COURT'S JURISDICTION TO HEAR AND ENTERTAIN ADMIRALTY MATTERS IN NIGERIA*

Abstract
In the case of Chief Oloba v. Akereja[1], it was held that the issue of jurisdiction is very fundamental to the competence of a court or tribunal. It is an exhibition of wisdom to have the issue of jurisdiction or competence determined before embarking on the hearing and determination of the substantive matter or action itself, for where a court, has no competence or jurisdiction to entertain a matter or claim in a suit, it is a waste of valuable time for the Court to embark on the hearing and determination of the suit, issue, matter or claim. Jurisdiction it is said is very fundamental and it is the centre pin of the entire litigation. It is the foundation upon which every litigation hinges upon; and that is why all courts in Nigeria are vested with some specific statutory jurisdiction or the other. It is observed in this work with primary and doctrinal methodology that it is settled that a court, be it a trial or an Appellate Court, has a duty to put an end to any proceedings before it. When it discovers that it lacked jurisdiction to entertain and/or determine it, otherwise, it will be a nullity, whatever the merit of the case may be. A critical examination of some of the cases through which the FHC emerged with exclusive jurisdiction to hear and entertain admiralty matters or causes, reveals that the decisions are unfettered, and are neither nebulous nor ambiguous. Today, the decisions of the FHC in civil causes and matters are no longer questionable. By and large, the expansive nature of the jurisdiction of the FHC under the 1999 Constitution as amended is a welcome development rather than being the subject matter of intense criticisms.

Keywords: Jurisdiction, Admiralty, Legal Battle, Litigation, Competence.

1. Introduction

The Nigerian Maritime sector is second to the oil and gas sector of the economy and it has been critical to the economic, social, employment and growth of Nigeria, in terms of employment generation, contribution to the GDP and foreign exchange earnings. The significant dependence of African countries through the Gulf of Guinea on international trade makes maritime transport is a crucial factor in Africa's economic development. Maritime transport provides a gateway to international markets through the West African sub-region for Africa's exports. Port facilities play an important trade facilitation role to land locked countries. Fishing and tourism are important sources of income and employment to littoral and island economies. The Sea is an important source of oil, gas and minerals, and has been used for connecting cables and pipes for data services and mobile telephone connectivity. The maritime activities are exploited within a country's EEZ. Under the law of the sea, an EEZ is a sea zone over which a state has special and sole exploitation rights over all marine resources and Nigeria's geographical location places it as a gateway state to enjoy the advantages of its EEZ. The law of the sea also provides that land locked countries should be given the right of access to and from the sea without taxation on traffic, through transit states, but foreign state has the freedom of navigation and over flight, subject to the regulation of the coastal states.

In line with the various advantages that accrue to littoral states in international law, the positivist theory states that states could only be bound on the basis of their consent. This was expressed in the S.S. Lotus case where the PCIJ held that*, 'the rules of law binding upon states emanates from their own free will as expressed in conventions or by usage generally accepted as law'.* The traditional conception of customary international law is based on consistent trends of state practice, and it was to such practice that courts, tribunals and other decision-makers had to turn in order to determine the substance of the law. This gave birth to a long protracted and fierce battle between the courts in Nigeria, not with guns or super artillery weaponry, but through the courts for the power to exercise jurisdiction over maritime issues and matters in Nigeria. Thus, for several years in the past, the state High Courts, the (then) Regional High Courts and the Federal High Court has engaged itself with one another in a marathon litigation on which court is authorized to hear and entertain maritime issues or matters in Nigeria in line with the Courts Rules, or Decrees, empowering them to do so. Based on these fact, Hall, upholds the necessity of the maritime belt on the ground that unless the right to exercise control were admitted by international law, no sufficient security would exist for the lives and property of the subjects of the state upon the land.[2]

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[1] (1988)3, NWLR (pt. 84)508 at 510-(1988)7 SCNJ (pt. 1)56 at 60, (1988)7 Sc (pt.1) at 11

[2]See, Article 2 of the Draft Convention of the Hague Codification Conference 1930; The Territory of Coastal States, include also, the airspace above the territorial sea as well as the bed of the sea and the subsoil' (League of Nations Publications, 1930). See, also the British reply to the League's Questionnaire in 1929; 'The Sovereign rights of the coastal state extend to the airspace, above, and to the sea bottom below, the belt of territorial waters and also to the subsoil below the sea bottom'. See also McNair, *The Law of the Air* 2nd ed. (1958) pp.6-11.

