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*From The Editor's Cabin.*

**Greetings and good wishes to our readers and friends!**

**Welcome to the 4<sup>th</sup> edition of the OFIANYI CHAMBERS NEWSLETTER. In this exciting edition, we are pleased to present to you, research analysis on topics ranging from Ship Financing, the CABOTAGE Act, Rail Transport, and more...**

**As always, we thank you so much for associating with us. Here, there are copious informative contents for our progress in the maritime field, both national and international.**

**Let's sail!**

**... Ruth Abanum Esq.**

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### **SHIP FINANCING**

Ship acquisition is closely linked to ship finance. Every ship acquisition requires some form of financing and maintenance of operations. Ships are generally capital intensive to purchase, with larger ships pricier to acquire and operate. The greater the costs of acquisition and operation, the greater the need for alternative financing means.

Ships such as a very large crude carrier (VLCC), would today cost at least \$90million if it were to be built to the highest specification. Ships typically cost millions of dollars and the cost of the containers is also factored in for



Container vessels into the price of the ship. The costliest of types of ships are the large LNG carriers and cruise ships. An LNG carrier would cost over \$250 million to build and a large modern cruise ship costing about \$ 250million - \$300 million, rising higher for the latest designs

Apparently, financing these sums requires both intuitional and governmental input. However, there are only two main means that funds of this size can be provided: through equity or debt. All other forms of financing are either a combination of these two or variations in nomenclature.

The commonly adopted sources of financing for the purchase of a ship are the commercial banks. As at 2013, Germany's 10 largest Banks have 98 Billion Euros, or \$128 Billion, in outstanding credit or other risks related to the global shipping industry, according to Moody's Investors Service. That is more than double the value of their holdings of government debt from Greece, Ireland, Italy, Portugal and Spain. It is also more than any other Country's financial exposure to the shipping industry,

which is in the fifth year of a recession.

It is also a common practice for governments to subsidize the acquisition of a ship by their indigenous shipping companies or Nationals who are able to show sufficient knowledge about Shipping and display capacity to persuade their government to commit such enormous resource in encouraging them to own ships. In Nigeria, a form of this government support is the **Coastal and Inland Shipping (Cabotage) Act of 2003**, which introduced a Fund known as the Cabotage Vessel Financing Fund (CVFF). This fund is aimed at encouraging indigenous fleets and will be further examined in this research.

Other Governments subsidize their shipbuilding industries and provide export related incentives. Sometimes, these incentives take the form of a loan guarantee and/or make up the difference between the market rate of interest and that charged for the transaction.

Another method of making funds available for the industry is



leasing. Similar to the leasing of cars, ship leases may be tax based, which then involves the less or (the actual owner of the ship) indirectly passing on some of the tax benefit she enjoys from a capital transaction to the lease (the user/operator of the ship) through reduction in the lease hire.

Generally, some of the common sources of ship finance include the following:

- i. Owners' personal funds;
- ii. Institutional financiers (credit and financial institutions);
- iii. Capital markets instruments (Initial public offering (IPOs, bonds etc);
- iv. Investment funds;
- v. Private equity;
- vi. Securitization vehicles;
- vii. Venture capitalist;
- viii. High Net worth Individuals (HNIs).

The four forms of ship finance are namely:

1. Asset finance: Asset finance generally relates to the acquisition or operation of one or more assets. Ship

acquisition can be subject to this form of financing.

2. Corporate finance: The primary feature of this form of financing is the injection of liquidity into the borrowing corporate entity or a broader group of companies to which the borrower belongs, in a bid to strengthen the borrower's balance sheet.
3. Equity finance: By equity finance, the company raises capital by selling shares to the public, institutional investors or financial institutions. This form of financing does not connote any repayment obligation as applicable in loans. Acquired interest in the company shares usually carry voting rights, rights to dividends, rights to appoint directors etc and are used to finance ship acquisition.

#### 4. Cabotage Vessel Financing Fund (CVFF)

The Act provides a remedy to financing issues usually experienced in the industry in form of the Cabotage



Vessel Financing Fund (CVFF), aimed at promoting the development of indigenous ship acquisition in Nigeria.

The CVFF is comprised of funds pooled from revenue collection of 2% surcharge on all Cabotage contracts. It is expected that beneficiaries are to utilize the funds in acquiring cabotage vessels, boost operational capacity for chartering vessels and improving ship agency operations. Beneficiaries must be Nigerian citizens and shipping companies wholly owned by Nigerians.

### **Applicable Statutes**

Some statutes that may be applicable in the acquisition and financing of vessels include:

- i. **Nigerian Maritime Administration and Safety Agency (NIMASA) Act 2007:** NIMASA Act establishes NIMASA and saddles NIMASA with the responsibility of pursuing the development of

shipping and regulating matters relating to merchant shipping and seafarers in Nigeria.

- ii. **The Coastal and Inland Shipping (Cabotage) Act 2003:** The Cabotage Act restricts the use of foreign vessels in domestic coastal trade (including carriage of good and passengers in Nigerian waters), promotes the development of indigenous tonnage and establishes a cabotage vessel financing fund. Specifically, the Cabotage Act precludes a vessel other than a vessel wholly owned and manned by Nigerian citizens, built and registered in Nigeria from engaging in the domestic coastal carriage of cargo and passengers within the coastal territorial inland waters, or any point within the waters of the exclusive economic zone of Nigeria.
- iii. **Merchant Shipping Act, 2007:** This Act provides



- for Merchant Shipping in Nigeria and allows only registered Nigerian ships to operate commercially in Nigerian to the exclusion of others except for statutory exempted cases.
- iv. **Value Added Tax Act 2004:** This Act provides for five percent rate on all goods and services that do not fall within any of exemptions under the Act.

The Government created such a concessional finance window, through setting up an interest subsidy scheme called the Ship Acquisition and Ship Building Fund (SASBF). NIMASA administered the scheme which has now been replaced by the Cabotage Vessel Financing fund (CVFF)

### **Financial institutions**

The creation of maritime division within the Nigeria Bank of Industry and other similar organizations to

cater for the exclusive, financing and development needs of companies engaged in shipping, ship building , ship repairs and other maritime related activities, would be a welcome development. However, sanctions and disbursements for ship acquisition and related activities have been negligible in the past two decades.

