**AMERICAN INTERNATIONAL INSURANCE CO.**

**v.**

**CEEKAY TRADERS LIMITED**

IN THE SUPREME COURT OF NIGERIA

15TH MAY, 1981.

SC.81/1980

**LEX (1981) - SC.81/1980**

**OTHER CITATIONS**

3PLR/1981/7 (SC)

(1981) 2 N.S.C. 65.

**BEFORE THEIR LORDSHIPS:**

GEORGE SODEINDE SOWEMIMO, JSC (Presided)

MOHAMMED BELLO, JSC

ANDREWS OTUTU OBASEKI, JSC

AUGUSTINE NNAMANI, JSC

MUHAMMADU LAWAL UWAIS, JSC (Read the Lead Judgment)

**BETWEEN**

AMERICAN INTERNATIONAL INSURANCE CO. – Appellant

AND

CEEKAY TRADERS LIMITED - Respondent

**ORIGINATING COURT(S)**

FEDERAL COURT OF APPEAL (Coram: Nnaemeka-Agu and Mohammed, JJ.CA (affirming) and Coker. JCA (dissenting)

FEDERAL HIGH COURT, LAGOS (Karibi-Whyte, J.,)

**REPRESENTATION**

F.R. A.. WILLIAMS, SAN, (with him B. O. OGUNDIPE, Esq.) –for the Appellants

S. S. ARTHUR- WORREY Esq., - for the Respondents

**ISSUES FROM THE CAUSE(S) OF ACTION**

ADMIRALTY AND SHIPPING:- Jurisdiction of Nigerian Courts - History of

ADMIRALTY AND SHIPPING:- Marine Insurance claim - Whether an Admiralty claim -Jurisdiction of Federal High Court to entertain - Sections 7(1)(d), 8(1), 24 and 63(4), Federal High Court Act, 1973

INSURANCE AND REINSURANCE LAW:- Marine Insurance – Jurisdiction for claims arising thereto – Where resident – Applicable statute(s)

**PRACTICE AND PROCEDURE ISSUES**

JURISDICTION**:**- Federal High Court and State High Court - Marine Insurance claim – Whether Federal High Court can entertain - Whether State High Court has admiralty jurisdiction - Sections 7(1)(d), 8(1), 24 and 63(4), Federal High Court Act, 1973

**MAIN JUDGMENT**

**UWAIS, JSC** (Delivering the Lead Judgment):

An action was filed in the Federal High Court, Lagos, by Ceekay Traders Limited (respondents) against the American International Insurance Co. (appellants) in which the respondents claimed the sum of N2, 742,318.00 as indemnity under a marine insurance policy covering a cargo of rice shipped in Bangkok for Lagos.

The vessel carrying the rice was the "JAL SEA CONDOR". On 6th July, 1978, the ship sank with all its cargoes off the coast of South-West Africa.

After the statement of claim filed by the respondents was served on the appellants, the latter entered a demurrer under Order 27 rules I and 3 of the 'Federal Revenue Court (Civil Procedure) Rules, 1976 for the suit to be dismissed for want of jurisdiction by the Federal High Court.

The objection raised by the appellants was overruled in a well- considered ruling by Karibi-Whyte, J.,(as he then was). The appellants then appealed to the Federal Court of Appeal. By a majority judgment of ,two (Nnaemeka-Agu and Mohammed, JJ.CA) to one (Coker. JCA), the appeal was dismissed.

It is against that decision that the appellants appealed before us. In giving his ruling, Karibi-Whyte, declined to follow the decision of this court in Jammal Steel Structures Ltd. vs. African Continental Bank Ltd. - (1973) 1 ALL NLR (Pt. 2) 208, which he considered to be obiter. He traced the history of Admiralty jurisdiction in Nigeria and observed that by virtue of the Admiralty Jurisdiction Act, 1962 No. 34 of 1962, the High Courts in Nigeria were vested with the jurisdiction "vested in or capable of being exercised by Her Majesty's High Court of Justice in England."

According to him, since that is the jurisdiction transferred to the Federal Revenue Court, (now Federal High Court) be section 7(1)(d) of the Federal Revenue Court Act, 1973, No. 13 of 1973, it followed that by the provisions of section 1 (1)( c) of the English Administration of Justice Act, 1956, he had jurisdiction to entertain the respondents' action which the parties conceded, was founded on marine insurance.

It is significant to observe that although the majority of the learned Justices of the Federal Court of Appeal agreed with Karibi-Whyte J. that the Federal High Court had jurisdiction to hear the action, their reasons for so holding are quite different from his. It is also interesting to note that the dismissal of the appeal by the majority was based on conflicting ratio decidendi.

In his judgment, Nnaemeka-Agu, JCA held the view that the history of the Admiralty jurisdiction of the courts, in Nigeria was traceable to the provisions of section 45 of the Law (Miscellaneous Provisions) Act, Cap. 89 which, inter alia; states that the English law received in Nigeria consists of ' 'the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st] January, 1900". Consequent to this provision, he remarked that the Admiralty jurisdiction in England by 1900 (which extended to marine insurance) by virtue of the English Admiralty Act, 1861 (a statute of general application) and the "common law of England," is the jurisdiction conferred on the Federal High Court. He subsequently held that the English Administration of Justice Act, 1956, being a post-1900 Act, did not have any relevance to the jurisdiction of the Federal High Court as there was no specific Nigerian Statute which extended its application to Nigeria.

