

# DETERMINING THE JURISDICTION OF COURTS IN A MULTIMODAL TRANSPORT CARRIAGE UNDER NIGERIAN LAW – CARDINAL IN AN AFRICAN CONTINENTAL FREE TRADE AREA

DAMILOLA OSINUGA\*

## Abstract

The recent establishment of the African Continental Free Trade Area ('AfCFTA') was predicated on the belief that increased intra-African trade and market integration would benefit the continent. The pact is expected to increase intra-African trade by making Africa a single market, *harnessing its immense potential of over a billion persons* and the Gross Domestic Product of circa three trillion United States Dollars. Without access to markets and resources, growth and continued poverty in society will stagnate. Accordingly, transportation is essential to international trade and regional integration. Research shows that multimodal transportation could create a cheaper transportation option than unimodal transportation. According to statistics, multimodal transport can reduce transportation costs by circa 20%, help enhance effectiveness in transportation by 30%, reduce the risk of damage to cargo by 10%, and aid energy savings and emissions. The United Nations Economic Commission for Africa (UNECA), through its Regional Advisor on Trade, has advised that the establishment of Multimodal Transport Operators (MTOs) should be encouraged to ensure the non-interrupted flow of goods from the origin to the destination. This paper particularly focuses on the determination of the jurisdiction of multimodal transportation and the extent to which the current lack of a clear legal framework affects a predictable and foreseeable determination of the jurisdiction of courts. The research considers these issues at a time when African leaders have come together to sign an agreement for the establishment of the AfCFTA.

**Keywords:** Multimodal transport, AfCFTA, jurisdiction, Nigeria

## I INTRODUCTION

The importance of trade in a global economy cannot be overemphasised. Global trade can create economic wealth on a global scale. Each country maximises its revenue and growth by focusing on trade. Global economies recognise that international trade can be more profitable and time-efficient if different countries take action to eliminate

---

\* Damilola Osinuga, Ph.D, Managing Partner, Damilola Osinuga LP, 229 Herbert Macaulay Road, Yaba, Lagos, Nigeria, e-mail: damioshi@gmail.com.

complex processes affecting the mobility of goods, people, customs insurance, standards, transaction cost and more generally, conformity with regulations.

Recently, African leaders came together to establish the African Continental Free Trade Area ('AfCFTA') to increase intra-African trade and cross-border trade in Africa. The agreement, which has a protocol on trade of goods, includes several provisions which will aid the elimination of trade barriers by improving trade facilitation and reducing the cost of doing business in Africa.<sup>1</sup> The establishment of the AfCFTA was based on the belief that:

enhanced intra-African trade and deepened market integration can contribute significantly to sustainable economic growth, employment generation, poverty reduction, the inflow of foreign direct investment, industrial development, and better integration of the continent into the global economy.<sup>2</sup>

Trade and transport are inextricably linked. Efficient transport services are a requisite to successful trading. The adage that 'transportation is the life-blood of commerce' still rings true. Notably, modern international trade development requires goods to be transported from the seller to the buyer without delay. Therefore, effective transport must be 'just in time' and 'tailor-made' ('door-to-door').<sup>3</sup> Most of this door-to-door transportation is carried out exclusively under single carriage contracts. In most cases, more than one mode of transportation is used to carry out door-to-door transportation.<sup>4</sup> In practice, the use of more than one mode of transportation has been described with many expressions. These expressions include 'multimodal', 'intermodal', and 'combined' transport.<sup>5</sup>

Multimodal transport (also known as combined transport) is the transportation of goods under a single contract but performed with at least two different means of transport.<sup>6</sup> Traditionally, international trade entails a segmented transportation system whereby cargoes may, for instance, be transferred from seller to land carrier, from land carrier to independent sea carrier, from sea carrier to independent land carrier and the buyer.<sup>7</sup> This system is expensive because of the cost associated with loading and unloading individual parcels. In addition, this method is undesirable because of its documentation

<sup>1</sup> See the Protocol on Trade of Goods, Agreement Establishing The African Continental Free Trade Area, arts 10, 12, 15.

<sup>2</sup> African Union, *Boosting Intra-African Trade - Issues Affecting Intra-African Trade, Proposed Action Plan for Boosting Intra-African Trade and Framework for the Fast-Tracking of a Continental Free Trade Area* (30 January 2012). Retrieved from: [https://au.int/sites/default/files/documents/32454-doc-declaration\\_english.pdf](https://au.int/sites/default/files/documents/32454-doc-declaration_english.pdf).

<sup>3</sup> Jasenko Marin, 'The Harmonization of Liability Regimes Concerning Loss of Goods during Multimodal Transport' (2013) (University of Zagreb, Zagreb, Croatia 2012) 1.

<sup>4</sup> Marian Hoeks, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods* (Kluwer Law International 2010) ('Marian Hoeks').

<sup>5</sup> Diana Faber, 'The Problems Arising From Multimodal Transport' (1996) *Lloyd's Maritime and Commercial Law Quarterly* (Pt 4) 503.

<sup>6</sup> A. Odeleye Joshua, 'The Need For Multimodal Transport Development in Nigeria' (2015) 8(9) *Journal of Geography and Regional Planning* 239.