### **Commercial banks**

Commercial bank controls a major portion of the banking business in Nigeria. They did not have sizeable exposure to the shipping industry, prior to the reforms in the banking industry in Nigeria and, as a consequence of this; they do not have dedicated shipping desks. They can take a considerable time in evaluating a project (for a new client it can take anything between three to six months).

NIMASA is ready involved in the SASBF. However,



appraisal techniques and methodologies used in the past were different from conventional banking practices. Therefore, NIMASA is restructuring the SASBF to become the Cabotage Vessel Financing Fund (CVFF). The funding structure is being worked out with the primary lending institutions and other interests providing for financing vessel acquisition.

### Ship Acquisition

The conventional model for ship finance transactions has often been in the form of asset finance. Over the past years, however, it can be best described as a hybrid of asset and corporate finance. This is linked to the fact that account is taken of and emphasis placed on the overall financial situation of the borrower and the wider group of companies to which the borrower belongs.

**Asset finance:** In ship acquisition by asset finance, financial liquidity is often provided by institutional investors.

Ship finance and acquisition can take any of the following form, to wit:

- acquisition of tonnage (new or fairly used) secured by real security over the ship which is the focus of the ship acquisition and finance;
- financing of shipping operations towards improving the ship ownership and working capital secured by the ship which is the object of the acquisition; and
- Re-financing existing facilities secured by the ship which is the subject of the finance.

In ship finance, the debt servicing is based on the ships being continuously operated profitably and efficiently. To achieve profitability and efficiency, the ship must continue to be operated by its owner or designated operator, which can be the owner or an approved charterer or manager and the ship must remain in the possession of such party.

### Matters Arising in Ship Financing



It is worth noting that ship financing is an arrangement that uses vessel charter fees as the principal source of repayment, while various forms of collateral structured around shipbuilding and charter agreements are assigned to mitigate credit risk.

### **Security in Ship Financing**

Generally, a first priority mortgage is often used as security over the vessel but depending on the particular transaction, the lender may also demand all or some of the following types of security:

- Assignment of insurances
- Earnings and requisition compensation
- Parent company guarantee
- Charge over shares
- Charge over a deposit account.

In jurisdictions such as the UK, a legal mortgage over a ship is created by the execution of a form of statutory mortgage by the owner which is then registered with the Registrar. Notably, priority in respect of registered mortgages is determined by the

order in which they are registered. Particularly, priority will be given to a registered mortgage over an earlier mortgage that has not been registered.

### **Islamic Finance in Shipping.**

Understand the characteristics of the principal shariah compliant financial instruments found in shipping finance, including Mudharabah, Murabaha, Ijara, and Sukuku.

### **Issues in Ship financing**

A downward spiral in values is developing as falling values prompt banks to pressurize owners to sell off further ships.

Closure of funds supporting the industry has already shut down due to the long-simmering crisis in global container shipping

### **Recommendations and Conclusions**

- There is a great need to create an enabling environment in Nigeria to boost the indigenous shipping sector in Nigeria.
- Eliminating the traffic in Apapa, railway links from



the ports and revamping the procedure for clearance of goods at the ports.

- Mismanagement of funds is also another major issue being battled. Most of these embezzled funds are diverted from their primary purpose for development of sectors such as Shipping.
- Strict enforcement of the Cabotage Act.
- Expansion of the provisions of the Cabotage Act to engage and protect the entire shipping industry in Nigeria, rather than just the Shipowners.

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## THE COASTAL AND INLAND SHIPPING (CABOTAGE) ACT 2003.

What is Cabotage?

The CABOTAGE Act

- The Purpose of the Cabotage Act
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## What is Cabotage?

The Black's Law Dictionary 7<sup>th</sup> Edition, defines "Cabotage" as the carrying on of trade along a country's coast, the transport of goods or passengers from one port or place to another in the same country.

Section 2 of The Coastal and Inland Shipping (Cabotage) Act 2003, provides thus:

*Coastal trade" or "cabotage" means—*

(a) *the carriage of goods by vessel or any other mode of transport, from one place in Nigeria or above Nigerian waters to any other place in Nigeria or above Nigerian waters, either directly or via a place outside Nigeria and includes the carriage of goods in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources of Nigeria whether in or under Nigerian waters;*

(b) *the carriage of passengers by vessel from any place in Nigeria situated on a lake or river to the same place, or to*

*any other place in Nigeria, either directly or via a place outside Nigeria to the same place without any call at any port outside Nigeria or to any other place in Nigeria, other than as an in-transit or emergency call, either directly or via a place outside Nigeria;*

(c) *the carriage of passengers by vessel from any place in Nigeria to any place above or under Nigerian waters to any place in Nigeria, or from any place above Nigerian waters to the same place or to any other place above or under Nigerian waters where the carriage of passengers is in relation to the exploration, exploitation or transportation of the mineral or non-living natural resources in or under Nigerian waters; and*

(d) *the engaging, by vessel, in any other marine transportation activity of a commercial nature in Nigerian waters and, the carriage of any goods or substances whether or not of commercial value within the waters of Nigeria;*



Cabotage, or coastal trade, may not always be solely along the same geographical coast. Some nations either have more than one stretch of coast, or are so geographically fragmented as to render the idea of 'cape to cape' impossible. Maritime and International Law Jurisprudence had to accommodate these extra-territorial adventures within existing nomenclature. A new definition of coastal trade and cabotage was therefore introduced to remedy this concern, thus **L. Oppenheim** in **The Meaning of Costing Trade in Commercial Treaties**, defined Cabotage as;

*“Sea-trade between any two ports of the same country, whether on the same coast or different coasts, provided always that the different coasts are all of them, coasts of one and the same country as a political and geographical unit in contradistinction to the coasts of Colonial dependencies of such a country”.*

It is clear from these definitions, that the words “Cabotage” and “Coastal trade” are two conterminous terms, one seeming

to derive from the other, they are therefore used interchangeably.

**Cabotage**, empowers navigation and trading within a country's coasts, or from port to port within a nation to be reserved exclusively for, and carried on by its national flagships and nationals.

Cabotage strictly speaking involves five basic ideas, they are:

1. Navigation along a nation's coastal waters;
2. Coastal trading;
3. Reservation to national flag vessels, and indigenous vessel owners, of coastal trading;
4. Reservation to citizen crewmen of manning positions on vessels; and
5. Reservation to indigenous shipyards of coastal vessel building and repair.