2. Territorial Waters/Sea

This is a zone that extends 12, nautical miles from the coast, and over which the state is free to set laws, regulate and use any resource. Vessels from other countries are given right of innocent passage, i.e. 'passing through waters in an expeditious and continuous manner not prejudicial to peace, good order or security of the coastal state. Countries can temporarily suspend innocent passage in specific areas of their territorial sea for security reasons. Unfortunately, the Nigerian Supreme Court in the offshore boundary case,[3] in arriving at its decision that the territorial sea was not part of Nigeria did not address itself to the fact that there is a historical evidence to show that as far back as the nineteenth century, certain states have claimed part of the territorial sea as part of their territory.[4] Under admiralty law, notwithstanding the hallowed doctrine, Freedom of the Sea, there are certain portions of the sea along a state's coasts which are universally considered as a prolongation of its territory, and over which its jurisdiction is recognized. Such maritime territory depends on various considerations, the legal aspects of which may vary and which consequently require adequate legislative framework and an adequate Court System. It therefore, can be gleaned from the under mentioned points adumbrated below that the battle for jurisdiction by the Courts in Nigeria to hear admiralty cases may be justified, in view of the following:-

(i) The security of the state demands that it should have exclusive possession of its shores and that it should be able to protect it.
(ii) For the purposes of furthering its commercial, fiscal and political interest, a state must be able to supervise all ships entering, leaving or anchoring in its territorial waters.
(iii) The exclusive exploitation and enjoyment of the products of the sea within a state's territorial waters is necessary for the existence and welfare of the people on its coasts.[5]
(iv) Under international law, the coastal state is granted sovereignty over territorial sea.[6] The adoption of the law of the Sea (LOS) Convention on 30th April 1982 marked a milestone in the development of the law of the sea. This Convention represented a revolution in the manner in which international law is made. It focuses on the law making techniques, rather than substantive rules, tracing the shift from customary international law to the codification and progressive development of international law by international conferences. This subject finds its origin in the practice of individual states which contributed to the gradual formation of customary international law through a process of claim and counter claim through the courts.

Many authors including Hugo Grotius, and Bernhardt, tried to identify the foundations of the modern law of the sea in seventeenth century Europe.[7] An early milestone for the subject was undoubtedly the publication in 1609 of *Mare Liberum*, the seminal thesis on the law of the sea by the Dutch scientist, and jurist, Hugo Grotius. Grotius famously interpreted the meaning and legal implications of the term, 'Freedom of the Sea', arguing that the seas are not susceptible to appropriation, thereby setting the foundation for the principle of the 'Freedom of the Seas'. His thesis prompted other scholarly contributions as highlighted in footnote (6) showing scholars who advocated competing theories on the general principles of the 'Law of the Sea'.[8] Also, at this time, positivism became the dominant theory of international law. According to the 'Positivist Theory', states could only be bound on the basis of their consent. A classic exposition of this theory is found in *The S.S. Lotus*, where, the PCIJ held that, *the rules of law binding upon states*, emanate from their own free will as expressed in Conventions or by usages generally accepted as law…'.[9] This buttresses the fact that the traditional conception of customary international law is based on consistent trends of states practice and that it was to such practice that courts, tribunals and other decision makers had to turn in order to determine the substance of the law. At this time, few international Courts and tribunals existed, and maritime cases were chiefly dealt with by national admiralty courts.[10] Although they were

[3] *A.G. Federation v. A.G. Abia State & 35 Ors* (2002)6 NWLR (pt. 764)1.

[4]See, P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction, New York, Kraus Reprint, 1970, 115-119; 34 and V. Press Cott & S. Davis, Agboriginal Claims to Seas in Australia' (2002)17(1) *International Journal of Marine and Coastal Law*. 1-31.

[5]*Lord Fitzhardinge v. Purcell* (1908)2 CH.139; *Secretary of State for India v. Sri Raja Chellikani Rama Rao.* (1916) 32. T.L.R. 652 (P.C) and *Lord Advocate v. Wemyss* (1900) A.C. 48 (H.L.).

[6]See Judge Sir Arnold McNair's dissenting Judgment in the Anglo-Norwegian Fisheries case, ICJ Reports (1951) 116 at 160 and G. Marston, the Evolution of the Concept of Sovereignty over the Bed and Subsoil of the Territorial Sea', (1976-77) XLVIII B.Y. LL-.321-332.