Mohammed, JCA, on the other hand, was of the opinion that Admiralty jurisdiction was conferred on Nigerian Courts by the provisions of section 2 subsection (2) of the Colonial. Courts of Admiralty Act, 1890, (see Chapter 27 in Volume XI of the Laws of the Federation of Nigeria and Lagos, 1958). He interpreted the provisions of the said section 2(2) to be ambulatory and, therefore, came to the conclusion that the Federal High Court had the same jurisdiction in Admiralty matters as the High Court of Justice in England. He held that the Administration of Justice 1956 to England was applicable to Nigeria and thereupon concluded that the Admiralty jurisdiction of the Federal High Court extends to marine insurance by virtue of section 1 subsections (g) and (h) of the 1956 Act.

Although Coker, JCA, gave a dissenting judgment from the judgments of Nnaemeka-Agu and Mohammed, JJ.CA and he was in the minority, I think it will not be out of place to make cursory reference to his reasons for holding that the Federal High Court lacked jurisdiction. He considered that prior to the Nigerian Independence on 1st October, 1960, the power to legislate for Nigeria on external matters, (such as the Admiralty jurisdiction of Nigerian courts), rested with British Parliament. Admiralty jurisdiction legislated for Nigeria by the British Parliament is as Provided by the Colonial Courts of Admiralty Act, 1890 and the Administration of Justice Act, 1956.

However, he was unable to agree that the Federal High court has jurisdiction to try the respondent's action because, in his judgment, firstly, the claim before the Federal High Court did not fall within section 1(1)(g) or (h) of the Administration of Justice Act, 1956. Secondly, the facts pleaded in the statement of claim show that the cause of action arose from a breach of contract which was subject to common law jurisdiction and not Admiralty. He, therefore, held that the jurisdiction to try the action rested with the High Court of Lagos State.

I turn now to the grounds of appeal before us. These read as follows:-

"(1) The majority of the Federal Court of Appeal erred in law in failing to observe that the Admiralty Jurisdiction of Courts in Nigeria is regulated by the Colonial Courts of Admiralty Act, 1890 and by the Admiralty Court Acts of 1861, in addition to the Law Merchant administered by the old Courts of Admiralty prior to the Judicature Acts of 1873 to 1875 in England.

(2) The majority of the Federal Court of Appeal misconstrued or misinterpreted the history of admiralty jurisdiction in England by failing to observe that by 1890, all courts exercising such jurisdiction in England had ceased to do so in respect of contracts of Marine Insurance.

(3) The courts below erred in law in considering that the scope of Admiralty Jurisdiction in Nigeria is co-extensive with such jurisdiction as exercised by superior courts in the USA.

(4) The majority of the Federal Court of Appeal erred in law in failing to observe that admiralty jurisdiction is confined to the special jurisdiction of the Federal High Court exercisable over torts, contracts and other claims arising on the high seas or in which the owners or characters of ocean going vessels are involved and not to claims based on contracts between parties both of whom are resident in Nigeria."

In their brief, the appellants formulated the questions for our determination to simply be:-

"1. Whether the Federal High Court has jurisdiction to entertain a claim under a policy of marine insurance for indemnity by an insured against insurer; and 2. What statutory provisions regulated the admiralty jurisdiction of the Federal High Court?"

Arguing the appeal, Chief Williams for the appellants contended that the Federal Revenue Court Act, 1973, which created that court, (now Federal High Court) merely gives the court Admiralty jurisdiction. The Act does not define the extent of the Admiralty jurisdiction. Learned counsel submitted that in the absence of a specific statutory provision, it is the law (Miscellaneous Provisions) Act, Cap. 89, which define the contents of Admiralty jurisdiction in Nigeria. The definition he said is in terms of common law and the statute of general application in force in England on the 1st January, 1900. He, therefore, agreed with the conclusion reached in that respect by Nnaemeka-Agu, JCA. Chief Williams referred to the jurisdiction of the English Courts as at 1800, when the Common Law Courts exercised jurisdiction only where a writ was issued and served on a defendant. Such Courts, he said had no system of suing the res which was the feature of Roman Legal System. As the Roman system developed with the sea merchants, it became possible to sue the property or the ship. This, he said, is why in the early days of the High Court of Admiralty in England the court could issue a writ in rem to be served on a ship visiting the shores of England. It also made it possible for such ship to even be arrested until it satisfied the judgment given against it. However, he pointed out that the jurisdiction was restricted to only loss or damage of cargo and collision at sea.

It was submitted by Chief Williams that marine insurance is distinguishable from Admiralty matters. While Admiralty jurisdiction relates to the arrest of ship, he said that a marine insurance is a contract of indemnity and one cannot arrest a ship in relation to marine insurance.

