of Nigeria.

Section 251 (1) of the Nigerian Constitution expressly states that jurisdiction conferred on the Federal High Court is to the **exclusion** of any other Court in civil causes and matters. It stipulates as follows:

*(g) any **admiralty jurisdiction including shipping** and navigation on the River Niger or River Benue and their affluents and on such other inland waterways, all Federal Ports (including the constitution and powers of the port authorities for Federal Ports) and **carriage by sea.***

This Constitutional provision is further elaborated upon by the scope of Admiralty Jurisdiction set out in the Sections 1 and 2 of the Admiralty Jurisdiction Act 1991.

Section 1 of the said Admiralty Jurisdiction Act provides:

1. Extent of the Admiralty Jurisdiction of the Federal High Court

(1) The admiralty jurisdiction of the Federal High Court (in this Act referred to as "the Court") includes the following, that is-

(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 this Act;

[1] Being text of Article presented by L. Chidi Ilogu (SAN), FCIArb.
[2] (1987) 3 NSC Page 1

(b) Any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Act;

(c) Any jurisdiction connected with any ship or aircraft which is vested in any other court in Nigeria immediately before the commencement of this 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;

(g) Any matter 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) The admiralty jurisdiction of the Court in respect of carriage and delivery of goods extends ***from the time the goods are placed on board a ship for the purpose of shipping to the time the goods are delivered to the consignee or whoever is to receive them, whether the goods were transported on land during the process or not****.*[3]

(3) Any agreement or purported agreement, monetary or otherwise connected with or relating to carriage of goods by sea, whether the ***contract of carriage is executed or not****, shall be* ***within the admiralty jurisdiction of the Court****.*

[3] Pre-AJA cases like Petrogessica Enterprises v. Leventis Technical (1992) 5 NWLR, Aluminium Manufacture Co v NPA (1987) 1 NWLR (Part 51) 475, American International Ins. V Ceekay Traders (1981) 5 SC. 81 only recognised admiralty matters which arose while cargo was still on board the vessel.

Section 2 of AJA sets out types of maritime claims as being **proprietary** or **general**. Section 3 stipulates that the admiralty jurisdiction applies to **all ships** and all **maritime** claims wherever arising once the vessel is in Nigerian territorial waters.

Section 19 AJA confers on the Federal High Court **exclusively** in both civil and criminal admiralty matters to the exclusion of State High Courts.

It is evident from these classifications that the Admiralty Jurisdiction of the Federal High Court is quite extensive and comprehensive. It is therefore of concern that in the last ten years or so the classification of certain transactions as "**simple contracts**" are gradually being introduced into the jurisprudence as an exception to the express and unambiguous wording of the legislation thereby eroding the integrity of the admiralty jurisdiction of the Federal High Court.

What then is a "Simple Contract"?

Wikipedia defines a simple contract ***"as a contract made orally or in writing, rather than a contract made under seal. A simple contract requires consideration to be valid but may be implied from the conduct of the parties bound by the contract"***.

Notably, the Court of Appeal per Danjuma JCA accepted Prof. Sagay (SAN)'s definition of simple contract in his book – Nigerian Law of Contracts as *"**all contracts other than formal contracts or contracts required to be under seal**"*.[4]

These two definitions tend to suggest that "Simple Contracts" are more or less informal or elementary understandings arrived at between two parties devoid of lengthy phraseology and terms. It is therefore surprising to see lengthy contracts and agreements being classified as "simple contracts" in some admiralty matters discussed herein. Furthermore, neither Section 251 (1)(g) of the 1999 Constitution nor the provisions of the Admiralty Jurisdiction Act 1991 does not expressly exclude "simple contracts" or contracts generally from being classified as admiralty claims/matters as long as they fall within the subject matter scope highlighted above.

[4] Adeniyi v. Governing Council Yaba College of Technology (2012) LPELR 8434 (CA)

In the case of **Chevron (Nig) Ltd v. Lonestar Drilling (Nig) Ltd**, the Supreme Court considered the question whether an action for breach of contract for supply of goods conveyed by sea is an admiralty action and agreed with the view expressed by the Court of Appeal per Niki Tobi JCA (as he then was) that "I have carefully examined the claim and I am of the view that it is a claim in contract and has nothing to do with admiralty. It is clearly stated in the claim that it is for the sum of $10,000,000 as special and general damages, it is not an admiralty action. *"The fact that a transaction between two parties in Nigeria involves the conveyance of a Rig – subject of the transaction by sea from one country (India) to Nigeria does not give that transaction the character of an admiralty action."*[5]

In the case of **Ports & Cargo Handing Services Ltd & 3 Ors v. Migfo Nigeria Ltd & Anor**[6], Aka'ahs JSC maintained that the parties had entered into two (2) simple contracts for supply, delivery and installation of (a) X-Ray equipment and spare parts (b) prosthetic & orthortic equipment from Siemens Germany. Notably there was short-delivery or short landing of the goods carried by sea. Respectfully, this should have constituted a maritime transaction or cause of action. However, it is conceded that the cause of action arose and was filed on 5th July 1988 when both the State and Federal High Courts had concurrent jurisdiction. As such, the State High Court was at liberty to retain jurisdiction over the matter which was already pending before it before the Admiralty Jurisdiction Act came into force in 1991 and had no retrospective effect.