In effect, the term “**Cabotage**” involves the totality of a nation's legal and regulatory measures, aimed at preserving the carriage of all merchandise within its territorial boundaries exclusively for its nationals and carriers of its nationality.



Note that, Cabotage is not restricted to the maritime industry, as there also exist the aviation cabotage, transport cabotage and so on.

### **THE COASTAL AND INLAND SHIPPING (CABOTAGE) ACT OF 2003.**

Nigeria is blessed with a coastline of about 870km (over 530 miles) and 3,800 kilometers of navigable waterways. Twenty-eight of the nation's 36 States can be accessed through water.

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The Rivers Niger and Benue constitute the major channels for inland navigation which include but not limited to the Cross – River, Port Novo-Badagry-Lagos waterways, Lekki and Lagos Lagoons, Ogun-Ondo waterways, Benin River, Escravos channel, Nun River, Imo River, Orashi River, Ethiope, Ugwuta Lake, Lake Chad and the numerous creeks in the Niger delta.

The country's natural resources include petroleum, natural gas,

tin, Colum bite, iron ore, coal, zinc, limestone, and lead, and this presents enormous coastal trade opportunities for shipping companies in Nigeria, thus there have been a constant effort by the Nigerian government to initiate policies and projects to boost indigenous vessel acquisition.

The commercial operations of carriage of goods, services and passengers in the inland and coastal waters of Nigeria were almost exclusively dominated by foreign owned and foreign-crewed vessels, thus it informed the development of an indigenous legislation- **The Cabotage Act.**

In April 2003, the **Coastal and Inland Shipping Act 2003**, popularly known as the CABOTAGE Act was passed by the National Assembly and signed into law by the then president (President Olusegun Obasanjo). It was stipulated that the provisions of the Cabotage Act would become enforceable from 1 May 2004. To facilitate compliance with the provisions of the Act, the Federal Ministry of Transport in June 2004, issued a set of guidelines to relevant



stakeholders. The guideline proved to be a useful tool, for the operations and implementation of the Cabotage Act. The guidelines had some hiccups and thus a revised version was produced in August 2018.

### **The Purpose of the Cabotage Act.**

The Cabotage Act (2003) was enacted in order to reduce or eliminate the dominance of foreign vessels in Nigerian waters and spur the growth of indigenous shipping companies engaging in coastal trade, in other to contribute to the growth and development of Nigerian economy. This is clearly espoused by the preamble of the act, which reads thus:

*“An act to restrict the use of foreign vessels in domestic coastal trade to promote the employment of indigenous tonnage and to establish a Cabotage Vessel Financing Fund; and for related matters”.*

It must be noted, that the beneficial expectations from the

implementation of cabotage act include:

1. To boost inland water transport operation, which will in turn help in reducing over-reliance on road transportation in Nigeria;
2. The creation of employment opportunities;
3. The development of indigenous shipping companies;
4. To develop inland water deports; and
5. The transfer of technology in the areas of repairs and building.

The four (4) pillars of the Nigerian Cabotage regime are as follows:

- Cabotage vessels must be wholly owned by Nigerian citizens,
- Cabotage vessels must be registered in Nigeria
- Cabotage vessels must be manned by Nigerian citizens, and
- Nigerian shipyards must build cabotage vessels.



The intention of the Cabotage Act is primarily to stimulate the development of indigenous capacity in the Nigerian Maritime Industry. The Act therefore seeks to reserve domestic coastal trade (“cabotage or cabotage trade”) within Nigerian Coastal and Inland Waters to vessels built and registered in Nigeria, wholly owned and wholly manned by Nigerian citizens. Foreign owned vessels and companies are however allowed to participate in cabotage trade within Nigerian waters, subject to obtaining a waiver and/or a license from the Federal Ministry of Transport.

We shall now examine the provisions of the Act step by step;

Under the Cabotage Act, **“Nigerian Waters”** is defined to include **inland waters, territorial waters or waters of the Exclusive Economic Zone (respectively, together or any combination thereof) and the meaning given to them by the National Inland Waterways Authority Decree 1997.**

### Cabotage Services

Services that qualify as cabotage trade are identified as follows:

1. The carriage of goods and passengers originating from one coastal inland point (this could be ports, terminals, jetties, piers etc.) to another point located within Nigeria;
2. The carriage of goods and passengers by sea in relation to the exploration, exploitation, or transportation of the mineral or non-living natural resources in or under Nigerian waters;
3. The carriage of goods and passengers on water or underwater (sub-sea) installations;
4. The carriage of goods and passengers originating from a point in Nigeria destined for Nigeria but transiting through another country then back to Nigeria for discharge;
5. The engaging by vessel in any other marine transportation activity of a commercial nature in Nigerian waters. These include towage, pilot age,



dredging, salvage,  
bunkering, etc.

### **Cabotage Vessels:**

The following types of vessels are identified under the Act and its Guidelines as cabotage vessels:

- a. Passenger Vessels;
- b. Crew Boats;
- c. Fishing Trawlers;
- d. Barges;
- e. Tugs
- f. Off-shore Service Vessels
- g. Anchor handling Tugs and Supply Vessels
- h. Floating Petroleum Storage
- i. Dredgers
- j. Tankers
- k. Carriers
- l. Any other craft or vessel for carriage on, through or underwater of persons, property or any substance whatsoever.

The Act and the guidelines do not address the specific status of Barges, Rigs, Seismic vessels and other similar vessels which may, in the course of their operations, be involved in the carriage of persons and property even though the primary purpose and activity of such vessels is not the carriage

of persons and property. On a literal interpretation of the Act, these vessels may be caught by the provisions of the Cabotage Act.

### **Registration**

All vessels intended for use in cabotage trade are required to be registered by the Registrar of Ships in the special register for vessels and ship owning companies engaged in cabotage ("Cabotage Register") at the Nigerian Maritime Administration and Safety Agency (NIMASA). Vessels seeking registration to participate in cabotage trade are required to comply with the provisions of the Merchant Shipping Act (Cap. 224 Laws of Nigeria 1990), as well as obtain all other applicable licenses and permits from other relevant government agencies, such as the National Inland Waterways Authority ("NIWA").

