

ADMIRALTY JURISDICTION ACT

ARRANGEMENT OF SECTIONS

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An Act to provide for the extent of the jurisdiction of the Federal High Court in admiralty matters and other matters connected therewith.

[Commencement] [30th December, 1991]

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;
- (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;

[Cap. M11.]

(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 manner arising within a Federal port or national airport and its precincts, including claims for loss or 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) 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.

2. Maritime claims

(1) A reference in this Act to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim.

(2) A reference in this Act to a proprietary maritime claim is a reference to-

(a) a claim relating to-

(i) the possession of a ship;

(ii) a title to or ownership of a ship or of a share in a ship;

(iii) a mortgage of a ship or of a share in a ship; or

(iv) a mortgage of a ship's freight;

(b) a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship;

(c) a claim for the satisfaction or enforcement of a judgment given by the Court or any court (including a court of a foreign country) against a ship or other property in an admiralty proceeding *in rem*;

(d) a claim for interest in respect of a claim referred to in paragraphs (a), (b) or (c) of this subsection.

(3) A reference in this Act to a general maritime claim is a reference to -

(a) a claim for damage done by a ship, whether by collision or otherwise;

(b) a claim for damage received by a ship;

(c) 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;

(d) subject to subsection (4) of this section, a claim, including a claim for loss of life or personal injury, 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;

(e) a claim for loss of or damage to goods carried by a ship;

(f) 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;

(g) a claim relating to salvage (including life salvage of cargo or wreck found on land);

(h) a claim in respect of general average;

(i) a claim in respect of pilotage of a ship;

(j) a claim in respect of towage of a ship or an aircraft when it is waterborne;

(k) a claim in respect of goods, materials or services (including stevedoring and lighterage service) supplied or to be supplied to a ship for its operation or maintenance;

(l) a claim in respect of the construction of a ship (including such a claim relating to a vessel before it

was launched);

(m) a claim in respect of the alteration, repair or equipping of a ship or dock charges or dues;

(n) a claim in respect of a liability for port, harbour, canal or light tolls, charges or dues, or tolls, charges or dues of any kind, in relation to a ship;

(o) a claim arising out of bottomry;

(p) a claim by a master, shipper, charterer or agent in respect of disbursements on account of a ship;

(q) a claim for an insurance premium, or for a mutual insurance call, in relation to a ship, or goods or cargoes carried by a ship;

(r) a claim by a master, or a member of the crew, of a ship for -

(i) wages; or

(ii) an amount that a person, as employer, is under an obligation to pay to a person as employee, 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;

(s) 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;

(t) 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 proprietary maritime claim or a claim referred to in any of the preceding paragraphs;

[Cap. A18.]

(u) a claim for interest in respect of a claim referred to in any of the paragraphs (a) to (r) of this subsection.

(4) A claim shall not be made under subsection (3) (d) of this section unless the act or omission is an act or omission relating to the management of the ship including an act or omission in connection with -

(a) the loading of goods on to or the unloading of goods from a ship;

(b) the embarkation of persons on to or the disembarkation of persons from a ship; and

(c) the carriage of goods or persons on a ship.

(5) A claim under paragraphs (a) to (c) of subsection (4) may be made against the owner, agent or charterer of a ship.

3. Application of jurisdiction to ships, etc.

Subject to the provisions of this Act, the admiralty jurisdiction of the Court shall apply to -

1. all ships, irrespective of the places of residence or domicile of their owners;

and

(b) all maritime claims, wherever arising.

4. Aviation claims

Any reference in this Act to a claim in respect of an aircraft includes a claim that can be made under any of the Conventions in force to which Nigeria is a party.

5. Mode of exercise of admiralty jurisdiction

(1) Subject to section 6 of this Act, an action *in personam* may be brought in the Court in all cases within the admiralty jurisdiction of the Court.

(2) In the case of a claim as is mentioned in section 2 (2) (a) or section 2 (3) (u), or a question as is mentioned in section 2 (2) (b) of this Act, an action *in rem* may be brought in the Court against the ship or property in connection with which the claim or question arises.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action *in rem* may be brought in the Court against that ship, aircraft or property; and for the purpose of this subsection, "**maritime lien**" means a lien for -

(a) salvage; or

(b) damage done by a ship; or

(c) wages of the master or of a member of the crew of a ship; or

(d) master's disbursements.

(4) In any other claim under section 2 of this Act, where the claim arises in connection with a ship and the person who would be liable on the claim in an action *in personam* (in this Act referred to as "the relevant person") was, when the cause of action arose, the owner or charterer of or in possession or in control of the ship, an action *in rem* may (whether or not the claim gives rise to a maritime lien on that

ship) be brought against-

(a) that ship, if at the time the action is brought the relevant person is either the beneficial owner of that ship in respect of all the shares in it or the charterer of the ship under a charter by demise; or
(b) any other ship of which, at the time when the action is brought, the relevant person is the beneficial owner in respect of all the shares in the ship.