It remains a moot point whether the action could be classified under Section 1 of AJA as a claim for loss or short-delivery of goods shipped on board a vessel for delivery in Nigeria. As regards the supply of the Rig from India in the Chevron v. Lonestar case, it is contended that it relates to *"any jurisdiction connected with any ship or aircraft…"*. It is argued that the attempt to distinguish the nature of the transaction or contract introduces grounds for the controversy as to what amounts to a "simple contract" or a contract not connected with a "maritime" cause of action or subject strictly so called as contended by their Lordships in BB Abugo and Port & Cargo cases.

[5] (2007) LPELR – 842 (SC) & (2007) 1 NWLR (Part 1059) 168 SC. 170. See also BB Apugo & Sons Ltd v. OHMB (2016) LPELR – 40598 (SC)

[6] (2012) 11 & 12 SCM 205 per Aka'ahs JSC (pages 90-91, para D-B)

Closely related to the above observation is the disputation which arose in **TSKJ (Nig) Ltd v. Otochem (Nig) Ltd**[7] where the Supreme Court maintained that *"it can be seen at a glance from the amended Statement of Claim reproduced above that the main plank of the Plaintiff's case is the breach of the terms of payment by the Defendant in respect of the contract entered into between the Plaintiff and the Defendant. The action instituted by the Plaintiff before the Rivers State High Court is for the recovery of accrued but unpaid hire rentals for the houseboat let by the Plaintiff to the Defendant and damages for breach of contract simpliciter".*

Even though the houseboat was conveyed from Warri to Bonny and was defined as being "a flat-bottomed boat or barge" with a superstructure fitted out for living, the Supreme Court (per K. B. Aka'ahs JSC (pp 34-35 para B-E) held that such factors did not affect the jurisdiction of the Rivers State High Court from adjudicating on the breach of the contract notwithstanding the **subject matter of the cause of action relates to a boat/ship.**

Also, controversy trails such cases as M.R.S. and Texaco Overseas v. Pedmar (Nig) Ltd[8] (involving Stevedoring contracts), where the Court sought to distinguish debt recovery/simple contracts from admiralty claims.

<u>No Proviso/Exemption to Admiralty Jurisdiction</u>

It is observed that the provision of Section 251 (g) of the 1999 Federal Constitution did not create any exemption or proviso to the admiralty jurisdiction conferred on the Federal High Court. It states "***any admiralty jurisdiction including shipping … and carriage by sea".***

It is pertinent to note that in the case of **banking** relationships/transactions, Section 251(d) of the Constitution clearly includes a proviso which stipulates ***"Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transactions between the individual customer and the bank"***.

[7] (2018) SC 118

[8] (2002) 13 NWLR (Part 785) 526; (2016) LPELR 42251 (CA)

It is therefore not difficult to appreciate the interpretation given by the Supreme Court in **Nigerian Deposit Insurance Corporation (Liquidator) of Allied Bank of Nigeria Plc) v Okem Enterprises Ltd & Anor**[9] where it held (per Uwaifo JSC)–

> *"…I have considered the arguments advanced by the parties. I agree entirely with the reasoning of the Court below … A lot depends on the nature of the transaction between the two banks. The facts show that the Plaintiff (a Bank) like any other customer placed a short-term deposit with the Defendant (another Bank) on agreed interest".*

It follows that where there is a Banker/Customer relationship between two Banks, the proviso to Section 251(d) applies. There is no such qualification in respect of admiralty or maritime matters and the judicial distinction introduced by the Courts as to simple contracts in the case of admiralty or maritime matters, respectfully derogates from the constitutional jurisdiction conferred on the Federal High Court as it relates to such causes of action.

I closely align with the interpretation given by the Supreme Court in **Rhein Mass Und See & Ors v. Rivway Lines Limited**[10] **-**

> *"It is a cardinal rule of interpretation which has been accepted in numerous cases in this country, that if the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, as the words themselves in such case best declare the intention of the legislative…. I do not think there is a place for the incorporation of the mischief rule in this case …"* per Ogundare JSC.