### ***Types of Registration***

The guidelines issued by the Minister of Transport provide for five categories of registration. They are:



**1. Registration of Wholly Owned Nigerian Vessels-**To qualify for registration in this category, 64% of shares of the vessel must be wholly and beneficially owned by Nigerian citizens, or by a company registered in Nigeria, with 100% of its share capital wholly and beneficially owned by Nigerian citizens. All the shares in the vessel or in the company that owns the vessel must be held free from any trust or obligation in favor of any person who is not a citizen of Nigeria.

**2. Registration of Joint-Venture Owned Vessels-**As the name implies, this category applies to the registration of vessels owned under a Joint-Venture arrangement between Nigerian citizens and non-Nigerians. It is required that the equity shareholding of the Nigerian partner(s) in the vessel and/or the shipping company must be at least 60% held free from any trust or obligation in favor of non-Nigerians.

**3. Registration of Bareboat Chartered Vessels-** To qualify for registration in this category, the bareboat chartered vessel is

required to be under the full control and management of Nigerian citizens, or a Company with 100% of its share capital, wholly and beneficially owned by Nigerian citizens, free from any trust or obligation in favor of non-Nigerians.

**4. Registration of Foreign-Owned Vessels-**To be eligible for registration in the Cabotage Register, foreign owned vessels are required to obtain a waiver and a license for participation in coastal trade (cabotage) from the Minister of Transport.

**5. Temporary Registration of Cabotage Vessels-** The Cabotage Act in Section 27, provides that foreign owned vessels engaged in cabotage trade at that time, may be granted a temporary registration in the Cabotage Register for the duration of the contract, for which the vessels are employed. However, as stipulated in the guidelines, where the period left to run the contract exceeds one year from 1 May 2004, the foreign vessel will only be granted temporary registration for one year, and not for the duration of the contract for which the vessel



is employed. Thereafter, the vessel is required to obtain a license from the Minister of Transport and obtain registration as a foreign owned vessel.

This appeared to be inconsistent with the Act which provides that temporary registration will be granted for the duration of the contract.

### ***Requirements for Registration***

The registration requirements for all the five categories are similar except that in the case of a Bareboat Chartered Vessel, a copy of the Bareboat Charter Agreement is required and in the case of a foreign owned vessel, a license from the Federal Ministry of Transport is required prior to registration.

The duly completed application form is required to be submitted to the Registrar of Ships with the applicant's corporate documents and the statutory certificates for the vessel as specified in the guidelines.

### ***Registration of vessels above 15 years old***

Vessels registered in the Nigerian Registry at the enforcement of the Act (i.e. 1 May 2004), that are above 15 years old shall continue to be eligible for participation in Cabotage for a period of 5 years after the enforcement date, subject to the vessel possessing a Certificate of Registry and a Certificate of Seaworthiness from a recognized classification authority.

From these provisions, it appears that vessels that are above 15 years old, 5 years from the enforcement date (i.e. from 1 May, 2009) may not be eligible to register for participation in Cabotage trade. Regrettably, the guidelines issued by the Minister of Transport did not adequately clarify this issue. Indigenous operators have raised objection to this provision on the ground that it may disqualify most indigenous operators from participating in Cabotage trade.

### ***Duration of Registration:***

The guidelines stipulate that the Cabotage Ship Registration Certificate for categories 1-4 shall be valid for period of (5) years, subject to annual endorsement by





the Registrar of Ships. The documents required to be provided for the annual endorsement of the certificate by the Registrar of Ships are:

- (a) Evidence of payment of 2% surcharge (where applicable).
- (b) Copy of Joint Maritime Industrial Council ("JOMALIC") Certificate and Declaration of compliance with Seafarers' condition of employment.

### **Waiver, License and Exemptions**

The Cabotage Act, permits the Minister of Transport to grant waivers for matters in the prohibited list, that is, **Section 3 of the Cabotage Act** which provides thus:

*"A vessel other than a vessel wholly owned and manned by a Nigerian citizen, built and registered in Nigeria shall not engage in the domestic coastal carriage or cargo and passengers within the Coastal, Territorial, Inland Waters, Island or any point within the waters of the Exclusive Economic Zone of Nigeria".*

Foreign owned vessels are required to obtain a license from the Minister of Transport in order to qualify for registration in the Cabotage Register. In certain prescribed circumstances, vessels both foreign and Nigerian may be granted a waiver by the Minister of Transport in respect of the prohibitions contained in the Cabotage Act.

Despite the restrictions placed on foreign vessels from trading in Nigerian waters, the Minister of Transport is empowered by Sections 10, 11 and 12, of the Act to waive the requirements that a ship be wholly owned, manned and built in Nigeria. This waiver is categorised into three sections:

1. *Section 10, Cabotage Act(2003)-Waiver on the requirement for the vessel to be wholly owned by Nigerian citizens:*

Upon receipt of an application, the minister may grant a waiver to a duly registered vessel, upon being satisfied that there is no wholly owned Nigerian vessel that is suitable or available to



perform the activity (ies) specified in the application.

2. *Section 11 of the Cabotage Act (2003)- Waiver on the requirement for the vessel to be fully manned by Nigerian citizens:*

The abovementioned section, also gives the Minister the power to grant a waiver upon the receipt of an application to allow a registered vessel which is not wholly manned by Nigerians to trade in Nigerian waters if it is shown that there is no qualified officer or crew for the position specified in the application.

3. *Section 12 Cabotage Act, (2003)-Waiver on the requirement for the vessel to be built in Nigeria:*

On being satisfied that there is no Nigerian ship-building company that has the capacity to construct the particular vessel or that there is no available Nigerian built vessel of the particular type specified. Foreign built vessels that were entirely rebuilt in Nigeria are

eligible for participation in cabotage services without a waiver. **Section 7(1) Cabotage Act.**

However, the waiver system is subject to certain conditions as provided in **Section 13 of the Act.**

The validity of waivers granted by the Minister is one year, subject to annual renewal. On renewal, applicants amongst other things are required to show evidence of improved level of compliance with the requirements of the Cabotage Act with respect to manning, ownership and ship-building.