(5) In the case of a claim in the nature of towage in respect of an aircraft, an action *in rem* may be brought in the Court against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action *in personam*.

(6) Where, in the exercise of its admiralty jurisdiction, the Court orders any ship, aircraft or other property to be sold, the Court shall have jurisdiction to hear and determine any question arising as to the title to the proceeds of sale.

(7) In determining, for the purposes of subsection (4) and (5) of this section, whether a person would be liable on a claim in an action *in personam*, it shall be assumed that the person has his habitual residence or place of business within Nigeria.

(8) Where a ship has been served with a writ or arrested in an action *in rem* brought to enforce a claim, no other ship shall (subject to subsection (9) of this section) be served with a writ or arrested in that or any other action *in rem* brought to enforce that claim; but this subsection shall not prevent the issue, in respect of any one such claim, of a writ naming more than one ship (for example where the claim relates to repairs to two or more ships in the same ownership) or of two or more writs each naming a different ship.

(9) Where a ship has been arrested, no other ship shall be arrested in the proceeding unless the first-mentioned ship-

(a) having been invalidly arrested, has been released from arrest; or

(b) had been unlawfully removed from the custody of the Admiralty Marshal and the Admiralty Marshal has not regained custody of the ship.

(10) Where a person has a claim that is both-

(a) a claim on a maritime lien or other charge; and

(b) a general maritime claim,

in respect of a ship and has commenced proceedings against a sister ship, subsection (9) of this Act shall not prevent the arrest of the first-mentioned ship in a proceeding on the maritime lien or other charge if the amount recovered by the person in the proceeding is less than the amount of claim on the maritime lien or other charge.

6. Re-arrest

(1) A ship or other property arrested in a proceeding on a maritime claim shall not be re-arrested in the proceeding in relation to the claim unless the Court so orders, because default has been made in the performance of a guarantee undertaking given to procure the release of the ship or property from the earlier arrest or for some other sufficient reason.

(2) An order under subsection (1) of this section may be made subject to such conditions as the Court deems just in the circumstances.

7. Service and arrest within jurisdiction

(1) A writ in a proceeding commenced as an action *in rem* in the Court may be served on a ship or other property.

(2) A ship or other property may, in any proceeding under subsection (1) of this section, be arrested at any place within the limits of the territorial waters of Nigeria.

8. Proceeds of sale

Where, but for the sale of a ship or other property under this Act, a proceeding could have been commenced as an action *in rem* against the ship or property, the proceeding may be commenced as an action *in rem* against the proceeds of sale that have been paid into a Court under this Act.

9. Limitation of liability proceedings

(1) A person who apprehends that a claim for compensation under any law, including the Merchant Shipping Act, that gives effect to a Liability Convention may be made against him by some other person, may apply to the Court to determine the question whether the liability of the first-mentioned person in respect of the claim may be limited under that law.

[Cap. M11.]

(2) On an application under subsection (1) of this section, the Court may, in accordance with the law referred to in that subsection-

(a) determine whether the applicant's liability may be so limited and, if so determined the limit of the

liability;

(b) order the constitution of a limitation fund for the payment of claims in respect of which the applicant is entitled to limit his liability; and

(c) make such orders as are just with respect to the administration and distribution of that fund.

(3) Where the Court has jurisdiction under this Act in respect of a proceeding, that jurisdiction shall extend to entertaining a defence in the proceeding by way of limitation of liability under a law that gives effect to the provisions of a Liability Convention.

10. Retention of security where proceedings are stayed or dismissed

(1) Without prejudice to any other power of the Court -

(a) where it appears to the Court in which a proceeding commenced under this Act is pending that the proceeding should be stayed or dismissed on the ground that the claim concerned should be determined by arbitration (whether in Nigeria or elsewhere) or by a court of a foreign country; and

(b) where a ship or other property is under arrest in the proceeding, the Court may, order that the proceeding be stayed on condition that the arrest and detention of the ship or property shall stay or satisfactory security for their release be given as security for the satisfaction of any award or judgment that may be made in the arbitration or in a proceeding in the Court of the foreign country.

(2) The power of the Court to stay or dismiss a proceeding commenced under this Act includes power to impose any condition as is just and reasonable in the circumstances, including a condition -

(a) with respect to the institution or prosecution of the arbitration or proceeding in the court of a foreign country; and

(b) that equivalent security be provided for the satisfaction of any award or judgment that may be made in the arbitration or in the proceeding in the court of a foreign country.

(3) Where the Court has made an order under subsection (1) or (2) of this section, the Court may make such interim or supplementary orders as are appropriate in relation to the ship or other property for the purpose of preserving -

(a) the ship or other property; or

(b) the rights of a party or of a person interested in the ship or other property.