<sup>7</sup> J. R. Whittaker, *Containerization* (Hemisphere Publ. Corp. 1975) (2<sup>nd</sup> Edn).

costs. Sellers will be required to contract individually with each carrier in the chain and provide documents on cargoes at each stage of transport.<sup>8</sup>

Parties involved in international trade have long sought to make this system more continuous and thereby reduce its costs.<sup>9</sup> Research shows that multimodal transportation could create a cheaper option of transportation than unimodal transportation. According to statistics, the use of multimodal transport can reduce transportation costs by circa 20%, help enhance effectiveness in transportation by 30%, reduce the risk of damage to cargo by 10%, and also aid energy savings and reduce emissions.<sup>10</sup> This has led to the proliferation of multimodal transport contracts. One primary reason for the continued rise in multimodal transportation is that shippers and consignees are often interested in dealing with one party, usually called Multimodal Transport Operators ('MTO'). The MTO arranges for the transportation of goods from door to door and assumes contractual responsibility throughout, irrespective of the segment of carriage where the loss occurred.

Authors like Taylor believes that multimodal transport is a key factor to increasing the productivity and competitiveness of the freight transport industry.<sup>11</sup> Another major benefit of multimodal transport is that it saves time. As many as ten days can be saved by using multimodal transport for the carriage of cargo from the Far East to New York rather than using sea transport alone, which is unimodal.<sup>12</sup> Multimodal transport also saves cost, which is a major prospective benefit of AfCFTA.

Castro in his work stated that:<sup>13</sup>

The competitiveness of multimodal transport operators is the result of financial liquidity, rather than unit price per segment (origin service, ocean voyage, and destination). Their pricing rules follow a 'risk management policy' based on customer profile (financial weight, payment habits, volume, origins/destinations, etc.) within the margins of regional competition. They try to secure the lowest possible rates from subcontractors based on volume, and can afford substantial rebates to users.

The use of containers<sup>14</sup> in transporting goods reduces handling and saves costs associated with labour, packaging and damage costs during transshipment. The risk of goods being

---

<sup>8</sup> James H Porter, 'Multimodal Transport, Containerization, and Risk of Loss' (1984) 25 *Va J Int'l L* 171.

<sup>9</sup> Samuel A. Lawrence, *International Sea Transport: The Years Ahead* (Studies in Business, Technology, and Economics) (Lexington Books 1972).

<sup>10</sup> M. Steadie Seifi et al, 'Multimodal Freight Transportation Planning: A Literature Review' (2014) 233(1) *European Journal of Operational Research* 1. Retrieved from: <https://www.sciencedirect.com/science/article/pii/S0377221713005638>.

<sup>11</sup> John C. Taylor, 'Remove Barriers to Intermodal' (1993) 34(4) *Transportation & Distribution* 34.

<sup>12</sup> Marian Hoeks (n 4); Richard W. Palmer and Frank P. DeGiulio, 'Terminal Operations and Multimodal Carriage: History and Prognosis' (1989) 64(2-3) *Tulane Law Review* 281.

<sup>13</sup> De Castro, Carlos F. *Trade and Transport Facilitation: Review of Current Issues And Operational Experience: A Joint World Bank/UNCTAD Publication (English)*. Sub-Saharan Africa Transport Policy Program (SSATP) Working Paper Series; no. 27, Washington, DC: World Bank 1996.

<sup>14</sup> In multimodal transport operations, the MTO makes use of some form of unitization. The most popular form of unitization among MTOs is containerization. The MTO is able to easily transfer the containers to different modes of transportation, which it intends to employ.

damaged is reduced when the number of times a cargo is discharged onto another mode of transportation is reduced. One other benefit that multimodal transport confers on the consignor is the fact that only one MTO takes responsibility for the entire process. Therefore, a shipper does not need to deal with all the sub-contractors. It is envisaged that there will be a proliferation of multimodal transport in the era of intra-African trade because it saves cost and can aid competitiveness by reducing transaction costs associated with transportation.

## II AN OVERVIEW OF THE LEGAL FRAMEWORK OF MULTIMODAL TRANSPORTATION

The first international legal instrument to reach fruition on multimodal transport was the United Nations Convention on International Multimodal Transport of Goods of 24 May 1980 ('Multimodal Convention'). However, the Convention has not yet entered into force, and after forty years, it is safe to say it is doubtful that it will ever enter into force. The lack of international legislation is one of the challenges that face multimodal transport globally. This challenge glides down to Nigeria, as there are no national laws or statutory instruments dealing with multimodal transportation in Nigeria.

The Multimodal Convention defines international multimodal transport as:

International multimodal transport means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator to a place designated for delivery situated in a different country.<sup>15</sup>

Similar to this definition, Vogel defines multimodal transport as the transport of goods by at least two different modes of transport based on a single multimodal transport contract.<sup>16</sup>

From the above definitions, it is essential to note that, in multimodal transport, there is a prerequisite for at least two different modes of transportation. In addition, such carriage must be carried under one single international contract with one carrier being responsible for the entire transportation and must assume responsibility as principal in such contracts.<sup>17</sup> The carrier who assumes responsibility as principal is usually called an MTO. MTOs must voluntarily assume the responsibility of the goods as principal making them personally liable for any loss or damage to the goods throughout the transport to the final destination. However, the MTO as the principal may, on his own volition, decide how to effect carriage or subcontract to other carriers.<sup>18</sup>

<sup>15</sup> The United Nations Convention on International Multimodal Transport of Goods, Geneva (24 May 1980).