In the case of **The MT Makhambet & 2 Ors. V. Incorporated Trustees of Indigenous Ship owners Association of Nigeria & Anor (2012) NWLR P. 1283**, the plaintiffs instituted an action against the defendants wherein they claimed *inter alia* declaratory and injunctive reliefs against the defendants under the Cabotage Act, 2003. To wit:



- A declaration that on a proper construction of some sections of the Coastal and Inland Shipping (Cabotage) Act, 2003 and the regulations made there under, by using the 1st defendant to carry 10, 000 metric tons of Petroleum Products within and in Nigeria waters and Exclusive Economic Zone to Ibadan Jetty/Apapa Port, Lagos in or about July, 2009, the 1st defendant which is a foreign vessel that is foreign crewed, foreign built that the 3rd defendant is in charge of and her 2nd defendant foreign owner, not having been licensed or registered or granted ministerial waivers or approvals under the Cabotage Act to engage in cabotage trade, wrongfully and illegally acted contrary to the Cabotage Act, and at the expense of the 1st plaintiff's members and their ships.
- A declaration that on a proper construction of the Coastal and Inland

Shipping (Cabotage) Act, 2003, especially sections 2, 3, 5, 9, 10, 11, 12, 15, 22, 23, 29, 33 and 39 thereof and the regulations made there under (hereinafter called the Cabotage Act), as between the plaintiffs and the defendants, 1st plaintiff's members and their ships are the persons rightly entitled to carry the said 10,000 metric tons of Petroleum Products in and within Nigeria Exclusive Economic Zone to the Ibadan Jetty, Port.

However, the court ruled in favor of the defendants and held that the plaintiffs failed to prove that the defendants have contravened any provision of the Cabotage Act or any of the guidelines. The *ex-parte* order of arrest of the 1st defendant was discharged. The suit was accordingly struck out. The decision of the trial court was also upheld by the Court of Appeal.

### *License*

Part 2 of the act covers the conditions for granting licences for



participation in coastal trade to foreign vessels. The conditions are premised on instances in which Sections 10, 11, and 12 apply - that is, where:

- there is no vessel wholly owned by Nigerian citizens which can perform the services contemplated by the foreign vessel;
- there is no crew or officer for the position contained in the application; or
- Such a vessel cannot be built in Nigeria.

Foreign owned vessels are required to obtain a license from the Federal Ministry of Transport prior to registration in the Cabotage Register. The duly completed application form (FMOT Cabotage Trade Form 3) is required to be submitted to the Ministry of Transport with the applicant's corporate documents, certificate of waiver and vessel documents as specified in the Guidelines.

The license is valid for one year subject to annual renewal. On

renewal, applicants are among other things required to show evidence of improved level of compliance with the provisions of the Cabotage Act on manning, ownership and shipbuilding requirements.

### *Exemptions*

Vessels (both foreign and Nigerian owned) engaged in the following activities are exempted from compliance of the provisions of the Act. These activities are:

- a. Commercial Salvage Operations;
- b. Activities related to Marine Pollution Emergency;
- c. Ocean Research Activity;
- d. Marine Scientific Research; and
- e. Humanitarian Salvage Operations.

Vessel Operators that intend to engage in the above activities, except humanitarian salvage operations are however required to apply for exemption from the Minister of Transport.



## **The Cabotage Vessel Financing Fund (CVFF)**

**Section 42 of the Cabotage Act (2003)**, establishes a Cabotage Vessel Financing Fund (CVFF) to increase the indigenous ship acquisition capacity. The Section reads thus;

*42.-(1) There is established a fund to be known as the Cabotage Vessel Financing Fund (herein in this Act referred to as "the Fund")*

*(2) The purposes of the Fund shall be to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping.*

The CVFF consists of funds pooled from the collection of 2% surcharge on all Cabotage contracts. Beneficiaries are expected to utilize the funds in acquiring Cabotage vessels, boosting operational capacity and chartering -in vessels and improving ship agency operations. The beneficiaries are to be Nigerian citizens and shipping companies wholly owned by Nigerians.

Section 43 of the Act provides thus;

*"There shall be paid into the Fund (a) a surcharge of 2per centum of the contract sum performed by any vessel engaged in the coastal trade; (b) a sum as shall from time to time be determined and approved by the National Assembly; (c) monies generated under this Act including the tariffs, fines for licenses and waivers ; (d) such further sums accruable to the Fund by way of interests paid on and repayment of the principal sums of any loan granted from the Fund".*

The purpose of the creation of the CVFF was to remedy the financial constraint of interested Nigerians with respect to the acquisition of vessels.

### *Application of Cabotage Act to Employers of Vessels*

Employers of vessels for Cabotage trade are required to specify and publish all the requirements to be satisfied under the Cabotage Act in invitations for pre-qualification to tender in major Nigerian newspapers not less than 3 months before the close of



submission of bidding documents. Also, all invitations for prequalification to tender advertisements are required to expressly state compliance with the Cabotage Act as a pre-requisite for pre-qualification.

### **Enforcement of the Act**

The Minister of Transport is empowered to create an Enforcement Unit ("**Cabotage Enforcement Unit**") within NIMASA, with responsibility to enforce compliance with the provisions of the Cabotage Act.

Enforcement Officers have wide powers under the law including the power to:

- a. Stop and board any vessel reasonably suspected of contravening the Cabotage Act;
- b. Search a vessel and seize anything found that may be used as evidence of contravention of the Cabotage Act;
- c. Request the Master of the vessel or any other responsible person to produce for inspection the log book of the vessel or

other documents that may provide evidence of contravention;

- d. Enlist the assistance of Nigerian Customs Service, Nigerian Navy or Nigerian Police or any other law enforcement agency as deemed necessary and in exigent circumstances, issue a detention order in respect of a vessel without first obtaining a Court Order.

### **Fees and Tariffs**

The guidelines specify the fees and tariffs for the various processes and application. For instance, the fee for waiver on the ownership requirement in respect of foreign owned vessels is **USD 50,000.00** per vessel. The fees for waiver on the manning requirement are specified per man, while the fee for waiver on shipbuilding requirement is a flat rate of **USD 1,000.00** per vessel. The registration fee is calculated with reference to the gross tonnage of the vessel.

### **Offences and Penalties**

The Cabotage Act specifies penalties for the breach of its



provisions with fines ranging from a **Hundred Thousand Naira (N100, 000.00) to Fifteen Million Naira (N15, 000,000.00)** or higher as determined by the Court and/or forfeiture of the offending vessel.

### Advantages and Disadvantages

Prior to its passage, the Cabotage Act was widely criticized for several reasons.