[7]Brown, 'Law of the Sea History', in *Encyclopedia of Public International Law,* ed. Bernhardt (North Holland, 1989) at P. 192, C.F. Anand, *Origin and Development of International Law* (Martinus NIjhoff Publishers (1983) at p. 226. See also, the Sources discussed by Jenks, the Common Law of Mankind (Stevens, 1958) at pp 74-76.

[8]Other contributors are, for instance, O' Connell who traced the notion of land-kenning to the Scots Lawyer; Craig; The International Law of the Sea, (Oxford University Press, 1982) at pp. 3-4. On the contributions of Welwood and Selden, see Witty; 'Water Law Regime' in the *History of Private Law in Scotland* ed. Zimmerman and Reid (Oxford University Press, 2005). For a more detailed discussion of the debate that took place between Grotius and Welwood, see, Van Ittersum, *Mare Liberum* versus the propriety of the seas.' (2006)10 Edinburg Law Review 239.

[9]The case concerning the S.S. Lotus (1927) series A, No. 10 PCIJ Reports at p. 18.

[10] Columbus, *The International Law of the Sea* (Longmans, 1967) at p.7.

national institutions, the law applied by these courts was largely of an international character. Sir Charles Hedges, a seventeenth century Judge of the English High Court of Admiralty, made this clear when he said;

> The Court of Admiralty is a court of justice, and the judge who is sworn in to administer it is as much obliged to observe the laws of nations as the Judges of the Court of West Minister are bound to proceed according to the statutes and the Common Law.[11]

In the past, the admiralty courts drew on a variety of sources, including ancient codes of maritime law[12] as well as the contemporary practice of state[13], in order to determine customary international law.

3. Development of Admiralty Jurisdiction in England

'Admiral' is a word used to identify an officer of the navy. Admiralty is therefore the office or function of an admiral according to the Oxford Advanced English Dictionary.[14] It could also mean that branch of jurisprudence or judiciary that regulates maritime affairs or matters whether civil or criminal. Admiralty Courts refer to those courts entrusted with powers as of right and authority to hear and entertain admiralty matters or, causes. It is observed that in England prior to the 19th century, there were chronic disputes existing between Admiralty Courts and Courts of Common Law, during the reign of King James I. Perhaps, it was in the king's interest in maritime matters that encouraged the Lord High Admiral to end the proscriptions placed on the Court of admiralty by the Common Law Courts. In view of the protests against the Admiralty Courts by the Common Law Courts, Lord Coke records that at as a result of the protests: 'We acknowledge that, of contracts, pleas and quarrel, made upon the sea or any part thereof which is not within any court from where no trial can be had, the Lord Admiral had and ought to have jurisdiction'.[15] During the 17th century, the Admiralty Court was thus very successful in exercising wide jurisdiction in England. An Ordinance Passed on April 12 1648 further enhanced by constant appeals made to its jurisdiction; particularly in prize matters consequent upon the many maritime wars in which great Britain found herself engaged at the time.[16] It was fortunate that the court was presided over, at the time of the Napoleonic wars, by Lord Stowell whose able judgments both in prize and in instance case contributed in raising the Court to a position of the highest prestige.[17] During the 19th century several statutes were passed with the aim of defining and consolidating the functions of the Admiralty Court. The more important are the Act of 1840 which improved and extended the Courts jurisdiction, and the Admiralty Court Act 1861, which endowed it with still wider powers. The patent issued by Queen Victoria in1867 to Sir Robert Phillimore, the last Admiralty Judge to be appointed before the Court was formed into a High Court of Justice by the operation of the Supreme Court of Judicature Act of 1873, which increased its powers to handle 'all causes, civil and maritime, all in an ample manner and form.[18]

4. Development of Admiralty Jurisdiction in Nigeria

The establishment of Admiralty Jurisdiction in Nigeria can be traced to the passing by the British Parliament of the Admiralty Jurisdiction Act of 1847. Since then, admiralty matters were introduced into Nigeria in accordance with the provisions of the Act,[19] and were administered by specially appointed judges by warrant from the Admiralty in England. In 1886, the Governor of Lagos was empowered to introduce a special Court of Admiralty for the colony of Lagos. This gave birth to the enactment of the Colonial Court Ordinance passed by the British Parliament.[20] It could be said that admiralty Jurisdiction in Nigeria actively commenced in 1890. It is pertinent to state that the Supreme Court Act of 1876 did not vest any of the courts hitherto with admiralty jurisdiction. It is lucidly observed that S. 11 of the Supreme Court Act specifically excluded the exercise of such jurisdiction. The said S.11 provides as follows:

