THE LIMITS OF COMMON LAW RULES OF SEAWORTHINESS IN THE CONTEXT OF NIGERIAN JUDICIAL DECISIONS AND THE MERCHANT SHIPPING ACT (2007)

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Abstract

The ancient maritime law of yore which forms part of the received English common law stipulates that vessels/ships supplied by Ship Owners to Charterers, under Voyage and Time Charterparties, must be fit for the voyage or voyages envisaged, based on the prudent reasonable man standard. A vessel was usually hired for commercial operation for which the profit margin of the charterer will depend on the fitness and efficiency of the vessel, and, even where there are no express agreement, common law would readily imply a seaworthiness obligation on the Owner. A breach, depending on the circumstances, would lead to either termination or damages. However, the Nigerian courts in Coastal Shipping & Agencies Co. Ltd. v. Mandilas & Karaberiis Ltd., (1969) NSC 153, Narumah & Sons Ltd. v Niger-Benue Transport Company Ltd., (1989) LPELR-1940(SC) and NIMASA v Hensmor Nigeria Ltd. (2014) LPELR-22462(CA), respectively, appear not to be limited by the English common law rules in their application of the vessel's seaworthiness obligation in Nigeria. In addition, Sections 216-249 of the Nigerian Merchant Shipping Act, No. 27 of 2007 (MSA 2007) contain more expansive obligations and rules which exceed the ancient rules. This Paper starts with an examination of the common law requirement of seaworthiness for vessels used in carriage of goods by sea and also reviews the rationale behind the old rules. The Paper then critiques the Nigerian judicial decisions in Mandilas, Narumah, and Hensmor, and identifies the Nigerian divergence from the English rules. The author then reviews Sections 216-249 and 417 of the MSA 2007. In concluding, the Paper adopts the position that the current Nigerian statutory rules trumps the old common law because MSA 2007 has removed the determination of seaworthiness, safety, and fitness of sea-faring vessels, i.e.,, the safety of passengers, personnel (crew), and cargo on board the vessel, from the hands of private merchants, and conferred such on impartial and qualified ship surveyors and maritime experts.

Keywords: *Seaworthiness, Merchant Shipping Act, Charterparties, affreightment*

1. Introduction

In the carriage of goods by sea, ships and marine vessels are the means of transportation, and the essential characteristics of the maritime vessel is that it is a contrivance serving as a medium for transportation as it is able to navigate across waters on being propelled.[1] The ancient maritime law which forms part of the received English common law stipulates that vessels/ships[2] supplied by a

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[1]. *Ecodrill (Nig.) Ltd. v. Akwa Ibom Internal Revenue*, (2015)11 NWLR (Pt.1470) 303, at 341-342, paras. H-A; *Mobil Producing (Nig.) Unltd. v. Ayeni,* (2010) 4 NWLR (Pt. 1185) 586.

[2]. In this paper, the words—'vessel' and 'ship' are used interchangeably. Generally, a vessel or a ship is any structure, whether completed or in the course of completion, launched and intended for use in navigation and not propelled by oars or paddles. Kingsley E. Izimah, "The Procedure For Arrest And Detention Of Ship Under Maritime Law In Nigeria," August 7, 2023. Available at: https://www.tekedia.com/the-procedure-for-arrest-and-detention-of-ship-under-maritime-law-in-nigeria/. (Izimah). A 'vessel' or 'ship' is defined under Section 445 of the Merchant

Ship Owner[3] to a Charterer[4] under either a Voyage or Time Charterparty must be fit for the voyage or voyages envisaged by the parties, based on the prudent reasonable man standard.[5] In fact, where there are no express agreement for such, the common law would readily imply and impose such a seaworthiness obligation on the Owner, with a breach of such, depending on the circumstances, leading to either termination or damages.[6] Generally, there are two main types of contract carriage of goods by sea (transportation of goods by sea) in wide use, to wit: (a) Charterparty contract[7] and (b) Bill of Lading contract.[8] The bulk of maritime commercial activities involves carriage of goods, and the most important document used in this type of transaction is the Bill of Lading. While the Charterparty is a private contract between two principal parties (the Ship Owner and the Charterer), a Bill of Lading is the best available evidence of the contract of carriage between the Shipper[9] and

Shipping Act, No 27 of 2007 (MSA 2007), as a vessel of any type whatsoever that is not permanently attached to the seabed, including dynamically supported craft, submersibles of any other floating craft which shall include but not limited to Floating Production Storage and Offloading (FPSO) platform, as well as Floating Storage and Offloading (FSO) platform. Also, under Section 26 of the Admiralty Jurisdiction Act, 1991, Cap A5 Laws of Federation of Nigeria (LFN) 2004 (AJA), a ship is a vessel of any kind used or constructed for use of navigation by water, however it is propelled or moved and includes barge, lighter or other floating vessel, including a drilling rig, a hover-craft, an offshore industry mobile unit and a vessel that has sunk or is stranded and the remains of such vessel, but does not include a vessel under construction that has not been launched. Further, a vessel is a ship, brig, sloop, or other craft used or capable of being used to navigate on water. The structure's purpose must to some reasonable degree be to transport passengers, cargo or equipment from place to place across navigable waters. See, Coastal and Inland Shipping (Cabotage) Act No 5 of 2003. (Cabotage Act).

[3]. The Ship Owner is the natural or legal person who operates his own or a rented ship. A ship owner employs the captain and crew, and he also is civilly liable for obligations arising from the operation of the ship. So it is the owner of the ship or a person authorized to dispose of the ship on his behalf. In the maritime trader's law, a shipowner is specified by such phrases as: "shipping company" or "ship trader." See, "What does the shipowner do?," ShipHub Newsletter. Available at: https://www.shiphub.co/https://www.shiphub.co/what-does-the-ship owner- do/#:~:text= Who%20is%20the%20shipowner%3F,the%20operation%20of%20the%20ship.