<sup>16</sup> R. Vogel, 'Multimodal Transport: Impact on Developing Countries' 6(1) *Ocean Yearbook Online* 139. Retrieved from: <http://booksandjournals.brillonline.com/content/journals/10.1163/221160086x00103>.

<sup>17</sup> *Ibid.*

<sup>18</sup> Besong, C, *Towards a modern role for liability in multimodal transport law* (ProQuest Dissertations Publishing 2007). Retrieved from: <https://search.proquest.com/docview/899715990>.

### III UNDERLYING THEORIES OF MULTIMODAL CONTRACTS

One of the questions that can arise is whether a multimodal transport contract can be considered ‘*sui generis*’ (ie constituting a class of its own) or a form of mixed contract, which is a chain of different unimodal transport segments whose regimes are, therefore, still applicable.<sup>19</sup> The proponents of the *sui generis* theory believe that a multimodal transport contract is a contract of its kind and should not be considered as a contract for a particular mode or fall within rules directed towards contracts for a single mode. The conceptual idea is that a multimodal transport contract is a contract *sui generis*, which is not made up of a series of unimodal contracts.<sup>20</sup> This theory approaches multimodal transport as a new type of contract formed by several contracts. The implication is that once different modes are combined in a contractual framework, the contract can no longer be seen as a contract of unimodal contracts. The approach considers a multimodal carriage contract as a contract with additional services such as storage, transshipment and other services included under the logistics head and as such a complete transport chain.

The *sui generis* approach stipulates that although the MTO performs various services that could all be the subject of separate contracts, his obligations are connected so that they form one undividable whole.<sup>21</sup>

On the other hand, the proponents of the mixed contract theory see multimodal contracts as nothing more than a chain of unimodal contracts. A mixed contract is a contract that incorporates the characteristic features of more than one special type of agreement designated by written or unwritten law. The implication is that different stages of transport are governed by national or international conventions, which regulates those stages of transport in the country. This is the English position on multimodal transport contract.<sup>22</sup> The English Court of Appeal in *Quantum Corporation Inc. and Others v Plane Trucking Ltd. and Another*<sup>23</sup> overruled the judgment at first instance and held that the Convention on the Carriage of Goods by Road (‘CMR’) applied to the road leg of an international contract for multimodal carriage.<sup>24</sup> The Court in showing its disinterest in the *sui generis* theory noted that opening up ‘a prospect of metaphysical arguments about the essence of a multimodal contract’ is best avoided. It is however important to note that a mixed contract theory is susceptible to its challenges. Seeing a multimodal transport contract as a mixed contract will lead to challenges because there is no uniform regime for governing multimodal transport. As such, a network system will be used (each leg of the transport would be governed by the rules applicable to that particular mode).

<sup>19</sup> Haedong Jeon, *Coping With Muddles And Uncertainty In The Field Of Multimodal Transport Liability* (University of Southampton 2013). Retrieved from: <https://search.proquest.com/docview/1775429723> (‘Haedong Jeon’).

<sup>20</sup> David Glass, *Freight Forwarding And Multimodal Transport Contracts* (Maritime and Transport Law Library, 2013).

<sup>21</sup> Marian Hoeks (n 4).

<sup>22</sup> [2002] 2 Lloyd’s Rep. 25, 535-560 [62].

<sup>23</sup> *Ibid.*

<sup>24</sup> This case was in respect of a carriage by air from Singapore to Paris and from there by road and roll-on/roll-off ferry to Dublin. Accordingly, Air France’s conditions to the extent that it would limit its liability were overridden. The claimants were allowed to show, under CMR art 29, that there was wilful misconduct or equivalent default, disentitling Air France to limit its liability under the Montreal Convention.

Further, applying international or national unimodal legal regimes could lead to conflict of unimodal conventions; for example, where the place of loss is not ascertainable, which law will prevail? Also, some conventions extend to other modes of transportation, such as the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (Appendix B to the CMR). Finally, the legal regimes applicable to the unimodal transport segment are not directly applicable to a multimodal contract. Issues such as whether the Hague or Hague-Visby Rules<sup>25</sup> could be mandatorily applicable to a multimodal bill of lading or whether a carriage from an airport warehouse to the airport is governed by the Montreal convention or CMR may lead to undesirable uncertainty.

The *sui generis* approach, although the most desirable approach, is complex in practice because of its complete avoidance of mandatory unimodal carriage law. Furthermore, it clashes with the provisions of international conventions on unimodal carriage that explicitly states that they are applicable to a particular mode of carriage, even if it is performed based on a contract that also includes other modes of transport.<sup>26</sup>

The *sui generis* approach was adopted in the Multimodal Convention, however, the inability of the Multimodal Convention to attract enough support and in the absence of an international mandatory convention governing multimodal transport, the *sui generis* approach has been losing its popularity and consequently, the mixed contract approach has become more popular.

#### IV DETERMINING THE COURTS WITH JURISDICTION FOR MULTIMODAL TRANSPORT CLAIMS

As stated above, there is no legislation on multimodal transport in Nigeria. However, a clear principle of law is ‘*ubi jus ibi remedium*’, meaning: ‘where there is a wrong there is a remedy’.<sup>27</sup> Accordingly, the Nigerian courts, like its English counterparts, will treat a multimodal contract as a mixed contract. This is because there are existing unimodal transport law frameworks. The court’s jurisdiction will be determined by the stage of transport, which occasioned the claim brought before a competent court of law.