(4) Where -

(a) a ship or other property is under arrest in a proceeding;

(b) an award or judgment as mentioned in subsection (1) of this section has been made in favour of a party; and

(c) apart from this section, the award or judgment is enforceable in Nigeria, then in addition to any other proceeding that may be taken by the party to enforce the award or judgment, the party may apply to the Court in the stayed proceeding for an appropriate order in relation to the ship or property to give effect to the award or judgment.

11. Liability not limited to value of ship or property

Where judgment is given for the plaintiff in any proceeding on a maritime claim commenced as an action *in rem* against a ship or other property, the extent to which a defendant in the proceeding, who has entered an appearance and is a relevant person in relation to the claim, is personally liable to the judgment shall not be limited by the value of the ship or other property.

12. Ownership disputes

In a proceeding on a maritime claim between co-owners of a ship relating to possession, ownership, operations or earnings of the ship, the orders that the Court may make shall include -

(a) an order for the settlement of accounts outstanding and unsettled;

(b) an order directing that the ship or a share in the ship be sold; and

(c) an order relating to entries in and deletions from the Registry of Ships.

13. Damages for wrongful arrest

(1) Where, in relation to a proceeding commenced under this Act -

(a) a party unreasonably and without good cause -

(i) demands excessive security in relation to the proceeding; or

(ii) obtains the arrest of a ship or other property under this Act; or

(b) a party or other person unreasonably and without good cause fails to give a consent required under this Act for the release from arrest of a ship or other property, the party or person shall be liable in damages to a party to the proceeding, being a party or person who has suffered loss or damage as a direct result.

(2) The jurisdiction of the Court shall extend to determining summarily, in relation to the proceeding, a claim arising under subsection (1) of this section.

14. Priorities: general maritime claims

Notwithstanding the provisions of any other law, where -

(a) a proceeding in respect of a general maritime claim concerning a ship has been commenced under this Act against a sister ship; or

(b) in relation to a proceeding commenced under this Act concerning a ship, a sister ship has been arrested,

the order in which general maritime claims against both ships shall be paid out of the proceeds of the sale of a sister ship shall be determined, as if all the claims were general maritime claims against the sister ship.

15. Statutory powers of detention

(1) Where a law, other than this Act, confers on a person a power to detain a ship -

(a) if the ship is under arrest under this Act, the power to detain the ship shall not be exercised;

(b) the exercise of the power to detain the ship shall not prevent the arrest of the ship under this Act.

(2) If a ship that has been detained under such a power as is mentioned in subsection (1) of this section, is arrested under this Act, then, by force of this subsection the detention shall be suspended for so long as the ship is under arrest.

(3) If a ship that has been detained pursuant to a civil claim or would, but for paragraph (a) of subsection (1) of this section, be liable to be detained under such a power, is arrested and sold under this Act, then, the civil claim shall, unless the Court otherwise directs, be payable in priority to any claim against the ship other than the claim of the Admiralty Marshal for expenses.

16. Liability for principal and agent

(1) The charterer, manager, operator or master of any ship in a Nigerian port or territorial waterways who authorises an agent to act for the ship, in relation to any purpose for which the ship is in Nigeria, shall be liable for any act, declaration, default, omission or commission of his agent in carrying out his agency.

(2) If the owner, charterer, manager, operator or master of any ship entering or coming into Nigeria requests the services of an agent in Nigeria, such request shall be notified in writing to the ports authorities before or on the arrival of the ship, and the authorisation shall only cease if no suit is brought against the ship within the limitation period.

(3) A person who acts as an agent of the owner, charterer, manager or operator of a ship may be personally liable, irrespective of the liability of his principal, for the act, default, omission or commission of the ship in respect of anything done or failed to be done in Nigeria.

(4) A person who does anything or carries out any duty under the provisions of this Act or under the provisions of any law in force in Nigeria in respect of any ship in the territorial waters of Nigeria shall by doing that thing or carrying out that duty constitute himself the agent of the ship.

17. Currency clause

(1) The Court shall have the power to give judgment in any monetary currency (accepted as legal tender by the laws of any other country) in which any of the parties has suffered loss or damage if-

(a) the goods or consignment are paid for or are to be paid for in that foreign currency; or

(b) the goods are insured in that currency and part of the amount so claimed is confined to that portion in foreign currency; or

(c) the consideration or loss is derived from, accruing in, brought into or received, as the case may be, in the foreign currency or for the benefit of the party making a claim before the Court.

(2) A judgment awarded by the Court in any foreign currency shall be recoverable as if it were a judgment of the Court awarded in the currency of Nigeria.