Many believe that the average shipowner in Nigeria cannot meet the requirements laid down by the act. In other words, most stakeholders fear that their respective vessels will not pass the test of being owned, manned and built in Nigeria.

Some ships owned by Nigerian citizens were not built in Nigeria. To satisfy the requirement that the ship be built in Nigeria might thus be an onerous burden for shipowners in Nigeria who previously had their ships built outside Nigeria.

It is sad to note that despite the creation of the CVFF, and the 2% surcharge from all Cabotage contracts performed in Nigeria, In other to generate income for indigenous ship acquisition For

about 18 years (ie 2003 – 2021), there is no record of a Nigerian has successfully acquired a vessel by the creation of this fund.

Yet another requirement which may stifle the growth of the shipping industry and necessarily affect the aim of the Cabotage Act itself is the requirement that the ship be wholly manned by Nigerians. There are presently few ships which are wholly manned by Nigerians so as to satisfy this requirement.

The act will be enforced one year after its commencement, in order to give enough time to indigenous operators to regularize their position by acquiring coastal ships - that is, ships which are built or assembled in Nigeria. The growing concern of many is that this places a burden on indigenous operators to acquire ships which would enable them trade within the inland waterways.

On the other hand, however, the Cabotage Act have actually opened new opportunities for shipping companies in Nigeria, the direct result of restricting ships which can trade on inland waterways to vessels which fulfil



these requirements brings about a growth of the Nigerian shipping industry and the economy at large. The advantage of being the sole shipping companies engaging in domestic trade will give Nigerian shippers an added impetus towards ensuring that domestic trade actually improves, by giving them a sense that they have a stake in the industry itself. Other advantages of the Act are as follows:

- It catalyzes the growth and development of the transportation sector due to the over dependence of the nation on road transportation and the consequent damage of the roads a .
- Creation of employment opportunities
- Development of inland water way depot
- Technology transfer in the areas of repair and building of vessel

This may also induce a sense of competition among indigenous operators, which should lead to better services, an improved

shipping industry, and a stronger and more vibrant economy.

Though the Cabotage Act has been severely criticized by many, stakeholders in the maritime industry seem pleased with the development, as they believe that it has the capacity to improve not only their situation but the maritime industry in general.

## CONCLUSION

It is of a fact that the importance of maritime activities locally and internationally cannot be over emphasized as the global trade is largely dependent on water transportation. Effective and efficient transportation with good legislations or policies in place and with proper implementation will definitely contribute immensely to the economic growth and development of a nation. It must be noted that Cabotage Act 2003 was implemented in Nigeria to serve as a tool that will improve the coastal trade and contribute to the development of the economy.





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## RAIL TRANSPORT

- What is Rail Transport?
- Features of Rail Transport System
- Disadvantages of Rail Transport System
- Types of Rail Transport
- Rail Terminal (Freight Terminals)
- Gauges



- Functions of Rail Freight
- Rail Transport in Nigeria
- Recent Reforms in the Rail Transport Sector

Rail transport is a means of transportation with vehicles running on tracks known as rails or railroads. Rail transport is also referred to as train transport and is one of the most commonly used and cost-effective means of commuting and carriage of goods over long and short distances. Trains are powered by an engine locomotive running on electricity with signaling systems for multiple route networks.

In terms of safety, Rail transport has emerged as one of the most dependable modes of transport and also one of the fastest modes of land transport. Its origin dates back to the human hauled contraptions in ancient Greece and has evolved into a modern, complex and sophisticated system.

Freight trains, haul, bulk cargo, standardized shipping containers, or specially designed cars for a specific type of freight. Rail freight is much faster than the ocean

freight. It is more expensive than sea freight but cheaper than air freight. Moving goods by train is perfect for high-value industrial products such as vehicles, electronics and computer equipment, as well as promotional equipment that must reach their final destination as quickly as possible. Rail freight can be one of the most efficient means of transportation in terms of energy consumption, as well. With six times lower emission than the road vehicles, especially when the cargo is hauled over long distances. Moreover, there are fewer accident reports on the railroads than on the road.

Railways always end at some point and in a trans-shipment process. Goods are transferred from one shipper to another, at an intermediate port in a process called trans-shipment and it often involves extra costs and time.

### Benefits/features of Rail Transport system

1. It has fixed routes and schedules.
2. More dependable as it is the least affected by usual



weather turbulences like rain or fog, compared to other transport mechanisms.

3. High Speed over long distances.
4. Suitable for Bulky and Heavy Goods, especially over long distances.
5. Cheaper and safest form of transport. Chances of accident are minimal compared to other modes of transport.
6. Large capacity; capacity is elastic as can be increased easily by adding more wagons.

### Disadvantages

1. The cost of construction, maintenance and overhead expenses are very high compared to other modes of transport.
2. Rail transport cannot provide door-to-door service as it is tied to a particular track.
3. Intermediate loading or unloading involves greater cost, more wear and tear and wastage of time.
4. They may give rise to monopolies due to lack of

competition and work against public interest at large.

5. Under-utilized capacity: The railway must have full load for its ideal and economic operation. As it has a very large carrying capacity, under-utilization of its capacity, in most of the regions, is a great financial problem and loss to the economy.

### Types of Rail Transport

- i. **Passenger Trains** are of three main types: long-distance, short-distance, and trains within cities.
- ii. **Freight trains** are used to haul goods.
- iii. **Container Trains**
- iv. **Passengers Trains**
- v. **Long Distance Train:** are built for travels between different cities or a region of a country
- vi. **High-Speed Rail**
- vii. **Inter-city Trains**
- viii. **Regional Trains**
- ix. **Short-Distance Trains**
- x. **Commuter Trains**
- xi. **Rapid Transit Trains**
- xii. **Tram**



- xiii. Light Rail
- xiv. Mono Rail
- xv. Maglev
- xvi. Railcar

### Rail Terminal (Freight Terminals)

Rail Terminals are connected to port facilities and are a key component of the inland intermodal supply chain. Rail terminals always potentially attract manufacturing activities to utilize the distribution capabilities of rail transport.

Freight terminals require much space for the laying of the tracks and are most likely located in non-residential areas or outskirt sites. Adjacent areas are mostly significant industrial zones. In dealing with bulk commodities, rail terminals are proximately located to the point of delivery, serving as the primary medium for shipping the commodities.