##### A *Carriage of Goods by Sea*

Under Nigerian law, section 251 of the Constitution of the Federal Republic of Nigeria 1999 (‘the Nigerian Constitution’) confers jurisdiction on the Federal High Court to exclusively deal with matters pertaining to carriage of goods by sea and admiralty law. The Admiralty Jurisdiction Act 1991 (‘AJA’) further itemises the extent of the jurisdiction of admiralty matters at the Federal High Court. Section 1 of the AJA deals extensively with the issue of admiralty jurisdiction of the Federal High Court.

<sup>25</sup> These are international rules relating to the carriage of goods by sea. They are constituted by original rules known as the Hague Rules, agreed in 1924.

<sup>26</sup> See for eg, the Warsaw Convention art 31; the Montreal Convention art 38 which appears to extend its application to multimodal transport contracts by stating that ‘Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air’.

<sup>27</sup> *University Of Calabar Teaching Hospital & Anor v Bassey* (2008) LPELR-8553 (CA).

The AJA and the Constitution give the Federal High Court jurisdiction over matters related to carriage of goods by sea. Accordingly, any claim in respect of a multimodal transport claim where the loss can be localised to matters pertaining to carriage of goods by sea and admiralty law will be heard by the Federal High Court.

### **B *Carriage of Goods by Air***

Section 251(1)(K) of the Nigerian Constitution confers the Federal High Court exclusive jurisdiction over civil causes and matters of aviation and safety of aircraft.

Furthermore, Section 7(1)(k) of the Federal High Court Act 2004 provides that:

The Court shall to the exclusion of any other Court have original jurisdiction to try civil causes and matters relating to aviation and safety of aircraft.

By Section 7(3) of the Federal High Court Act 2004, it is further provided thus:

Where jurisdiction is conferred upon the Court under Subsection (1), (2) and (3) of this section, such jurisdiction shall be construed to include jurisdiction to hear and determine all issues relating to, arising from and ancillary to such subject matter.

Section 7(5) of the Federal High Court Act 2004 provides that:

Notwithstanding anything to the contrary contained in any other enactment or rule of law, any power conferred on a State High Court or any other Court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which jurisdiction conferred on the Court the provisions of this section.

Pursuant to the AJA, aviation matters are under the admiralty jurisdiction of the Federal High Court.<sup>28</sup> The above clearly shows that any civil matter which relates to aviation falls under the jurisdiction of the Federal High Court.

### **C *Carriage of Goods by Rail***

As of today in Nigeria, the Nigerian Railway Corporation Act 2004 ('NRCA') governs the carriage of goods by rail in Nigeria. The NRCA does not state the court that has jurisdiction in matters of carriage of goods by rail.

In the event that the MTO is an independent carrier, the position is simple and straightforward. The court that will have jurisdiction is the State High Court. The claim will be founded on simple contract law or law of bailment where there is no contract. Where the Nigerian Railway Corporation ('NRC') is the MTO, this can raise a possibility of two options. It can be argued that the NRC is a federal agency and pursuant to section

---

<sup>28</sup> AJA s 1.

251(1) of the Nigerian Constitution, the Federal High Court has exclusive jurisdiction in matters relating to:

- (p) the administration or the management and control of the Federal Government or any of its agencies;
- (q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;
- (r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.

There is a slim possibility to argue that the carriage of goods by rail falls under the NRC's management and administrative functions. However, the possibility of succeeding with such a reasoning is very slim. A review of the above provision shows that the carriage of goods by rail does not fall under any of the actions stated above, consequently giving the Federal High Court exclusive jurisdiction over matters related to the carriage of goods by rail.

Further, the Court of Appeal in *Ademola v. Attorney General of the Federation & Anor*<sup>29</sup> had clearly stated that not all actions against a Federal agency is under the exclusive jurisdiction of the Federal High Court. The court, in affirming this, noted that:

Generally, where the Federal Government or any of its agencies is a party in a matter, the question of jurisdiction is two dimensional, the court in the case of *The Government Of Kwara State & Ors v Irepodun Block Manufacturing Company & Ors* (2012) LPELR - 8532 (CA) held as follows: 'The jurisdiction of a court to entertain a matter in which a Federal Government agency is a party, has two dimensional facts. In this issue, where a Federal Government agency is a party to a proceeding a court is mandated to look at both party and subject matter jurisdictional aspects to it. That is to say, a court has to, in addition to a party being a Federal Government or agency, examine the facts of a matter with a view to determining the subject matter of it. If the res comes within the jurisdictional provisions under Section 251 of the 1999 Constitution as amended, then the Federal High Court will have exclusive jurisdiction. Where, however, the subject matter falls outside the precincts of those provisions, then a State High Court will be vested with jurisdiction notwithstanding that the party involved is a Federal Government agency. The Supreme Court has set a seal on this grey and nagging area in the case of *Obiuweubi v. Central Bank Of Nigeria* (2011) 7 NWLR (Pt.1247) 465. The rationale behind this cardinal principle of law is underpinned by the fact that one of the triumvirate ingredients of jurisdiction is that the subject matter of a case must come within the jurisdiction of adjudicating court and there is no feature therein which will prevent it, the court, from exercising its jurisdiction'. The settled position therefore is that where the Federal Government or its agencies is a party, the court

---

<sup>29</sup> (2015) LPELR-24784 (CA).



must examine further the subject matter along the party to determine if the court has jurisdiction. The era of using Federal Government or its agencies as a blanket cover to give Federal High Court jurisdiction on matters which are clearly outside Section 251 of the 1999 Constitution and where it has no jurisdiction is over. It is a court with exclusive jurisdiction on specified matters unlike the High Court which has a general jurisdiction, see *Agbaso v Iwunze* (2014) LPELR-24108 (CA) relying on *Adetayo v Ademola* (2010) NWLR (Pt.1215) 169.