Learned counsel further argued that the Admiralty jurisdiction of the Federal High Court as provided under the 1973 Act is not the same as the jurisdiction of the High Court of Lagos as defined by the Law (Miscellaneous Provisions) Act, Cap. 89. He contended that although the 1973 Act took away the Admiralty jurisdiction of the High Court of Lagos, it did not vest such jurisdiction in the Federal High Court. To buttress his submission, he cited Jammal Steel Structures Ltd. vs. African Continental Bank Ltd. (1973) 1 ALL NLR (Pt. 2) 206 at p. 221.

In reply, Mr. Arthur- Worrey for the respondents contended that section 24 of the Federal Revenue Court Act, 1973 No. 13 of 1973 gives to the Judges of the Federal High Court the powers of the Admiralty Court Judges in England. He submitted that the Administration of Justice Act, 1956 of England was the law that gave jurisdiction to the Judges of the English Admiralty Court; similarly, the Judges of the Federal High Court have the Admiralty jurisdiction specified by the 1956 Act and thereby the jurisdiction to entertain the claim in the present case, by virtue of section 1(1) of the 1956 Act.

Learned counsel argued in the alternative that marine insurance had always been within the responsibility of the Claims Division of the High Court in England and that the Admiralty Courts had always exercised their inherent jurisdiction to deal with claims on marine insurance. In support of the argument, he cited the Queen vs. Judge of City of Lond on Court (1892) 1 OB 273; The Zeta (1893) 18 App. Cas. 468 at pp. 481,482 and 485; The Beldis (18) Aspinall's Report of Maritime Cases 598 at p. 602 and The New England Mutual Insurance Co. vs. Dunham (1870) (1) Aspinall's Report of Maritime Cases 21.

In passing, I would like to mention that reference was made in the Federal Court of Appeal and in this court to the concept of Admiralty jurisdiction in the United States of America and also to the International Convention relating to the Arrest of Sea-going Ships (Brussels’s Convention) which was ratified by Nigeria in 1973. I will say with respect that the American concept of Admiralty jurisdiction and the Brussell's Convention which is yet to be directly part of our municipal laws have, as it will appear later in this judgment, no relevance to the questions to be determined in this appeal.

The history of the Admiralty jurisdiction of the Courts in Nigeria may be briefly narrated as follows. . In 1890, the Colonial Courts of Admiralty Act, which came into force on 25th July, 1890 was passed by the British Imperial Parliament (see Chap. 27 of Volume XI of the Laws of the, federation of Nigeria and Lagos, 1958). By section 2(2) of the Act, the jurisdiction of Colonial Courts of Admiralty was made to "be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and t9 as full an extent as the High Court in England, and shall have the same regard as that court to international law and the comity of nations",

By section 12 of the Act, the Queen-in-Council was given the power to direct that the provisions of the Colonial Courts of Admiralty Act shall apply to any court established by the Queen for the exercise of jurisdiction in any Colony. It was in the exercise of that power that in 1928, the Nigeria Protectorate Admiralty Jurisdiction Order, 1928. (see pp; 501-502 of Volume XI of the Revised Laws of Nigeria, 1948) was made. The Order gave the former Supreme Court (i.e. High Court) Admiralty jurisdiction.

Although a Supreme Court for the Colony of Lagos existed since 1863 (see Supreme Court Ordinance, 1863, No. 11 of 1863) and the area of the Court's jurisdiction was gradually extended to apply to selected towns of Nigeria, it was not until 1933 that the Court's jurisdiction applied to the whole of the Protectorate (see Supreme Court (Amendment) Ordinance, 1933 No. 46 of 1933). When the 1933 Ordinance was repealed in 1945 and a new Supreme Court (i.e. High Court) was created for the Colony and Protectorate of Nigeria, the Admiralty jurisdiction conferred on the Court by the 1928 Order-in-Council was retained in section 24 of the Supreme Court Act, 1943 No. 23 of 1943. (See Cap. 211 of the Revised Laws of Nigeria 1948, Volume VI). The section reads:-

Admiralty

"24. The court shall be a Colonial Court of Admiralty within the meaning of the Colonial Courts of Admiralty Act, 1800 and shall have and exercise Admiralty jurisdiction in accordance with the provisions of the said Act in all matters arising upon the High seas or elsewhere or upon any lake, river or other navigable inland waters or otherwise relating to ships and shipping."

In addition to this jurisdiction, sections 11 and 14 of the 1943 Act provide as follows:-

"11. The Supreme Court shall be a superior court of record, and in addition to any other jurisdiction conferred by this or any other Act, shall, within the limits and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities which were vested in or capable of being exercised by the High Court of Justice in England."

14. Subject to the terms of this or any other Act, the common law, the doctrines of equity, and the statutes of general application, which were in force in England on the 1st January, 1900 shall be in force within the jurisdiction of the court."