Complexities also vary due to the different freight markets being services. Each specialized type of cargo requires loading/unloading facilities and equipment.

### Gauges

Gauges can be divided into 4 broad categories by width:

**Broad Gauge-** 1676 mm to 1524 mm or 5'6" to 5'0"

**Standard Gauge-** 1435 mm and 1451 mm or 4'-8½"

**Metre Gauge-** 1067 mm, 1000 mm and 915 mm or 3'-6", 3'-33/8" and 3'-0"

**Narrow Gauge-** 762 mm and 610 mm or 2'-6" and 2'-0"

Broader gauges are more expensive to build, but are able to handle heavier and faster traffic.

### **Functions of Rail Freight**

Rail freight terminals perform various functions such as:

- i. **Bulk.** These rail terminals are associated with extractive industries such as agriculture, mining, and mineral products. Terminals are generally designed in a commodity specific form. Bulk rail terminals usually have one-way flows with designs to specifically either load or unload bulk. A



- common example are grain elevators, which are bulk terminals commonly used to store, mix, and load grain into railcars. Rail terminals loading and unloading bulk are rare.
- ii. **Roll-on/Roll-off.** It is used to convey equipment and vehicles such as cars, trucks, or industrial equipment. The terminals commonly require a large amount of parking space to store vehicles and are rolled in a railcar using a ramp.
  - iii. **Break bulk.** Involves the handling of various cargoes that can be bagged in drums, rolls or crates. They are commonly related to a specific activity such as a manufacturing plant or a warehouse handling break-bulk cargo and serviced by dedicated rail spurs. Containerization has reduced the need for break bulk terminals.
  - iv. **Intermodal.** The function of loading and unloading unitized freight from railcars. Containerization has dramatically expanded the intermodal productivity of rail terminals since it permits quick loading and unloading sequences but at the expense of more trackside space available. Depending on the type of operation, specific intermodal equipment will be used. Intermodal terminal can be part of a port facility (on-dock or near-dock facilities) or being a stand-alone inland terminal.
  - v. **Shunting.** This process involves assembling, sorting, and breaking of freight trains. Trains can be composed of up to several railcars, often of various nature, origin and destination. The shunting can be a complex task performed on several occasions. Unit trains that convey uniform commodity, such as coal, cars, or containers require minimal shunting.

### Rail Transport in Nigeria

Nigerian Railway Corporation is the state-owned enterprise with exclusive rights to operate



railways in Nigeria. In 2016, the Itakpe – Ajaokuta – Warri Railway Standard Gauge project and Abuja to Kaduna Standard Gauge project were completed. The rail is expected to support the evacuation of cargoes from the ports, facilitate imports and exports, reduce traffic gridlock on port access roads and curb the huge revenue losses to ports.

The Nigerian Railway Corporation (NRC) and AMP Terminals are presently executing a project, designed to operate combined with the existing narrow gauge from the Apapa Seaport to the NRC terminal at Yaba, Lagos. The Apapa -Yaba standard gauge rail is projected to begin operations very soon and reduce congestion.

The African Centre for Supply Chain (ACSC) practitioners' estimates that congestion at the Nigerian ports was negatively impacting Nigeria's gross domestic product (GDP) and that the country loses \$14.2 billion annually.

**NRC provides the following services:**

#### **A. Passenger Services.**

- Express trains for long distance travel e.g. Lagos-Kano
- Intercity trains for medium journey travels e.g. Port Harcourt- Enugu
- Mass Transit Trains (MTT) for linking rural and urban areas e.g. Minna- Kaduna-Minna
- Commuters for intra-city movement of workers, traders, students to and from their various places of engagements e.g. Agbado-Iddo- Agbado

#### **B. Freight Services.**

- Covered Wagons suitable for loading dry goods such as cement and general merchandise.
- Open Wagons suitable for loading dry goods such as cars, billets, etc.
- Special Wagons, Tank Wagons- for liquid goods
- Baggage Vans suitable for parcels, household items and other courier services
- SBX/CBX for animals/general goods and farm products

#### **C. Workshop Services.**



- Maintenance of locomotives and rolling Stock;
- Foundry services-bricks making and carpentry; and
- Other commercial services.

#### **D. Ancillary Services.**

- Medical services: Commercialized Ultra-Modern Hospital in Ebute – Metta and Clinics in virtually all the districts;
- Advertising Facilities;
- Printing Press;
- Catering; and
- Real Estate

Railway transport in Nigeria is inefficient and has hardly developed at all over the past several years compared to railways in the developed world. This is due both to maladministration by successive governments and to the lack of a functional transport policy ensuring a constant pattern of railway development. The 100% ownership by the national government has contributed greatly to this neglect.

Rail transportation has immense benefit to the economy, making it a competitive choice for the mobility of passengers and freight.

The ability of trains to haul large quantities of freight and commute substantial numbers of passengers over long distances is its primary asset. Completions of projects have not automatically translated into operational reality and consequently, despite the ongoing development of rail infrastructure in Nigeria, it can still not be considered a viable freight transport option of a commercial scale to replace the road.

The Enterprise Resource Programme (ERP) was installed to promote efficiency and the upgrade and modernization of the archaic communication and signaling system of the entire rail system.

In developed countries, transport policy is dynamic and adapts in response to growing technological trends in the transport sector. Government policy in respect of rail transport innovation and development are fairly consistent and largely limited to policymaking and execution. Meanwhile, the railway infrastructure and provision of services are largely left in the hands of private enterprises. This



approach has generally enhanced efficiency, punctuality, and reliability.

Rail Freight transportation might be cost-efficient and environmentally friendlier, but it has some disadvantages too.

### **Recent reforms in the Rail transport sector**

- Upgrade and modernization of key railway components and equipment, procurement of Rolling Stock (wagons, coaches) and an assortment of parts for operational use.
- Introduction of the Transport Sector Reform Bill, which includes the Nigerian Railways Authority (NRA) Bill, designed to open up the sector for the first time, to private sector participation.
- The Lagos-Ibadan Standard Gauge Railway (157km) line was recently built by China Civil Engineering Construction Corporation (CCECC), which is “the first modern double track standard gauge railway in

West Africa”. Containers will now be able to travel straight from Lagos’ ports to an inland depot in Ibadan, from where goods can be distributed to other parts of the country.