Any matter that does not fall within the purview of the items listed in Section 251(1) of the Constitution is certainly not under the exclusive jurisdiction of the Federal High Court. Accordingly, a dispute arising from the carriage of goods by rail will be treated as a dispute in relation to a simple contract between the NRC and the shipper and accordingly, the State High Court, being the court that has jurisdiction over a simple contract,<sup>30</sup> will have jurisdiction over matters arising as it relates to the carriage of goods by rail.

### **D Carriage of Goods by Road**

The Nigerian Constitution does not exclusively confer the jurisdiction of carriage of goods by road to any court. The Federal High Court is created by the Nigerian Constitution and accordingly, its jurisdiction is governed by the Nigerian Constitution. Correspondingly, since the Federal High Court does not have jurisdiction, the State High Court will have jurisdiction in such matters as it relates to a contract of carriage of goods by road. This is supported by section 272 of the Nigerian Constitution, which stipulates that:

Subject to the provisions of section 251 and other provisions of this Constitution, the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

The High Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings or matter in which the existence or extent of any legal right, power, duty or privilege is in issue.<sup>31</sup> Therefore, in cases of carriage of goods by road, which jurisdiction is not conferred on any other court, the State High Court shall have jurisdiction over matters.

### **E Claims Arising from Storage**

Where a claim arises during the storage of goods which succeeds a carriage of goods by sea or carriage of goods by air, such claim will fall under the admiralty jurisdiction of the

<sup>30</sup> See eg, *P & C.H.S. Company Limited v. Migfo Nigeria Limited* (2012) 18 NWLR (Pt. 1333) 555; *Oliver v Dangote Industries Limited* (2010) All FWLR (506) 1858; *Okoro v Egbuoh* (2006) 15 NWLR (1001) 1; *Unachukwu v Ajuzie* (2009) 4 NWLR (1131) 336.

<sup>31</sup> *Fagbemi v Omonigbehin & Ors* (2012) LPELR-15359 (CA).

Federal High Court.<sup>32</sup> Claims arising from storage which does not fall within the provision of Section 1(1)(g) of the AJA will fall within the jurisdiction of the State High Court.

## V INCONSISTENCY OF THE JURISDICTION OF MULTIMODAL TRANSPORT CLAIMS IN NIGERIA

Despite the jurisdiction of courts for each chain of transport, there is a challenge as to the exact jurisdiction of multimodal transport claims. As stated above, multimodal transport is a single contract, the responsibility of a single carrier, multiple modes of transportation and sometimes-unspecified modes of transportation.

This means that a multimodal transport contract is the head contract, which would regulate the relationship between the multimodal carrier and the consignor or consignee.<sup>33</sup> The MTO is a principal who takes responsibility for the entire carriage of the goods. It is not an agent of the consignor just because it sub-contracts the other unimodal legs of transportation, neither is it an agent of the successive carriers which it employs. Accordingly, the consignor has a right of action only against the MTO and against no other carrier. The MTO may choose to employ third parties in fulfilling the terms of the multimodal transport contract.<sup>34</sup> In other words, a claim arising in a multimodal transport contract is a claim between the consignor or consignee and the MTO.

The determination of jurisdiction through the mode of transportation employed by the MTO, as in the case of *UPS (Nig) Ltd v Umukoro*,<sup>35</sup> is undesirable. In that case, the respondent delivered his documents to the appellant for onward delivery or dispatch to the consignee in Winnipeg, Manitoba, Canada. The documents were lost and the respondent sued at the High Court of Rivers State for general damages for the negligent loss of his confidential documents. The Court of Appeal held that the Federal High Court had jurisdiction because the goods were sent by air. Of course, the reasoning for the decision is questionable, considering that there is no airway bill to show that the respondent entered a contract for a carriage of goods by air. The contract between the parties in this case is very similar to a multimodal transport contract. Although the contract does not stipulate that it is a multimodal contract, the shipper left the decision of mode of carriage with UPS which may qualify as an MTO. The MTO carried the parcel from Nigeria to Canada by air, and further from the landing city in Canada to the place of delivery (which could be by road or air). An in-depth look at this position is not the intention of this paper. What is clear from this decision is that the Nigerian courts will opt to consider the mode of transportation in determining jurisdiction rather than the contract of transportation.

Multimodal transport contracts are sometimes entered into without the consignor specifying the mode of transportation which an MTO may employ in fulfilling the terms of the contract. Even where the consignor is aware of the mode of transportation to be employed by the MTO, such a consignor should not be subjected to a jurisdiction based

<sup>32</sup> Section 1(1)(g) of the AJA.