Essentially, this was the position when the Nigerian judicial system was unitary. But in 1954, when Nigeria became a Federation, the judicial system also became federal. The Federal Supreme Court, as well as separate High Courts for Lagos and each of the three Regions of the Federation were created. In 1956, the original Admiralty jurisdiction of the former Supreme Court (i.e. High Court) was vested in the Federal Supreme Court by section 10 of the Federal Supreme Court (General Provisions) Act, Cap. 68 (Revised Laws of the Federation of Nigeria and Lagos, 1958, Volume III), which was in pari materia with section 24 of the Supreme Court Act, Cap. 211 (Revised Laws of Nigeria, 1948). Unlike their predecessor, (i.e.: the former Supreme Court), the High Courts of Lagos and the Regions were not conferred with Admiralty jurisdiction by the various laws that established them.

In 1960 a new Federal Supreme Court came into existence by virtue of the Federal Supreme Court Act, 1960 (No. 12 of 1960). Section 17 of that Act made provisions for the exercise of Admiralty jurisdiction by the court in the same manner as the Acts of 1943 and 1955. A turning point was, however, reached in 1963, when the original jurisdiction of the Federal Supreme Court in Admiralty cases was repeated by the Admiralty Jurisdiction Act, 1962 (No. 34 of 1962). This Act made it possible at the same time for the Lagos and Regional High Courts to exercise original jurisdiction in Admiralty cases. Section 1 subsection (1) of the 1962 Act reads:-

"I (1) Any exclusion from the jurisdiction of the High Courts of the territories (within the meaning of the Constitution of the Federation) of original jurisdiction in relation to Admiralty matters is hereby abolished, and the enactment conferring original jurisdiction on these courts shall be construed accordingly, and in particular, the words "other than Admiralty jurisdiction" in section 10 of the High Court of Lagos Act shall cease to have effect."

It is to be noted that the Law (Miscellaneous Provisions) Act Cap. 89 (Laws of the Federation of Nigeria and Lagos, 1958) re-enacted in section 45 subsection (1) thereof the provisions of section 14 of the Supreme Court Act, Cap. 211, as the latter Act became superseded.

This was the historical background against which the Federal Revenue Court, (now Federal High Court) was established in 1973 by the Federal Revenue Court Act, 1973.

Now, I turn to consider the two questions posed by learned counsel for the appellants in his brief which are quoted above. By Section 10 of the High Court of Lagos Act, Cap. 80 (Revised Laws of the Federation of Nigeria and Lagos, 1958) as amended:-

"The High Court shall, in addition to any other jurisdiction conferred by the Constitution of the Federation or by this or any other enactment, possess and exercise, within the limits mentioned in, and subject to the provisions of the Constitution of the Federation and this enactment, *all the jurisdiction, powers and authorities, which are vested in or capable of being exercised by the High Court of Justice in England.* (Italics mine)

It appears to me that the combined effect of this provision, together with the provisions of section 2(2) of the Colonial Courts of Admiralty Act, 1890, section 45(1) of the Law (Miscellaneous Provisions) Act, Cap. 89 and the Admiralty Jurisdiction Act, 1962 is that the High Court of Lagos State had by 1973 the power to exercise the Admiralty Jurisdiction of the High Court of Justice in England. That is to say all such jurisdiction, whether derived from a statute of general application as at 1st January, 1900 or the Colonial Courts of Admiralty Act, 1890 or the common law as it existed in 1973 or indeed any statute (such as the Administration of Justice Act, 1956), J which by 23rd September, 1963, (when the Admiralty Jurisdiction Act, 1962 came into operation) gave the High Court of Justice in England Jurisdiction on Admiralty.

It is significant to observe that section 10 of the High Court of Lagos Act, Cap. 80 merely mentions "the High Court of Justice in England" and not any Division of that court. So that, it is, in my opinion, immaterial to the determination of the question in this appeal as to which of the Divisions of the High Court - Common Law or Admiralty - exercised, in 1963 or at anytime for that matter, jurisdiction in marine insurance as was strenuously argued by counsel before us and in the courts below.

Since I am of the view that the Admiralty jurisdiction of the High Court in England as at 23rd September, 1963 was the same jurisdiction conferred on the High Court of Lagos, it follows that the provisions of the Administration of Justice Act, 1956 of England was applicable to the High Court of Lagos. Section 1 subsection l(h) of the Act reads:-

"1 (1) The Admiralty jurisdiction of the High Court shall be , as follows that is to say, jurisdiction to hear and determine any of the following questions or claims:-

(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to use or hire of ship."

Karibi- Whyte, J. and Mohammed JCA both held that that provisions of section 1(1) embraced the facts of this case; but Chief Williams contended that the provisions cannot be overstretched to apply to insurance claim.

The courts in England have had occasions to interpret the said provisions Of the 1956 Act. In The Escheraheim (1974) 3 ALL E.R. 307, which went . on appeal to the Court of Appeal and the House of Lords, Brandon J., (as he then was) said on p. 318:-

"It seems to me that, since the difference in Admiralty jurisdiction between county courts and the High Court in respect of this head of claim (i.e. salvage) was removed as long ago as 1920, and that the 1956 Act was intended to give effect to an international convention defining the claims in respect of which ships might be arrested, there is no longer' any reason for putting a restricted construction on the words used in the latter Act (i.e. the 1956 Act) to describe such heads of claim. On the contrary, except in so far as the scope of the words used is restricted by actual decisions which can be regarded as having been endorsed by the legislature, I think that all the paragraphs section 1(1) of the 1956 Act, including para (h), should be construed in the usual way, that is to say, by giving the words used their ordinary and natural meaning in the context in which they appear.