> The Supreme Court shall be a superior Court of record, and in addition to any other Jurisdiction conferred by this or any other ordinance of the colonial legislature, shall within the limit and subject as in this ordinance mentioned, possess and exercise all the jurisdiction powers and authorities, excepting the jurisdiction and powers of the High Court of Admiralty, which are

[11]In *Currie v. M'Knight,* The U.K. House of Lords held that the Scots admiralty law was the same as that applied by the English Court of Admiralty; *Currie v. M'Knight, (1896)4, S.L.T. 161.*

[12]For instance, the Rhodesian maritime laws from the Island of Rhodes, Consolato del mare, and the Laws of Oleron and Winsby.

[13] Prentice, ed, *Treatise of the Law Relative to Merchant Ships and Seamen*, 12 ed., (Shaw, 1881) Preface.

[14]See *Oxford Advanced Learners English Dictionary,* New Special Edition, 7th Edition, Oxford University Press. www.oup.com/elt/oald.

[15] See Lord, Cokes, Reports, Part. Xiii 51 and institutes, Part iv Ch.22, pp. 134-135, Close Rolls, 35 Edw. III, m. 28d.

[16]*The Paquette Habana*; provides a good example; Here the US Supreme Court traced the history of price jurisdiction from 1403 onwards, examining several international treaties, the work of scholars, and price court decisions of various countries; *The Paquette Habana*, (1899)175 US Reports 677.

[17] This jurisdiction was referred to in concise terms by Lord Stowell in The Hercules (1819)2, Dods,-353, 371.

[18] The Supreme Court of Judicature (Commencement) Act, 1874, 37 and 38.

[19] A.J. Act, 1847.

[20] Colonial Court Ordinance, 1890.

> vested in or capable of being exercised by her majority's High Court of Justice in England as constituted by the Supreme Court of Judicature Act 1873 and 1875.

The Court of Admiralty Act 1890, which came into force on the 25th of July 1890, was passed by the British Imperial Parliament under the Queen in Council. Section 2(2) of the Act provided that the jurisdiction of the Colonial Court of Admiralty must be over the like places, persons, matters and things as are the admiralty jurisdiction of the High Court of England whether existing by statute or otherwise, and that the Colonial Court of Admiralty may exercise such jurisdiction in the like manner and as full and to an extent of the High Court in England, and shall have the same regard as that court in England and shall have the same regard as that court to International Law and Comity of Nations.[21] S.12 of the Ordinance vested on the Queen-in-Council, the powers to direct that the provisions of the colonial court of admiralty shall apply to any court established by the queen for the exercise of jurisdiction in the colony. In the exercise of this power, the Nigerian Protectorate and Admiralty Jurisdiction Order,[22] was enacted and this order gave the Supreme Court of Lagos Admiralty Jurisdiction and this power applies throughout the country. In 1933, a new Supreme Court Act was made for the colony and protectorate of Nigeria. Fortunately, the Admiralty Jurisdiction created by the 1928 Order-in-Council was retained by S.2(4) of the Supreme Court Act.[23] The section states as follows:- 'The Court shall be a Colonial Court of Admiralty within the meaning of Colonial Court of Admiralty, and shall, exercise admiralty jurisdiction in accordance with the provisions of the said Act, in all matters arising upon the high seas, or upon any land, rivers, or navigable inland waters, or, otherwise relating to shipping…' Section 11 and 41 of the Act,[24] imported the English Law of Admiralty Provisions by providing as follows: The Supreme Court shall possess and exercise all jurisdictions, powers and authority that were vested in or capable of being exercised by a High Court of Justice in England. While section 14 [25]provides: 'Subject to the terms of this and other Acts, the common law and the doctrine of equity and statutes of general application shall be in force within the jurisdiction'.

In 1954, as the wind of Federalism blew across, Nigeria, and Nigeria became a Federation. Subsequent upon this development, three Regions were created, and the judicial system of Nigeria became, Federal. The High Court was also created, but however, only the Federal Supreme Court had the jurisdiction to hear admiralty cases. The High Courts and the Regional Courts were not conferred with admiralty jurisdiction. This was the position till1962, when the original jurisdiction of the Federal Supreme Court was repealed by the Admiralty Jurisdiction Act of 1962. Surprisingly, the Admiralty Jurisdiction Act,[26] repealed the Federal Supreme Court Jurisdiction, and transferred jurisdiction to hear admiralty matters from the Federal Supreme Court to the High Court of Lagos and the Regional Courts. As to add salt to the already existing injury on the Federal Supreme Court, in 1973, the Federal Revenue Court, now Federal High Court was established, by the Federal Revenue Court Act.[27] It was observed that S.7(1) of the 1973 Act provided that, the Federal Revenue Court shall have and exercise jurisdiction in civil causes and matters over admiralty matters. Also, S.8(1) expressly stated the position of those courts which hitherto had exercised admiralty jurisdiction in one way or the other, as follows:

> In so far as jurisdiction is conferred upon the Federal Revenue Court in respect of causes, or matters mentioned in the foregoing proviso of this Act, the High Court or any Court of the state shall to the extent, that jurisdiction is conferred upon the Federal Revenue Court cease[28] to have jurisdiction.

The expression here is clear, it thus appear to us that S.8(1) of the Federal Revenue Court Act[29] also drew the battle line by interpreting and thereby hallowing the provision of S.7(1) of the same Act[30], by stating vehemently that in so far as jurisdiction has been conferred upon the Federal Revenue Court, in sections 7 and 8, of the Federal Revenue Court Act,[31] that the High Court of a state or any court of a state shall have its jurisdiction withdrawn with respect to admiralty jurisdiction. Thus, this omnibus provision of law was what led to series of interpretation as the battle ground shifted to the court room.

5. Maritime Law and Admiralty Law: Reflections

The fall and disintegration of the Roman Empire and the subsequent period of lawlessness and confrontation between island economies and Christianity gave way to another formative period in the history and evolution of

[21]See A. K. Mgbolu, Unpublished Final Year Lecture Notes on Maritime and Shipping Law, Faculty of Law, Ebonyi State University, Abakaliki, 2nd semester, 2015, (unpublished).
[22] Order of 1928.
[23] Act of 1933.
[24] *Op. cit., Ibid.*
[25] *Op. cit., Ibid.*
[26] Act of 1962.
[27] Act of 1973.
[28] Underlining, my expression.
[29] Act of 1973.
[30] *Op. cit. Ibid.*
[31] *Op. cit. Ibid.*

maritime law. Also, the growth of the Mediterranean littoral states created the need for newly defined maritime laws which developed around a number of city states with the Code of Oleron, a small Island off, La Rochelle, in France, as an important trading centre, including Venice, Amalfi and Trani. All these trading centres developed their own codified maritime laws and made various contributions towards the development of maritime laws. Indeed, the real growth of British maritime laws developed with the enactment of the Navigation Acts in 1651 under Cromwell and their subsequent development and enforcement. The effect was that the significantly expanding trade to and from the British colonies had to be carried on in British made ships. No foreign ships were allowed entry to and from Britain and carriage of goods than were regulated and controlled so that no other nation could participate in the carriage of goods. After the restoration of the English monarchy in 1660, the laws were further strengthened in favour of the British ships. At least, colonial ships were required and requested to be routed through England to attract payment of levies. The Navigation Act during this period-acquired popularity as it was required that all newly acquired colonies of Britain such as Canada, India, Australia, New Zealand had to be served by British ships to boost trading activities. Indeed the terms Maritime Law and Admiralty Law are interwoven as they are sometimes used interchangeably. It should be noted that Admiralty originally refer to a specific Court in England and the American colonies that had jurisdiction over torts and contracts on the high seas, while substantive maritime law developed through the expansion of Admiralty Court Jurisdiction to include all activities on the high seas and similar activities on the internal waters. Definitely because maritime transportation or navigation involve other foreign nations, a variety of the United States laws evolved in tandem with the growth of maritime law of other nations. For example, the federal statutes that address maritime issues are often customized United States version of the Conventions, and treaties of maritime international law to which the US has assented to as well as other maritime nations.

Again, the United Nations had organized and prepared these conventions and treaties through its branches such as the international maritime organization and the International Labour Organization (ILO) which prepares conventions on the health, safety and welfare of the seafarers. The substance of maritime law considers the adverse conditions and the unique vagary of the atmosphere and the conflicts experienced in navigation. For example sailors, are a times vulnerable to injury, cold and sickness due to harsh and cold weather conditions, loneliness or perils at sea. Admiralty and maritime matters is seen to deserve stringent laws carefully drafted to suit the complexity and the urgency of maritime expeditions. Finally, the command enforcement nature of Admiralty law requires a court of competent Jurisdiction to entertain its matters. This is because one do not need to be in the centre of an ocean to be under Admiralty Jurisdiction. The Jurisdiction merely attaches where the subject matter falls within the scope of maritime law. When admiralty Jurisdictions are invoked however, the consolidated rules still make provisions for differential treatments and the handing of certain matters previously existing only in admiralty.