<sup>33</sup> Haedong Jeon (n 20).

<sup>34</sup> Raja Siddharth, 'Multimodal Transportation of Goods Act 1993 (India)' (1995) 7 *Student Advoc* 66. Retrieved from: <https://search.proquest.com/docview/1303907786>.

<sup>35</sup> (2016) LPELR-45188 (CA).

on the leg of transportation. Documents obtained by the consignor from the MTO are multimodal transport documents. It is not an airway bill, a sea bill of lading or a document specific to any mode of transportation. As such, subjecting the jurisdiction of a particular mode of transportation is clearly unjustifiable.

A further complication may arise in instances where the damage is gradual and the loss occurred over unimodal carriages, a consignor's claim may fall within the jurisdiction of two courts. Such consignor may be compelled to bring an action in multiple courts thus leading to the increased cost of litigation and legal costs. The implication of the possibility of the increased costs of litigation leads to high transportation costs.

In addition to the challenges facing the determination of the jurisdiction of multimodal transport contract by the leg of transportation employed, is the challenge that the territorial jurisdiction of the admiralty jurisdiction poses. Section 1(1)(g) and 1(2) of the AJA extends the territorial limits of admiralty jurisdiction.<sup>36</sup>

Section 1(1)(g) provides thus:

Any matter arising within a Federal Port or national airport and its precincts, including claims for loss of or damage to goods occurring between the off-loading of goods across the 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.

Section 1(2) provides that:

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 are transported on land during the process or not.

A literal interpretation of section 1(2) will imply that the performance of a carriage of goods by sea or carriage of goods by air as one of the modes of carriage in a multimodal transport carriage will invoke the admiralty jurisdiction of the court. The AJA extends the admiralty jurisdiction<sup>37</sup> of the court from the time the goods are placed on ship until the time the goods are delivered to the consignee or whoever is to receive them *whether the goods are transported on land* during the process or not. Therefore, if there is a multimodal carriage from Togo to the Niger Republic, and the goods were carried by sea from Togo to the port in Port Harcourt and consequently moved by road to the Niger Republic, in the event of a claim, such claim, if brought to a Nigerian court,<sup>38</sup> will fall under the admiralty jurisdiction of the Federal High Court of Nigeria.

<sup>36</sup> Adewale Adedamola Olawoyin, *Introduction to Maritime Law and Admiralty Jurisdiction* (13th Maritime Seminar for Judge Nigeria Shippers Council, 10-14 June 2014).

<sup>37</sup> Admiralty jurisdiction in this context includes carriage of goods by sea and carriage of goods by air.

<sup>38</sup> Under Nigerian law, the factors to be considered in determining the appropriate venue or Court with jurisdiction to entertain matters relating to contract are: (a) where the contract in question was made, (b) where the contract is to be performed, and/or (c) where the defendant resides. See eg, *International Tobacco Co. Ltd & Anor v Sea Mountain Co. (Nig) Ltd* (2017) LPELR-43570 (CA).

The courts' decisions on the extent of the territorial limit of the admiralty jurisdiction further complicates the already difficult position. The position of law remains unsettled as to the jurisdiction of courts concerning the extension of the territorial limits of admiralty jurisdiction. Prior to the enactment of the AJA, the statute that was applicable to admiralty jurisdiction was the Administration of Justice Act 1956. The Administration of Justice Act 1956 did not deal with the territorial scope of admiralty jurisdiction. The Federal High Court was called upon in *Aluminium Manufacturing Company (Nigeria) Limited v Nigeria Ports Authority*<sup>39</sup> to decide on the limit of the admiralty jurisdiction of the Federal High Court.

There the claim was for ₦198,872.99 in general and special damages for breach of a contract of bailment and/or for breach of duty as a bailee in the custody of 47 packages of aluminium sheets delivered on board the vessel MV Aboine. The pleadings filed by the parties showed that the exact consignment of wooden plates carried on board the vessel MV Abione were delivered to the Nigerian Ports Authority. The claim was therefore not one against the shipowner/ship in respect of goods carried on a ship. The Federal High Court and the Court of Appeal found that the suit was not within the admiralty jurisdiction of the Federal High Court. In the words of Ademola JCA, 'to do so would be saying that the admiralty jurisdiction of the court covers everything that happens in all the ports in Nigeria, a proposition that is yet to get legislative approval'. The Supreme Court held that the cause of action as then constituted did not come within the admiralty jurisdiction of the Federal High Court. Obaseki JSC again stated that:

It will amount to ridiculous interpretation to say that because the goods had been carried in a ship any claim for damage or loss occurring after the completion of the journey by sea to Apapa occurring anywhere on land falls within the paragraph.

The Supreme Court was right in stating the position of the law before the enactment of the AJA that the admiralty jurisdiction ended when the goods left the ship. The enactment of the AJA, particularly the inclusion of sections 1(1) (g) and 1(2) gave the admiralty jurisdiction a new twist. The enactment appears to have extended the admiralty jurisdiction of the courts to carriage of goods by land. The implication of this enactment is that it overrules the decision of the Supreme Court in *Aluminium Manufacturing Company*. However, the courts, albeit wrongly, continue to follow the decision of the court in *Aluminium Manufacturing Company*.