The Supreme Court acknowledged that the Joint Venture Agency Agreement & Commission between the parties related to vessels and though commenced as an action in personam and was properly commenced as an action before the Federal High Court after eight and half years (8 ½) it was not caught by the six-years' time bar of the State High Court being that actions maintainable as admiralty action are exempt from Section 7(1) of

[9] (2004) LPELR 1999 (SC)
[10] (1998) LPELR – 2949 (SC)

the Limitation Act 1966. It is noted that the simple contract or Principal /Agency argument as was maintained by the various Courts in the case of **Cemar Shipping Inc v M/T Cindy Gaia & 4 Ors**[11] which involved **principal/agent** relationship in a Sale and Purchase of vessels transaction, introduced a rather unfortunate dimension to a maritime cause of action.

It is observed that in **Crestar Integrated Natural Resources v. The Shell Petroleum Development Co (Nig) Ltd SC 765/2017** decided on 5th day of June 2020 in a Lead Judgment delivered by Ejembi Eko JSC came to the conclusion that the Federal High Court lacks jurisdiction to determine **contracts generally** even where they pertain or relate to oil fields and oil drilling operations.

National Industrial Court/Crew Wages

The derogation of the Admiralty Jurisdiction of the Federal High Court has been heightened by the more recent incursion of the National Industrial Court into the controversy relating to crew wages and the inalienable **in rem right** of arrest of vessel by crew for unpaid wages well known worldwide in admiralty practice.

In a 2017 decision of the Federal High Court (**Suit No. FHC/L/CS/1807/2017 - Assuranceforeningen Skuld [GJENSIDIG] v. MT "Clover Pride" & Anor**), a claim for wages of crew was held to fall outside the jurisdiction of the Federal High Court. In that case, the Court per Idris J (as he then was) relied on Section 254C (a) & (k) of the 1999 Constitution of Nigeria (as amended) to confer jurisdiction on the National Industrial Court in respect of matters on crew wages. Section 254C (a) & (k) of the 1999 Constitution of Nigeria (as amended) provides as follows:

> *"Notwithstanding the provisions of section 251, 257, 272 and anything 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 National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:-*

[11] NSC Vol. 10 p. 456

a. Relating to or connected with any labour, employment, trade union, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour …"

k. Relating to or connected with disputes arising from payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee."

The Court held that the implication of the above provision was to confer the National Industrial Court with exclusive jurisdiction over employee wages and other labour related matters. It therefore held that the action of the Applicant being one founded on claims for unpaid crew wages was outside the jurisdictional competence of the Federal High Court. The Court further considered Section 2(3) (r) of the Admiralty Jurisdiction Act vis a vis Section 254C (a) & (k) of the 1999 Constitution of Nigeria (as amended) and held that the Section 2(3)(r) of AJA being at variance with the provision of the Constitution was void to the extent of its inconsistency. Therefore, the Court declined jurisdiction to entertain the case and accordingly transferred it to the National Industrial Court. It also discharged the Order of arrest of the vessel involved in the action in rem.

In my humble view, the above decision is a great erosion of the admiralty jurisdiction of the Federal High Court capable of having adverse effect on admiralty practice in Nigeria. This decision has obviated the right of an aggrieved party to arrest the ship for crew wages as the National Industrial Court is not vested with the jurisdiction to arrest a ship. This suggest that the only option available to an aggrieved party whether a Nigerian or a foreigner in Nigeria is to institute an action for recovery of the wages against shipowner/charterer who in most cases is a foreigner with address of service and assets outside the jurisdiction of the Court at the National Industrial Court. This decision is capable of placing huge hardship on a litigant in terms of commencing an action against the shipowner/charterer and enforcing a judgment against the said shipowner/charterer in Nigeria.

It is indeed regrettable that such decisions not only erode the jurisdiction of the Federal High Court but also violates the age-long and fundamental "in rem" right of a seaman internationally recognized in admiralty practice. This development has no doubt rendered arrest of vessel for crew wages in Nigeria a "non-starter" and futile. It is contended that the solution to this dilemma and to salvage the "in rem" right of the seaman in Nigeria should result in a constitutional amendment of the National Industrial Court jurisdiction to create an exception for seaman wages which legitimately amounts to an "in rem" right in admiralty practice.

Issuance/Service of a Concurrent Writ

Issuance of a concurrent writ of summons to be served outside jurisdiction in an admiralty *action in rem* is rather contradictory to the age-long common law tradition of the *in rem* procedure. The fact that other parties are named in the *in rem* processes along with the named vessel does not make it incumbent on the Claimant to take out a concurrent writ of summons (*in personam*) to be served outside jurisdiction on the named person or other parties listed on the processes.