6. Legal Battle for Admiralty Jurisdiction in Nigeria

The first and the foremost battle was seen in the case of *Jammal Steel Structure Ltd. v. African Continental Bank Ltd.*[32] Here, the Court ruling was:

> We observe that original jurisdiction in admiralty matters, in respect of which the Supreme Court formerly have monopoly was taken away from it and was expressly given to the High Court of a state, by the Admiralty Jurisdiction Act,[33] and as contained in S.23(4) of the Federal Revenue Court Act.[34] This position seems to say, that for the avoidance of doubt, the Admiralty Jurisdiction Act of 1962, shall be construed with such modifications with the provision of the 1962 Act. We do not understand this to mean, that the Admiralty Jurisdiction Act, 1962, is hereby repealed, vesting jurisdiction only on the Federal Revenue Court. It seem to us that only such causes and matters of admiralty as, pertaining to Federal Government vessels, or, property or revenue are within the jurisdiction of the Federal Revenue Court. If the true intention of the Court was to take Admiralty Jurisdiction out of the hands of the state high Courts, express provision of the Court would have been made for such contingency in the Federal Revenue Court Decree…

In yet another case, *A.I.I. Co. Ltd. v Ceekay Traders Ltd*,[35] the interpretation in the above mentioned case, *Jammal Steel Structures Ltd. v. A.C.B*[36] was faulted. The Supreme Court maintained that the combined effect of section 7(1)(d), S.8(1), S.24 and S.63(4) of the Federal Revenue Court has clearly ousted the provisions of the 1962 Act[37] and that with the coming into force of the 1979 Constitution,[38] under which the Federal Revenue Court was

[32] (1973)1 All NLR (pt.2) p.205 @ 231.
[33] 1962.
[34] Act of 1973.
[35] (1981) NSC vol. 1 at 65.
[36] (1973)1 All NLR (pt.2) p. 205 @ 231.
[37] Admiralty Jurisdiction act (A.J).
[38] (1938)6 S.C. 156.

renamed, the Federal High Court, that this position was again reversed. In yet another case, *Bronik Motors Ltd. v. Wema Bank Ltd*, the Supreme Court maintained that although S. 230(1) of the Constitution of Nigeria, as amended,[39] vested in the Federal High Court, the jurisdiction of the Federal Revenue Court, this jurisdiction was only limited to such jurisdiction as was expressly conferred by the Federal Revenue Court Act of 1973. The Court further held that S. 236(1) of the 1979 Constitution vested on the State High Court, unlimited jurisdiction to hear and determine civil proceedings in which the existence of a legal right, or a power or, duty, liability, privilege, interest, obligation or claim is in issue, or to hear and determine any criminal proceedings involving or relating to any penalty, punishment or other liability in respect of an offence committed by the person. It is very clear in this interpretation of the court in this case that, while the former admiralty jurisdiction were reversed by the 1979 Constitution of Nigeria, the Federal High Court shall continue to exercise vested jurisdiction by virture of S.7(1)(d) of the Federal Revenue Court Act.[40] It should be emphasized that this vested jurisdiction on the Federal High Court did not last long, as another court decision came up in 1987 bringing in confusion in the battle of the titans for exclusive admiralty jurisdiction. The blow came through the decision in the case of *Savannah Bank Ltd. v. Pan Atlantic Shipping and Transport Ltd*.[41] The Court here gave the ruling that the Federal High Court and the State High Court has concurrent jurisdiction in an over admiralty matters.

7. Final Settlement of the Battle for Jurisdiction

The issue of jurisdiction to hear and adjudicate over maritime issues and claims as seen above in this work were finally resolved and was vested on the Federal High Court of Nigeria, as decided in the latest stated case, in this work,[42] but it should be clearly stated that the combined effect of the underlisted decrees and legislations in Nigeria which enhanced the decision of the courts, made it possible. They are:

(a) The Federal High Court Act, 1973.
(b) The Admiralty Jurisdiction Decree, 1991.
(c) The Constitution (Suspension and Modification) Decree, No. 107 of 1993.
(d) The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

These should be considered as having settled the long drawn battle through the court to resolve the conflict over admiralty jurisdiction in Nigeria.