*It seems to me that the court, in deciding whether a particular agreement is an agreement relating to the use of a ship or not, should look at the substance of the matter:* "(The parenthesis and italics are mine)

In the Court of Appeal, the case was re-christened The Jade (see (1976) 1 ALL E.R. 441). Dismissing the appeal, Cairns L. J. said at p. 448:-

"In my opinion, there is no good reason for excluding from the expression 'an agreement for the use of hire of a ship' any agreement which an ordinary businessman would regard as being within it."

And in the House of Lords, where the appeal was further dismissed (see The Jade (1967) 1 ALL E. R. 920) Lord Diplock observed on p. 926 as follows:-

"My Lords, this (i.e. R. vs. Judge of City of London Court (1892)" 108 273) was not a decision which ascribed a specific and precise meaning to the words 'an agreement relating to the use or hire of a ship'. The reasons given in the judgment for giving a restricted meaning to words conferring admiralty jurisdiction on county courts, in the context in which they appeared in the 1869 Act, have no application in the context of Part 1 of the Administration of Justice Act, 1956, which is dealing with the jurisdiction of the High Court itself. I see no reason in that context for not giving them *their ordinary wide meaning.*" (Parenthesis and Italic mine)

It was in fact held earlier in The St. Elefterio (1957) p. 179 at p. 183 that the provisions of section 1 (1) (h) of the Act were "wide enough to cover claims whether in contract or tort arising out of any agreement relating to the carriage of goods in a ship".

The facts of the instance case, which are vital for the decision in this appeal are as contained in the statement of claim filed by the respondents in the Federal High Court. The statement of claim, in full, reads:-

"1. The plaintiff is a duly incorporated company with its registered office at 126-128, Nnamdi Azikiwe Street, Lagos.

2. The defendant is a duly licensed insurance company with its main office at 200, Broad Street, Lagos.

3. The plaintiff is a trader in, inter alia, commodities and on or about the 21st day of June, 1977 took out with the defendant a Marine Open Cover Policy No. MOC. 900014 for all shipments of goods and/or merchandise and/or commodities and/or frozen food of ever description from ports and/or places anywhere in the world to final warehouse in Nigeria. (The plaintiff will at the trial of this suit rely on the said Marine Open Cover Policy No. MOC. 900014 for its full terms and effect.)

4. Acting under the said Marine Open Cover Policy, the plaintiff, on the 19th day of May, 1978 insured certain shipments of rice from Bangkok on the vessel JAL SEA CONDOR with the defendants and duly paid the due premium.

5. The defendant's Certificates of Insurance Nos. 0425 to 0439 inclusive and No. 0451 were duly issued to cover the said shipments of rice with a total value of N2,742,318 (Two Million Seven Hundred and Forty-two Thousand, Three Hundred and Eighteen Naira).

The plaintiff will at the trial of this suit rely on the said Certificates of Insurance Nos. 0425 to 0439 inclusive and No. 0451 for their full terms and effect.

6. On or about the 6th day of July, 1978, the said vessel JAL SEA CONDOR sank off the coast of South- West Africa with the plaintiff's shipments of rice aboard.

7. Whereupon the plaintiff made a claim on the defendant for the insured value of the lost shipments of rice but the defendant has refused or failed to pay.

8. The plaintiff will at the trial of this suit rely on all correspondence and documents appertaining to this matter.

9. Whereupon the plaintiff claims as per the writ of summons

" Having been persuaded by the English authorities to which 1 adverted, 1 agree with Karibi- Whyte, J., and Mohammed, JCA, that the respondents' claim falls under section 1(1) (h) of the Administration of Justice Act, 1956. It follows that if the claim had been brought before the High Court of Lagos State or any State High Court prior to or in early 1973, such court would have had jurisdiction to entertain it.

It now remains to consider the nature and content of the Admiralty jurisdiction given to the Federal High Court by the Federal Revenue Court Act, 1973. Section 7 (1) (d) of the Act provides:-

"7 (1) The Federal Revenue Court shall have and exercise jurisdiction in civil causes and matters-

(d) of Admiralty jurisdiction".

The [issue] of the jurisdiction of the courts hitherto exercising the "Admiralty jurisdiction" is emphasised in section 8 sub-section (1) of the 1973 Act, which reads:-

"8 (1) In so far as jurisdiction is conferred upon the Federal Revenue Court in respect of the causes or matters mentioned in the foregoing provisions of this Part, the High Court or any other court of a State shall, to the extent that jurisdiction is so conferred upon the Federal Revenue Court, cease to have jurisdiction in relation to such causes or matters".

"Causes" and "matters" have been defined in section 63 of the Act. "Cause" is said to include "any action, suit or other original proceeding between a plaintiff and a defendant, and any criminal proceeding;"

while "matter" is defined to include "every proceeding in court not in a cause." Section 24 of the Act enables the Judge of the Federal High Court to exercise in court or in chambers the jurisdiction vested in the court as may be so exercised by a Judge of the High Court of Justice in England.