In an *action in rem* Court processes are addressed to and served traditionally on the vessel and master within jurisdiction as agent of the vessel owner who is usually not physically within jurisdiction but abroad whether his address is disclosed or not. Where the Owner wishes to defend the action, he enters an appearance usually through counsel and files a **statement of defence** to the action. By so doing he is **deemed to have submitted to jurisdiction** and the case can then proceed both as an *action in rem* (against the vessel) and *in personam* (against the owner). Where the owner fails or refuses to appear, the action remains purely an *action in rem* against the vessel. Where security is provided for release of vessel the action remains an action *in rem* to be realised or settled against the bond posted for its release. The primary aim of the *action in rem* remains the obtaining of pre-judgment security for a maritime claim.

In **MV Western Star & 2 Ors v. B. L. Lizard Shipping Co. Ltd**, the Appellants contended that the Respondent failed to seek and obtain prior leave of the trial Court to issue the writ of summons in this case meant for service on the 2nd Appellant who was resident outside the jurisdiction of the Court, and mark the writ as a concurrent writ for

service outside the jurisdiction contrary to the provision of the Sheriffs and Civil Process Act. Appellant Counsel submitted that by virtue of Order 6, Rule 12(1) of the Federal High Court (Civil Procedure) Rules 2000 which is now *in pari materia* with Order 6 Rules 14(1)(2) and Rules 15 of the Federal High Court (Civil Procedure) Rules 2009 the 2nd and 3rd Appellants were resident within jurisdiction although the 1st and 3rd Appellants were within jurisdiction when the 1st Appellant was arrested. He submitted that the address for service on the 2nd Appellant was Ukraine but nevertheless the Respondent purportedly served it through the 3rd Appellant (Master of the vessel). Appellant Counsel submitted that the originating process meant for service on one Defendant cannot be served on another. The cited the case of **Management Enterprises v. Otusanya (1987) 2 NWLR (Pt 55) 180** where the Court held as follows:

- A Court of last resort such as the Supreme Court has the competence to entertain a point of law raised for the first time before it, upon the construction of a document or upon facts either admitted or proved beyond controversy in order to do justice.

- The service of process on a Defendant is one of the fundamental conditions precedent to the exercise of jurisdiction by a Court.

It is hoped that this negative trend will be urgently reversed as the MV Western Star case and other similar cases progress on appeal to the Nigerian Supreme Court so as to restore the expediency and practical benefit of the *in rem action* in the best interest of admiralty practice in Nigeria. The position in **"The Arabella"**[12] has been corrected by the Supreme Court in the case of **Abraham v. Akeredolu.**[13]

Delays/Lack of Expertise

It is equally of concern that delay defeats equity especially in Admiralty matters where time is of essence and involves vessels which travel from one jurisdiction to another in the course of international trade/carriage of goods. The need for admiralty claims to be expeditiously treated cannot be over-emphasised.

[12] (2008) 11 NWLR (Pt 1097) 182 at 206
[13] (2018) 10 NWLR (Pt 1628) page 510

Admiralty matters involve quite some technicalities which are of universal application. This calls for much specialised knowledge among the Judges who are charged with administering justice in this area. The call by the Nigerian Maritime Law Association for an Admiralty Division with Judges with specialised competencies in the areas of Admiralty and Carriage of Goods by Sea principles continues to cry for attention. This will go a long way in hastening the trial process and enhance the quality of justice dispensed in Admiralty matters.

Conclusion

The foregoing exercise has sought to identify and interrogate the emerging trend in which the admiralty jurisdiction of the Federal High Court is fast losing its identity. It is contended that where a cause of action relates to or pertains to an admiralty or maritime matter then such cause of action falls within the realm of Admiralty Jurisdiction of the Federal High Court whether the matter relates to a simple contract or not.[14]

It is equally suggested that the principle of **"relating to or pertaining to …"** as was enunciated by the Supreme Court in the case of SDPC v Abel Isaiah & Ors[15] should be adopted to preserve the integrity of the Federal High Court as regards its admiralty jurisdiction. This approach will also prevent the resurrection of the ghost of the Savannah Bank v. Pan Atlantic Shipping & Anor[16] and similar controversial cases.

Finally, it should be stressed that the law and practice of admiralty and their related jurisprudence are international in nature. As such, Nigerian Courts should endeavour to align with such international best practices thereby preserving the age-long uniformity within the Comite of Nations in admiralty matters.

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2021

[14] Gamji Fertilizer Co Ltd & Anor v. France Appro S.A.S & Ors 2016 LPELR – 1245 (CA) (p. 22, paras B-E) per Adefope-Okojie JCA
[15] (2001) 11 NWLR (Part 723) p. 168
[16] (1987) 3 NSC 1 (supra)