(a) To buttress the above fact, S. 7(1) of the Federal High Court Act,[43] reads:

> The court shall to the exclusion of any other court, have original jurisdiction to try civil causes and matters connected with or pertaining to any admiralty matter including shipping and navigation on the River Niger or Benue and their affluent and on internal water-ways as may be designated by any enactment to be an internal water-ways, all Federal Ports, including the Constitution and the power of the Ports Authority for Federal Ports and Carriage, by sea.

Section 8(1) of the same Act,[44] also stated:

> In so far as jurisdiction is conferred upon the Court in respect of the causes or matters mentioned in the foregoing provisions of this Act, the High Court or any other Court of a State or, of the Federal Capital Territory, Abuja, shall to the extent so conferred upon the Court, cease to have jurisdiction in relation to such causes or matters.

(b) The Admiralty Jurisdiction Act, 1991, repealed the Admiralty Jurisdiction Act,[45] under which the State High Court was conferred with admiralty jurisdiction. It provides in section 1(1) as follows:

> The Admiralty Jurisdiction of the Federal High Court include the following:
>
> (i) Any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Decree.
> (ii) All maritime claims wherever arising:

The Jurisdiction of the FHC in this regard is exclusive. This is because; S.19 of the Decree provided that:

> Notwithstanding the provision of any other law or enactment, the Court shall from the commencement of this Decree exercise exclusive jurisdiction in admiralty causes and matters.

(c) The 1993, Constitution (Suspension and Modification) Decree No. 107; amended the 1979 Constitution of Nigeria, and provided that:

> The Federal High Court shall have and exercise jurisdiction in all maritime matters.[46]

[39] 1999 Constitution of the FRN (as amended).
[40] (1973).
[41] (1987) N.S.C.C. vol. 3. P.1.
[42] *Savannah Bank Ltd. v. Pan Atlantic Shipping and Transport Ltd*. 1987 NSCC vol. 3. P.1.
[43] 1973.
[44] Federal High Court Act, 1973.
[45] 1962.
[46] Reference is here made to S.230 of the Decree which provides that the FHC is vested with exclusive jurisdiction in admiralty matters. This position of the Decree was also adopted and assimilated into the 1999 Constitution of Nigeria (as amended).

(d) The 1999 Constitution of the Federal Republic of Nigeria (as amended) at S. 251(1)(g) reads as follows: Notwithstanding anything to the contrary, contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it, by an Act of the National Assembly, the Federal High Court shall have, and exercise jurisdiction to the exclusion of any other court in civil causes and matters.

(e) Any admiralty jurisdiction including shipping and navigation on the River Niger, or Benue and their affluent and on such other inland water-ways as may be designated by any enactment to be international water-ways, all Federal Ports, including the Constitution, and power of the Ports Authorities for Federal Ports and Carriage by Sea.

8. Scope and Extent of the Jurisdiction of the FHC

Having settled the issue of jurisdiction to try admiralty matters or claims by the Courts, we, welcome the impact of the Admiralty Jurisdiction Act in setting out the extent and the content of the jurisdiction of the Federal High Court. By and large, the extensive nature of the scope of the FHC jurisdiction on admiralty cases has laid to rest the era of back log of cases, as a result of delays in handling issues of utmost importance. For example, S. 3 of the AJA provides:

The admiralty jurisdiction of the Court shall apply to:

(a) All ships, irrespective of the place of residence or domicile of the owners.

(b) All maritime claims, wherever arising.

Also, it is gratifying to note that, any cause of action over which the Federal High Court has jurisdiction is listed under S.1 of the Act as follows:

(i) Any question relating to a proprietary interest in a ship or aircraft. This provision gave same jurisdiction, scope or power as relating to a ship and an aircraft to be similar.[47] It should be noted that S.1 of the AJA provided that any reference to a claim in respect to an aircraft shall include the claim which can be made under any of the Conventions to which Nigeria is a party. [48]

Both the Admiralty Jurisdiction Procedure Rule,[49] and the Federal High Court (Civil Procedure Rules),[50] regulate the practice and procedure of maritime claims in the FHC. It has been stated and argued that by virtue of Order 51 Rule 2(1) of the Federal High Court Civil Procedure Rule)[51] which provides:

> Where no specific procedure is given in any of the enactments in Appendix 1 to this Rule, the Rule and Procedure in this Rule, shall apply with necessary modifications, so as to comply with the subject matter which the enactments in Appendix 1, to this Rule deals with.

However, in other cases where there are no conflicts between the two rules stated above, the rules will complement each other. Finally of necessity we must make bold to state that the gamut of maritime claims which fall within the jurisdiction of the FHC, as seen in section 2 of the AJA,[52] are all classified under proprietary or General Maritime Claims.