In *Texaco Overseas (Nig) Petroleum Company Unlimited v Pedmar Nigeria Limited*,<sup>40</sup> the Supreme Court held that 'In any event, for a claim in admiralty to arise, the cargo or goods must still be in the vessel'. The same position was held in *Nomsal Marketing & Supplies Ltd & Anor v Joasy Pen Enterprises Ltd*.<sup>41</sup>

The above decisions are desirable for the interpretation of admiralty jurisdiction as it relates to multimodal transport. These decisions are less fraught with complexities as it

---

<sup>39</sup> (1987) 1 NWLR (Pt. 51) 475.

<sup>40</sup> (2002) 45 WRN 1.

<sup>41</sup> (2006) 12 WRN 125. See also the Federal High Court decision in *Pacific International Line (PTE) Ltd v Euason Nig. Ltd & Anor* (2010) 4 CLRN 219.

will simply allow the application of the law of contract. Notwithstanding its desirability, it does not in any way reflect the intent of the draftsmen of the AJA. The drafters intended to extend the jurisdiction of admiralty matters to goods carried by land after discharged by a ship.

The Court of Appeal in *Panalpina World Transport (Nigeria) Limited v Glenyork Nigeria Limited & Anor*<sup>42</sup> gave the section its clear intended meaning. In that case, the appellant, who is a carrier of goods and a clearing agent, was contracted by the respondent to clear its goods from customs at Port Harcourt wharf and to transport the same by road to the premises of the consignee in Calabar. While the goods were being transported by the appellants, one of the goods, a Ruston engine fell off the trailer and was delivered damaged to the respondent. A suit was instituted at the Lagos High Court and there was a preliminary objection. The Lagos High Court dismissed the objection on the ground that it was a simple contract of bailment.

However, the Court of Appeal sustained the objection by applying the ordinary grammatical meaning of section 1(2) of the AJA. Salami JCA (as he then was) in explaining why the Court of Appeal was not bound by *Aluminium Manufacturing Company* stated:

The innovation, the Admiralty Jurisdiction Act, Cap A5 introduced after the goods had been discharged from the ship includes – (i) delivery at the consignee’s premises, or (ii) during storage or warehousing or (iii) transportation before delivery to the consignee. . . .clearly the provisions of Administration of Justice Act, 1956 are narrower or more restrictive when compared with those of Admiralty Jurisdiction Act, A5. . . .The principle is inapplicable in the circumstance of the present appeal because the decisions which the learned trial judge thought and believed bound him were decided under an entirely different legislation. If the learned trial judge had cared to compare the provisions of the two enactments he would have found that they are not in pari material. This decision exposes the state of the law at the material time. But now respectfully they are moribund. . . .it is the extension of admiralty jurisdiction by section 1(2) from where it previously ended when goods were off loaded from a ship to a position to include claims for damages to goods occurring between offloading the goods from a ship and delivery at consignee’s premises that took cognisance of goods going to places like Niger Republic, Chad and hinterland Nigeria from Lagos, Port Harcourt or Calabar Ports. The subsection informed the current concept of dry ports in Ibadan, Kano, Aba, Bauchi, Katsina, Gombe and Jos. Indeed damage to goods off loaded from ships in transit to the consignee on camels still qualify as matter within the admiralty jurisdiction of the Federal High Court!

While the decision in *Panalpina World Transport* is right having regard to the provisions of section 1 of the AJA, however, it leaves many unanswered questions about the limits of the jurisdiction of the Federal High Court in multimodal transport matters, which involves the carriage of goods by sea or air. Where the court adopts the position in *Panalpina World*

---

<sup>42</sup> (2007) 12 CLRN 68.

*Transport* in multimodal transport cases, this decision seems to suggest that if there is a sea leg of transportation or an air leg of transportation, irrespective of whether there is a land carriage of the goods after discharge of the goods from a ship or an aircraft, it falls within the admiralty jurisdiction of the court. The implication of this is that a loss during the land carriage, which follows a carriage by sea, or a loss during the land carriage which follows a carriage by air will fall under the admiralty jurisdiction and will be heard by the Federal High Court rather than the State High Court. However, where the land carriage precedes the sea carriage or a land carriage precedes an air carriage, and a loss occurs during the land carriage, the State High Court will have jurisdiction pursuant to section 272 of the Nigerian Constitution.

## VI CONCLUSION

While viewing multimodal transport as a chain of several unimodal transportation, the courts in Nigeria will determine the jurisdiction of each case according to the mode of transportation that gave rise to a cause of action in the matter. The only exception to this is in the case of land carriage, which succeeds a carriage of goods by sea or a land carriage which succeeds a carriage of goods by air. Such land carriage will fall under the admiralty jurisdiction, and such action may be commenced at the Federal High Court. There is also an unanswered question as to which court will have jurisdiction in the event of unlocalised losses.

In an era when African economies recognise that international trade can be more cost-effective and time-efficient and there is a need to ensure competitiveness of trade, different countries must take steps to remove complex processes or challenges that will affect market access of goods and the mobility of goods. It is essential to have a predictable legal framework and avoid a situation wherein there is high litigation costs as a result of the lack of a predictable legal system. Accordingly, it might be important that Nigeria enacts a legal framework on multimodal transport through its legislature. The envisaged legal framework will deal with the adopted theory and will probably arrogate the jurisdiction of multimodal transport contracts to a single court. It is also suggested that a unimodal legal framework on road and rail carriage should be considered by the legislature.