Finally, section 63 (4) of the Act, inter alia, provides:-

"4. For the avoidance of doubt the following enactment:-

(a) The Regional Courts (Federal Jurisdiction) Act, (which gives jurisdiction to State High Courts in Federal subjects under the Exclusive Legislative List of the Constitution, such as Admiralty Matters).

(e) Admiralty Jurisdiction Act, 1962 (which conferred jurisdiction in Admiralty matters on State High Courts) shall be construed with such modifications as may be necessary to bring them into conformity with the provisions of this Act."

It seems to me that the intention and overall effect of all these provisions of the 1973 Act is to oust the High Courts of the States, (including the High Court of Lagos) of their Admiralty jurisdiction after the same jurisdiction had been vested in the Federal High Court. I am, therefore, unable to agree with the submission of Chief Williams that although the Act of 1973 took away the Admiralty jurisdiction of the High Court of Lagos, it did not give the same jurisdiction to the Federal High Court.

The decision of this court in Jammal Steel Structures Co. Ltd. vs. African Continental Bank Ltd. (1973) 1 ALL NLR (Pt. 2) 208 at p. 221 is to the effect that the provisions of section 63 (4) of the Federal Revenue Court Act, 1973 do not repeal the Admiralty Jurisdiction Act, 1962. The majority decision states:- "... We observe that the original jurisdiction in admiralty cases in respect of which the Supreme Court formerly had a monopoly was taken away from it and expressly given to the High Courts of the States by the Admiralty Jurisdiction Act, 1962, which is also referred to in section 63 (4) of the Federal Revenue Court Decree (Act), 1973. This last provision seems to say that, for the avoidance of doubt, the Admiralty Jurisdiction Act, 1962 "shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of "the Federal Revenue Court Decree (Act). We do not understand this to mean that the Admiralty Jurisdiction Act, 1962 is hereby repealed, leaving jurisdiction in admiralty cases only to the Federal Revenue Court. It seems to us that only such cases or matters of admiralty as pertain to Federal Government vessel or property or revenue are within the jurisdiction of the Federal Revenue Court. If the true intention had been to take all admiralty jurisdiction out of the hands of all State High Courts, express provisions would have been made for such contingency in the Federal Revenue Court Decree (Act)".

With respect, I do not think, for two reasons, that Elias, CJN, and Ibekwe, JSC were right in holding that view. Firstly, the question of the extent of the Admiralty jurisdiction of the Federal Revenue Court was never in issue in the appeal before them. They were only concerned with the interpretation of the provisions of section 7(1)(6) (iii) of the Federal Revenue Court Act, 1973, as they related to "banking". They seem to have been misled, by the second ground of appeal in the case, into giving by hypothetical interpretation to the whole of section 7(1 )(a), (b), (c) and (d) of the Act. In principle, the exercise ought not to have been embarked upon since it was unnecessary for the determination of the appeal before them. See In re Joel vs. Sangs (1949) I Ch. 258 at 1 pp. 267-270 and Mallstrom vs. Garner (1970) 2 ALL ER 9. In my view, Karibi-Whyte, J. was, therefore, right when he observed that the court's interpretation of section 7 subsection (1)( d) (which relates to Admiralty jurisdiction) was obiter dictum and as such had no binding effect on him.

Secondly, even if this court were right in giving the interpretation to section 7(1)( d) as it did, I think, with diffidence, that the interpretation cannot be correct. As I have already shown, in my judgment, the combined effect of sections 7 (1)(d), 8(1), 24 and 63(4) of the 1973 Act is clearly to oust the jurisdiction of the High Courts in Admiralty cases. I am, therefore, unable to agree that the Admiralty jurisdiction of the Federal High Court can simply be restricted to cases involving Federal Government vessels, property and revenue only. That will be too narrow an interpretation to be placed on the clear words of sections 7(1 )(d), 8(1),24 and 63(4). For the reasons which I have given, I hold that the Federal High Court has, to the exclusion of State High Courts, the jurisdiction to entertain the respondents' claim.

It follows that this appeal has failed and it must be dismissed. I shall accordingly dismiss it and remit the case to the Federal High Court for the action to be heard on its merits. The respondents are awarded costs assessed at N300.

**SOWEMIMO, JSC:**

I have read in draft the judgment of my brother, Uwais, with which I am in complete agreement. I agree that the appeal be dismissed and that the case should be remitted to the Federal High Court, Lagos to be heard on its merits. I also agree with his award of costs to the respondents and that the costs in the Federal High Court will abide by the result of that case.

**BELLO, JSC:**

I have read in draft the judgment just delivered by my learned brother, Uwais, JSC. For the reasons stated therein, I agree that jurisdiction to determine claim arising out of marine insurance policy is vested in the Federal High Court and that the High Court of a State has no jurisdiction to entertain such claim.