18. Limitation periods

(1) A proceeding may be brought under this Act on a maritime claim or on a claim on a maritime lien or other charge, at any time before the end of--

(a) the limitation period that would have been applicable to the claim if a proceeding on the claim had been brought otherwise than under this Act; or

(b) if no proceeding on the claim could have been so brought, a period of 3 years after the cause of action arose.

(2) The provisions of subsection (1) of this section shall not apply if a limitation period is fixed in relation to the claim by any enactment or law.

19. Exclusive jurisdiction

Notwithstanding the provisions of any other enactment or law, the Court shall, as from the commencement of this Act, exercise exclusive jurisdiction in admiralty causes or matters, whether civil or criminal.

20. Ouster of jurisdiction by agreement void

Any agreement by any person or party to any cause, matter or action which seeks to oust the jurisdiction of the Court shall be null and void, if it relates to any admiralty matter falling under this Act and if--

(a) the place of performance, execution, delivery, act or default is or takes place in Nigeria; or

- (b) any of the parties resides or has resided in Nigeria; or
- (c) the payment under the agreement (implied or express) is made or is to be made in Nigeria; or
- (d) in any admiralty action or in the case of a maritime lien, the plaintiff submits to the jurisdiction of the Court and makes a declaration to that effect or the *rem* is within Nigerian jurisdiction; or
- (e) it is a case in which the Federal Government or the Government of a State of the Federation is involved and the Federal Government or Government of the State submits to the jurisdiction of the Court; or
- (f) there is a financial consideration accruing in, derived from, brought into or received in Nigeria in respect of any matter under the admiralty jurisdiction of the Court; or
- (g) under any convention, for the time being in force to which Nigeria is a party, the national court of a contracting State is either mandated or has a discretion to assume jurisdiction; or
- (h) in the opinion of the Court, the cause, matter or action should be adjudicated upon in Nigeria.

21. Practice and procedure

The Chief Judge may make rules of practice and procedure for carrying into effect the objects of this Act.

22. Venue of proceedings

Any proceeding which may be brought pursuant to this Act may be filed in any judicial division of the Court in which the ship or other property may be located.

23. Appeals

Appeals from any decision or order of the Court in admiralty matters shall be as in other civil or criminal cases under the provisions of the Constitution of the Federal Republic of Nigeria 1999. [Cap. C23.]

24. Act to bind the State

(1) This Act binds the State in all its capacities.

(2) This Act does not authorise-

(a) a proceeding to be commenced as an action *in rem* against a Government ship or Government property; or

(b) the arrest, detention or sale of a Government ship or Government property.

(3) Where a proceeding has been commenced as an action *in rem* against a Government ship or Government property, the Court may, if it is satisfied that the proceeding was so commenced on the reasonable belief that the ship was not a Government ship or the property was not Government property-

(a) order that the proceeding be treated as though it were a proceeding commenced as an action *in personam* on the claim against the person specified as defendant in the order; and

(b) make such consequential orders as are necessary.

(4) In this section-

"Government ship" means a ship that belongs or is for the time being demised or sub-demised to the Federal or a State Government and includes a ship that is being used by or in connection with a part of the Nigerian Navy but does not include a ship that belongs or is for the time being demised or sub-demised to a corporation that is an agency of the Federal or a State Government;

"Government property" means cargo or other property that belongs to the Federal or a State Government but does not include cargo or other property that belongs to a corporation that is an agency of the Federal or a State Government.

25. Interpretation

(1) In this Act, unless the context otherwise requires-

"Chief Judge" means the Chief Judge of the Federal High Court;

"Court" means the Federal High Court;

"foreign ship" means a ship that is not registered under the Merchant Shipping Act;

[Cap. M11.]

"freight" includes passage money and hire;

"hovercraft" means a vessel that is an air cushion vehicle or a similar vehicle, used wholly or principally in navigation by water;

"initiating process" includes a third party notice;

"inland waters" means waters within Nigeria other than waters of the sea;

"inland waterways vessel" means a vessel that is used or intended to be used wholly on inland waters;

"master" in relation to a ship, means a person who has command or charge of the ship;

"member of the crew" in relation to a ship, means a person employed or engaged in any capacity on board the ship on the business of the ship other than-

(a) the master of the ship; or

(b) a person who has the conduct of the ship as the compulsory pilot of the ship; or

(c) a person temporarily employed on the ship in port;

"mortgage" in relation to a ship or a share in a ship, includes a hypothecation or pledge of and a charge on the ship or share, whether at law or in equity and whether arising under the law in force in a part of Nigeria or elsewhere;

"relevant person" in relation to a maritime claim, means a person who would be liable on the claim in a proceeding commenced on an action *in personam*;

"sea" includes all waters within the ebb and flow of the tide;

"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.

(2) A reference in this Act to the time when a proceeding is commenced is a reference to the time when the initiating process in relation to the proceeding is filed in or issued by the Court.

26. Short title

This Act may be cited as the Admiralty Jurisdiction Act.