### **Issues with Rail Transport**

- The lack of interoperability of the rail systems between the member states is a factor limiting the broader use of the rail mode.
- The COVID-19 pandemic also impacted the Rail transport sector due to significant decline in passengers, as applicable to other public transportation sector
- Most of the network is old narrow-gauge single track running diagonally across the country, there is no fully connected rail network running across the entire Nigeria, no operating standard gauge, and almost no double track in the existing system, prior to newly commissioned projects.





- Ongoing pandemic also truncated rail transport, rail projects delivery and completion plans, resulting to inflation & interferences with contract terms.

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## NEWS AND EVENTS



*Mrs. Rollens Macfoy. President of WIMA-Nigeria*



- **Mrs. Rollens Macfoy Emerges President of WIMA-Nigeria**

The Managing Director of Ocean Deep Services Limited, Mrs. Rollens Macfoy on Tuesday, 12 October, 2021, emerged as the newly elected President of the Nigerian chapter of African Women in Maritime Africa (WIMAfrica).

“I appreciate the existing members present, whether you voted for me or not, the issue now is that WIMA-Nigeria must go forward. I pledge to take reasonable counsel from different authorities; I will deliver and take the association to the next level. I thank all the

contestants for having the courage to step out because of the prevalence issue,” she said.

Macfoy equally commended the effort of the Continental President, Barr. Jean Chiazor Anishere SAN. And the immediate past President of WIMA-Nigeria, Hajia Bola Muse, for the laudable platform they had created.



*DG. NIMASA, Dr. Bashir Jamoh presents Maritime Memorabilia to Joao Titterington Gomes Cravinho, the Portuguese Defence Minister at the Atlantic Centre Conference in Lisbon.*



- **IMO Elections coming up soon!**

The election for members of the IMO council....

The Director General of Nigerian Maritime Administration and Safety Agency (NIMASA), Dr. Bashir Jamoh, has called on the international maritime community to support Nigeria's bid for reinstatement into Category C.

Speaking at the third Seminar of the Atlantic Center in Lisbon Portugal, Jamoh sought support of Nigeria's friends to vote for the country into the council of IMO in the election that comes up on 6-15 December 2021.

He said: "We ask for your vote and count on your continued confidence in the efforts of Nigeria to work in partnership with other nation states in the Gulf of Guinea to continue keeping our corridor of the Atlantic Ocean a safe passage for seafarers, their vessels and the vital supplies they transport for our common sustenance"



*Mrs. Jean Chiazor Anishere. SAN.*



- **Our Learned Silk, Mrs. Jean Chiazor Anishere. SAN. Was listed among personalities honored by Maritime Academy of Nigeria (MAN) Oron. She was appreciated for her contributions and benevolence in the Maritime Education.**

## GLOSSARY OF SHIPPING TERMS

- I. **Free onboard (FOB)** - Seller must load the goods onboard the ship nominated by the buyer: the cost and risk being divided at the ship's rail. The seller must the goods for export. Maritime transport only.
- II. **Free on rail/Free on truck (FOR/FOT)** - These terms are synonymous since the word 'truck' relates to the railway wagons. They should only be used when the goods are to be varied by rail.
- III. **LPG-** Liquefied petroleum gas, or a carrier of LPG.
- IV. **Lump sum freight** – Money paid to a shipper for the charter of a ship (or portion) to a stated limit irrespective of the quantity of cargo.
- V. **Manifest-A** document containing a full list of the ship's cargo, the bills of lading.
- VI. **Manning scales-** The minimum number of officers and crew members



that can be engaged on a ship to be considered as sufficient hands with practical ability to meet every possible eventuality at sea.

VII. **MITB-** Maritime Industry Training Board

VIII. **Semi-submersible-A** ship able to submerge part of itself to load cargo that can be floated on or off. Usually semi-submersible ship duty vessels.

IX. **Shifting** – This refers to movements or changing positions of cam place to another a dangerous situation at sea that can easily

seaworthiness or cargo worthiness of the ship.

X. **Technical management-** Management of the maintenance, insurance of the ship.

XI. **Terminal-** the business unit in ports where specific cargo (i.e.co handled).

XII. Jones Act- US Merchant Marine *Act of* 1920, Section27, requiring that all US Domestic water-borne trade be carried by US-Flag, US-built and US-manned

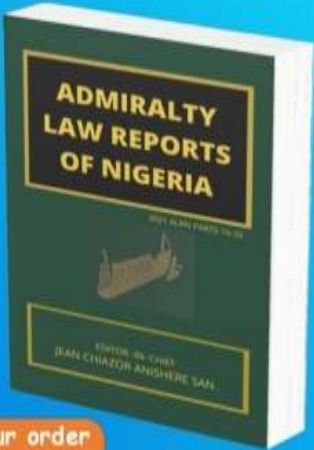
XIII. Knot – Unit of speed in navigation, the rate of a nautical mile (1,852mor6, 080ft).




- XIV. **Hull** –Shell or body of a ship. Applies to the side and bottom of a ship.
- XV. **Ex works (EXW)** - The seller makes the goods available at its named premises.
- XVI. **Oil record book**-A book or log kept by the master of an oil tanker wherein every discharge or escape of oil is recorded.
- XVII. **Oil tanker**-a ship designed for the carriage of oil in bulk, her cargo space consisting of several or many tanks. Tankers load their cargo by gravity from the shore or by shore pumps and discharge using their own pumps.
- XVIII. **Open rates** –Pricing systems that are flexible and not subject to conference approval. Usually applied to products in which tramp ships are substituted for liners.
- XIX. **Open registry**-A term used in place of flag of convenience or flag of necessity to denote registry in a country which offers favorable tax, regulator, and other incentives to shipowners from other nations.
- XX. **Operator** – The holder of a freight contract with a cargo shipper.

**NOW OUT IN PRINTS!!!**

The Latest Volume of the Admiralty Law Reports of Nigeria (ALRN) Parts 19-20, is now available for sale! Admiralty Law Reports of Nigeria (Parts 19-20) is an array of judgments on ADMIRALTY Cases from the Federal High Court through to the Supreme Court of Nigeria. The Reports will help you navigate through cases, as well as serve as tools to winning your cases on Admiralty Matters in Nigerian Courts. The Reports are edited by J.C. Anishere, SAN., who is the Editor-in-Chief.



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