I would only add that the ratio decidendi in Jamal Steel Structures Co. Ltd., vs. African Continental Bank (1973) 1 ALL NLR (Pt. 2) 208 was that upon the construction of section 7( 1 )(b )(iii) of the Federal Revenue Court Decree, 1973, a simple dispute between a banker and customer in respect of an overdraft account is within the jurisdiction of the High Court of Lagos State and not that of the then Federal Revenue Court. I agree with the view expressed by my learned brother, Uwais, JSC, that the observation made by this court in the majority judgment in Jamal Steel Structures Co. Ltd. v African Continental Bank to the effect that general jurisdiction in Admiralty cases and matters is vested in the High Courts of the States except in cases or matters of admiralty pertaining to the Federal Government vessel or property or revenue which are within the jurisdiction of the then Federal Revenue Court was obiter dictum and as such, for the reasons stated by Uwais, JSC, it ought not be followed.

I agree the appeal shall be dismissed and the case be remitted to Federal High Court for hearing on the merits. The respondents are entitled to N300 costs.

**OBASEKI, JSC**:

I have had the advantage of reading in draft, the judgment just delivered by my learned brother, Uwais, JSC, and I hereby express my concurrence in it.

The question whether the Federal High Court can entertain a claim founded on marine insurance contract must be answered in the affirmative considering the combined effect of sections 7(1)(b )(iii), 8(I), 24 and 63(4) of the Federal High Court Act, 1973. The origin of the Admiralty jurisdiction of the Federal High Court though lying in the Federal Revenue Decree, now Federal High Court Act cannot be fully explained without reference to the history of Admiralty Jurisdiction of the High Court of Justice in England in the 18th, 19th and 20th centuries, and the English statutes on the matter during those periods.

There is no doubt that there is much substance in the point - raised by counsel for the appellant that the claims arising out of marine insurance should be viewed more as claims in contract falling within the general jurisdiction of the States High Court rather than as a matter which invokes the admiralty jurisdiction of the Federal High Court. The point stressed by appellants' counsel is that whereas admiralty matters deal with and involve damage to and arrest of ships, marine insurance cases deal with money for goods or ships damaged or lost at sea or on waters and does not involve the arrest of ships.

There is, however, no doubt that courts of admiralty in England in the past exercised jurisdiction in insurance matters and that the rivalry between the Court of Admiralty and the Common Law Courts in England in the 18th and 19th centuries which gave rise to the issue of several Writs of Prohibition by the Common Law Courts against the Court of Admiralty died down by the turn of the 19th century. In Nigeria, the High Court and the Supreme Court, its predecessor were never split into several divisions, each exercising jurisdiction limited to specified areas of law, e.g. Probate, Admiralty and Matrimonial causes, Chancery Matters, Commercial Matters, Criminal Matters and Common Law Matters.

The absence of these divisions of necessity freed the High Court in Nigeria from the pains associated with the history and the evolution of admiralty jurisdiction in England. The exclusion of the jurisdiction of the States High Court from Admiralty Matters by section 8 (1) of the Federal High Court Act together with the grant of all the jurisdictions of a Judge of the High Court in England cannot be interpreted otherwise than that the court, the Federal High Court has all the jurisdiction exercised by the Admiralty Judge in England.

The Obiter dictum of this court in the case of Jamal Steel Structures Co. Ltd. vs. African Continental Bank (1973) 1 ALL NLR (Pt. 2) 208, underlined hereunder in the following passage at p. 221:-

"the original jurisdiction in admiralty cases in respect of which the Supreme Court formerly had a monopoly was taken away from it and expressly given to the High Courts of the States by the Admiralty Jurisdiction Act, 1962, which is also referred to in section 63(4) of the Federal Revenue Decree, 1973. This last provision seems to say that, for the avoidance of doubt, the Admiralty Jurisdiction Act, 1962 "shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of the Federal Revenue Decree.

We do not understand this to mean that the Admiralty Jurisdiction Act, 1962, is thereby repealed leaving jurisdiction in admiralty cases only to the Federal Revenue Court. It seems to us that only such cases or matters of admiralty as pertain to Federal Government vessel or property or revenue are within the jurisdiction of the Federal Revenue Court. If the true intention had been to take all admiralty jurisdiction out of the hands of all State High Courts, express provisions would have been made for such a contingency in the Federal Revenue Court Decree" appears to me to be in direct conflict with section 8 (1) of the Federal Revenue Decree - Federal High Court Act, 1973, which expressly took away admiralty jurisdiction from States High Court."

Overlooked the clear expressed intention of the law.

The admiralty jurisdiction conferred by section 7(1)(d) certainly was not limited "to causes or matters of admiralty as pertain to Federal Government vessel or property or revenue". In my opinion, the two sections, which read:-

(1) The Federal High Court shall have and exercise jurisdiction in all civil cases and matters;

(d) of Admiralty Jurisdiction"

8 (1) In so far as jurisdiction is conferred upon the Federal High Court in respect of the causes and matters mentioned in the foregoing provisions of this part, the High Court or any other court of a State shall to the extent that jurisdiction is so conferred upon the Federal High Court cease to have jurisdiction in relation to such causes or matters."

cannot bear any other interpretation than that admiralty jurisdiction was taken away from States' High Courts and vested in the Federal High Court. The appeal is accordingly dismissed with costs fixed at N300.00 (Three Hundred Naira).