## REFERENCES

### Reports

- African Union, Declaration on Boosting Intra African Trade and the Establishment of a Continental Free Trade Area (CFTA) (31 January 2012)
- Asian Development Bank, Trade Facilitation and Better Connectivity for an Inclusive Asia and Pacific (Asian Development Bank Institute 2017)
- De Castro, Carlos F. *Trade and Transport Facilitation: Review of Current Issues And Operational Experience: A Joint World Bank/UNCTAD Publication (English)*. Sub-Saharan Africa Transport Policy Program (SSATP) Working Paper Series; no. 27, Washington, DC: World Bank 1996

- Economic Commission for Africa, *An Overview Of Multimodal Transport Development In Africa* (2003)
- Logistics and Multimodal Transport (Conference on Building an Integrated Transport Market for China, Japan and Republic of Korea: Identification of Barriers, Organised by the East-West Center; Honolulu, Hawaii, 8 August 8 2001)
- Mesut Saygili, Ralf Peters and Christian Knebel, *Africa's Continental Free Trade Area: Challenges & Opportunities* (Division on International Trade in Goods and Services, and Commodities, UNCTAD, 28 March )
- Multimodal Transport: The Feasibility of an International Legal Instrument (United Nations Conference on Trade and Development, 13 January )
- Report by the Secretariat of the United Nations Conference on Trade and Development, *Trade and Development Report* (2001)
- United Nations Conference on Trade and Development, *Review of Maritime Transport 2016*
- 2050 Africa's Integrated Maritime Strategy (2050 AIM Strategy) 2012
- Adewale Adedamola Olawoyin, *Introduction to Maritime Law and Admiralty Jurisdiction* (13th Maritime Seminar for Judge Nigeria Shippers Council, 10-14 June 10-14 2014)

### Legislation

- Admiralty Jurisdiction Act 1991 (Chapter A5 Laws of the Federation of Nigeria)
- Civil Aviation Act 2004 (Chapter C13 Laws of the Federation of Nigeria)
- Constitution of the Federal Republic of Nigeria
- Federal High Court Act 2004 (Chapter F12 Laws of The Federation of Nigeria)
- Nigerian Railway Corporation Act 2004 (Chapter N129 Laws of the Federation of Nigeria)

### Cases

- Aluminium Manufacturing Company (Nigeria) Limited v Nigeria Ports Authority* (1987) 1 NWLR (Pt. 51) 475
- Fagbemi v Omonigbehin & Ors* (2012) Lpelr-15359 (CA)
- International Tobacco Co. Ltd & Anor v Sea Mountain Co. (Nig) Ltd* (2017) LPELR-43570 (CA)
- Okoro v Egbuoh* (2006) 15 NWLR (Pt.1001) 1
- Unachukwu v Ajuzie* (2009) 4 NWLR (1131)
- Oliver v Dangote Industries Limited* (2010) All FWLR (506)
- P. & C.H.S. Company Limited v Migfo Nigeria Limited* (2012) 18 NWLR (1333) 555
- Pacific International Line (Pte) Ltd v Eeason Nig. Ltd & Anor* (2010) 4 CLRN 219
- Panalpina World Transport (Nigeria) Limited v Glenyork Nigeria Limited & Anor* (2007) 12 CLRN 68
- Quantum Corporation Inc. And Others v. Plane Trucking Ltd. And Another* [2002] 2 Lloyd's Rep. 25
- Texaco Overseas (Nig) Petroleum Company Unlimited v Pedmar Nigeria Limited* (2002) 45 WRN 1

*UPS (Nig) Ltd v Umukoro* (2016) LPELR-45188(CA)

### **Books**

Besong C, *Towards A Modern Role For Liability In Multimodal Transport Law* (ProQuest Dissertations Publishing 2007)

David Glass, *Freight Forwarding And Multimodal Transport Contracts* (Maritime and Transport Law Library 2013)

Haedong Jeon, *Coping With Muddles And Uncertainty In The Field Of Multimodal Transport Liability* (University of Southampton 2013)

J. R. Whittaker, *Containerization* (Hemisphere Publ. Corp. 1975) (2<sup>nd</sup> Edn)

Marian Hoeks, *Multimodal Transport Law: The Law Applicable to the Multimodal Contract for the Carriage of Goods* (Kluwer Law International 2010)

Samuel A. Lawrence, *International Sea Transport: The Years Ahead* (Studies in Business, Technology and Economics) (Lexington Books 1972)

### **Journals**

A. Odeleye Joshua, 'The Need For Multimodal Transport Development in Nigeria' (2015) 8(9) *Journal of Geography and Regional Planning* 239

Diana Faber. 'The Problems Arising From Multimodal Transport' (1996) (Pt 4) *Lloyd's Maritime and Commercial Law Quarterly* 503

Jasenko Marin, 'The Harmonization of Liability Regimes Concerning Loss of Goods during Multimodal Transport' in (University of Zagreb, Zagreb, Croatia 2012) 1.

John C. Taylor, 'Remove Barriers to Intermodal' (1993) 34(4) *Transportation & Distribution* 34

James H Porter, 'Multimodal Transport, Containerization, and Risk of Loss' (1984) 25 *Va J Int'l L* 171