9. Conclusion

Maritime law started in England in the medieval ages as an ancient legal system from codes, ancient mercantile practices, customs of the early traders, merchants and sea farers, mostly the Greeks, Egyptians and the Phoenicians who engaged in commerce and trading on elephant tusk, hides and skin, cocoa, rubber, gold, iron ore and kola nut across the Mediterranean sea. With the introduction of maritime law in England in the 15th century, special courts were introduced to handle maritime cases with the aforementioned customary rules and codes which later dominated the England practice. These special Courts were later amalgamated and was called the High Court of Admiralty which metamorphosed into a Court of the Lord High Admiralty, the Royal Officer who is primarily responsible for naval matters, and for this claimed, the right to deal with crimes committed at sea against the safety of maritime navigation. Today, there are still Admiralty Courts in England which handle cases as a matter of practice concerning ships and shippers. These courts, may apply general rules of procedure or the general principle of laws, such as, Commercial Law, Contract, Arbitration and Tort. Indeed, what is today known as Maritime Law in Nigeria was borrowed from Britain. In Nigeria, maritime law has evolved as could be seen in every, Lloyds Reports. In fact, most of the cases which form part of the Lloyd's Report are cases tried in Nigeria, some of them prior to independence, but are reported by Britain. In Nigeria, laws governing maritime matters have for long begun to develop and they cover areas like:

[47]This provision was same with the Admiralty Justice of England which was of limited application as claims in respect of an aircraft.

[48] See, S.1(1) of the AJA; 1991, Also, S.1(1)(c).

[49] 1993.

[50] 2000

[51] *Ibid.*

[52] Decree of 1991.

1. The treatment of shipwrecked sailors.
2. The jurisdiction of those courts dealing with maritime matters.
3. The settlement of disputes arising under marine contract.
4. The role of prize courts, namely those of whom recourse could be made in the event that some persons felt they had been improperly deprived of their vessels.

The scope of the jurisdiction of the Federal High Court has been widened by both the Admiralty Jurisdiction Procedure Rule, 1993, Federal High Court (Civil Procedure Rules) 2000, and they regulate the practice and procedure in maritime claims in the Federal High Court. In furtherance of the scope of the FHC, in this regard, section 383 of the Merchant Shipping Act of Nigeria (MSA) provide that an owner of a common wealth foreign ship shall be entitled to a limited liability where an occurrence leading to a mishap or accident takes place without his actual fault or privity. In respect of claims as to limitation of liability, S. 383 of the MSA, 1962, provides that a ship owner shall first and foremost bring an action in the FHC for a decree, limiting liability, thereby further enthroning the FHC to hear admiralty cases to the exclusive of other courts of record in Nigeria. A cursory look at the Admiralty Jurisdiction Act Cap A5 LFN 2004 in its section 1 states that all the causes of action over which the Federal High Court can exercise Jurisdiction, and in its section 1(1)(b) the Federal High Court has the same admiralty Jurisdiction that existed in any court in Nigeria prior to the commencement of the Act. Although section 1(1)(b) of the Act did not expressly divest those other courts of their Jurisdiction in admiralty matters, section 19 of the Act expressly vests exclusive Jurisdiction in admiralty causes or matters, whether civil or criminal in Federal High Court . S. 3 also, provides that the admiralty Jurisdiction of the Federal High Court shall apply to all ships irrespective of the places of domicile or residence of the owners and to all maritime claims wherever arising, while S.4 provides that, any reference to a claim in respect of an air craft includes a claim that can be made under any of the conventions to which Nigeria is a party. Furthermore, the Admiralty Jurisdiction Decree No.59 of 1991 (now Admiralty Jurisdiction Act. Cap A5, LFN 2004) was promulgated and which repeated the Admiralty Jurisdiction Decree of 1962, under which the state High Courts were given Jurisdiction over admiralty matters, thus finally putting to rest the controversy on Jurisdiction in admiralty matters. As such, the only court capable of exercising admiralty Jurisdiction in Nigeria today is the Federal High Court. Also, professor Olowayin in his work submitted that the second schedule to Act 107 of 1993, titled 'Modifications of Provisions of the Constitution of the Federal Republic of Nigeria 1979 not suspended by section 1, introduced a new section 230 of the then 1979 constitution which automatically vested the Federal High Court with the Admiralty Jurisdiction to the exclusion of any other Court.