I agree with the order remitting the matter to the Federal High Court for trial made by my learned brother, Uwais, JSC.

**NNAMANI, JSC:**

I have had the advantage of reading in draft the judgment just delivered by my learned brother, Uwais, JSC and I agree with it. I agree that this appeal has failed and ought to be dismissed.

It seems to have been agreed on all sides that jurisdiction in Admiralty matters have been vested in the Federal High Court. This is surely the effect of sections 7(1)(d), 8(1),24 and 63 (4) of the Federal Revenue Court Act, No. 13 of 1973. The main controversy has been as to the contents of that jurisdiction, and more particularly whether it includes Marine Insurance.

This Court, in Jamal Steel Structures Co. Ltd vs. African Continental Bank Ltd. (1973) 1 ALL NLR (Pt. 2) 208, 221 tried to resolve this question of the content of the admiralty jurisdiction vested in the Federal High Court. I agree with my brother, Uwais, JSC that the majority opinion on the proper meaning of section 7 (1)( d) of Act No. 13 of 1973 (i.e. limiting the admiralty jurisdiction to only such causes or matters as pertain to Federal Government vessel or property or revenue) is not only obiter dictum but is rather too restrictive an interpretation. The admiralty jurisdiction vested in the Revenue Court, (now Federal High Court) appears to have no restraint, and is clearly exclusive when one examines section 8(1) closely. In my view, the proper effect of section 63(4) read with section 8(1) of Act No. 13 of 1973 is to exclude completely the powers granted to the Lagos and Regional High Courts by the Admiralty Jurisdiction Act No. 34 of 1962 to exercise original jurisdiction in Admiralty matters. With all respect, I do not also agree with the majority view in the Jammal Steel Structures case that the modifications required by section 63(4} do not mean that the Admiralty Jurisdiction Act 1963 is repealed leaving jurisdiction in admiralty cases only to the Federal Revenue Court. For the reasons given by Uwais, JSC, in his judgment, I am also of the view that the contents the Admiralty jurisdiction vested in the Federal High Court can be found in the Administration of Justice Act, 1956.

There was a submission by learned counsel for the appellants that Marine Insurance does not fall within Admiralty jurisdiction. To that, I would only say that the authorities clearly show that from time immemorial, Insurance has been within the Admiralty jurisdiction of the High Court of Justice in England. Even when the Common Law Courts sought to exclude the Admiralty Courts from exercise of this jurisdiction by the issue of prohibitions, it is clear that they did not extinguish the power of the admiralty courts. See The Zeta (1893) 18 App. Cas. 468 at pp. 481, 482 and 485 P. C.

Besides, one has to look at the nature of Marine Insurance. It is a contract of insurance between two maritime nature. It is a maritime contract which is why it is called marine. It is a contract which though entered on land relates to something which happens at sea, to perils of the sea. Section 3 of the Marine Insurance Act No. 54 of 1961 defines Marine Insurance thus:-

"A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure" (Italics mine) Section 5 sub-section 2 of the same Act provides that there is marine adventure where:-

"(a) any ship, goods or other moveables are exposed to maritime perils, such property being referred to in this Act as insurable property."

I am unable to see why this peculiar kind of contract should not fall within the admiralty jurisdiction of our Courts. I hold too that the Federal

High Court has jurisdiction to entertain this suit I accordingly dismiss the appeal and endorse the orders made in the judgment of my brother, Uwais, JSC.

**Cases Referred to in the Judgment:**

Jammal Steel Structures Ltd. vs. African Continental Bank Ltd. (1973) 1 All NLR (Pt.2) 208

In Re Joel vs. Sangs (1949)1 Ch. 258

Mallstrom v Garner (1970) 2 ALL ER 9

Queen v Judge of City of London Court (1892) 1 QB 273

The Beldis (18) Aspinall Report of Maritime Cases 598, 602

The Escheraheim (1974) 3 ALL E.R. 307

The Jade (1976) 1 ALL E.R. 441

The New England Mutual Insurance Co. V. Dunham (1870) (1)

Aspinall's Report of Maritime Cases 2}

The St. Elefterio (1957) p. 179,183

The Zeta (1893) 18 App. Cas.,468.. 481- 485

**Nigerian Statutes Referred to in the Judgment:**

Admiralty Act, 1890; Section 2(2)

Federal Revenue Court Act, 1973 (now Federal High Court)

Federal Revenue Court Act, 1973; section 7(1)

High Court of Lagos Act Cap. 80 (Revised Laws of the Federation of Nigeria and Lagos, 1958); Section 10

Law (Miscellaneous Provisions) Act, Cap. 89

Marine Insurance Act No. 5 of 1961

Nigeria Protectorate Admiralty Jurisdiction Order 1978, pp. 50 - 02

Supreme' Court Act, 1943, No. 23 of 1943

**Foreign Statute Referred to in the Judgment:**

Administration of Justice Act, 1956

**Nigerian Rules of Court Referred to in the Judgment:**

Federal High Court (Civil Procedure) Rules, 1976, Order 27 rules 1 and 3