[4]. The Chatterer is the person entitled to use the ship and the ship is said to be under charter. Chartering is the term used to name the renting of a whole ship, in an agreement between a shipowner and a renting party, in this case known as charterer, intermediated by a freight forwarder or a shipbroker. The charterer. The charterer is the individual or organization renting the ship. See, "Chartering: what is it and how does it work," Fox Brasil Newsletter. Available at: https://foxbrasil.com/blog/2022/03/21/chartering-what-is-it-and-how-does-it-work/#: ~:text=Chartering % 20is%20the%20term%20used,or%20organization%20renting%20the%20ship.

[5]. Per Scrulton, LJ in *FC Bradley and Sons v Federal Steam Navigation* (1926) 24 Ll. L Rep 446.

[6]. Aleka Mandaraka-Sheppard, *Modern Admiralty Law*, 3rd ed. (Cavendish Publishing Ltd, London 2013) 245; Christopher Hill, *Maritime Law*, 1st ed. (Cavendish Publishing Ltd., London, 2001) 551; L. Chidi Ilogu, *Essays on Maritime Law and Practice.* (Academic Press Plc, Lagos, 2006); See also, MSA 2007 (n 2) and Cabotage Act (n 2).

[7]. The charterparty contract is defined in (n 4), above.

[8]. The Bill of Lading (BL or BoL) is a legal document issued by a carrier (transporting company) to a shipper that details the type, quantity, and destination of the goods being carried. A bill of lading also serves as a shipment receipt when the carrier delivers the goods at a predetermined destination. This document must accompany the shipped products, no matter the form of transportation, and must be signed by an authorized representative from the carrier, shipper, and receiver. Evan Tarver, "Bill of Lading: Meaning, Types, Example, and Purpose." March 17, 2023. Available at: https://www.investopedia.com/terms/b/billoflading.asp#:~:text =A%20bill%20of%20 lading%20 (BL,goods%20at%20a%20predetermined%20destination.

[9]. The Shipper is the owner of goods who then entrusts them on board a vessel for delivery abroad, by charter-party or otherwise. 2. Also, a Dutch word, signifying the master of a ship.

the Carrier,[10] and it also becomes a binding contract when it reaches the hands, properly and unconditionally, of an innocent third party.

A Charterparty is a private agreement between two parties, individuals or corporate, and like any other contract, only those who entered into it can sue or be sued upon it. The person entitled to use the ship is the Charterer and the ship is said to be under charter. Charterparties can be divided into three: (a) Voyage Charterparty, (b) Time Charterparty, and (c) Demise Charterparty. An essential term of the charterparty agreement is that the vessel must be 'seaworthy,' i.e., that "the ship must have that degree of fitness which an ordinary careful owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it. The test is: Would a prudent owner have required that it should be made good before sending his ship to sea, he known of if?"[11] At common law, the effect of a term such as 'seaworthiness of a vessel' is very material, and a vessel was usually hired for commercial operation for which the profit margin of the charterer will depend on the fitness and efficiency of the vessel. Borrowing from Section 11(1)-(3) of the Sale of Goods Act (SOGA),[12] one can argue that the Charterer can sue to recover any money paid in advance to the Owner, and using Section 11(1) of SOGA analogically, he can repudiate the contract for the breach of a condition[13] by the Owner.[14] Also, based on *The Diana Prosperity*,[15] it can further be argued that, any inaccuracy in any part of the description of the ship, especially, the seaworthiness clause, the Charterers may refuse delivery and treat the contract as discharged. The seaworthiness clause must be assumed to be vital, i.e., a condition of the contract, breach of which entitles the charterers (irrespective of the seriousness of the breach) to reject.

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[10]. The Carrier is anyone that transports people or property for hire by any means of conveyance (land, water, air or pipeline). There are two types of carriers: common carriers and private carriers.

[11]. See, Scrulton, LJ in *FC Bradley* (n 5).

[12]. The Sale of Goods Act, 1893, 56 & 57 Vict. Ci-i. 71. In England, the Sale of Goods Act 1979 consolidates the Sale of Goods Act 1893. The primary source of law of sale of goods in the former territories of the British Empire and Commonwealth is the English Sale of Goods Act 1893 (Canada is an exception which has adopted hybrid legislation incorporating elements of the United States Uniform Commercial Code). In Nigeria, it has been held to be a statue of general application and so applicable in the country. See Lawal vs. Younan (1961), All N.L.R.245 at 255. The Sale of Goods Law in the Southern States of Nigeria is a verbatim reproduction of the 1893 Act. States in the northern Nigeria have their Sales of Goods Law with some variations. 3Kanyip B.B., 'Service Liability under Nigerian Consumer Law' Consumer Journal, (2005) 1(1), 90-95. See also Kanyip B.B., Consumer protection in Nigeria: Law, Theory and Policy, (2005) Abuja: Reckon Books Limited.

[13]. Okay Achike, *Commercial Law in Nigeria*. (Fourth Dimension, Enugu, 1985) 201; P.S Atiyah, *The Sale of Goods*, 8th ed. (Pitman, London, 1990) 570; T.O. Dada, *General Principles of Law*, (T.O. Dada Co., Lagos, 2006) 564; Gaius Okonkwo Ezejiofor and C.U. Ilegbune, *Nigerian Business Law*, (Sweet & Maxwell, London, 1982) 174; E.F. Uvieghara, *Sale of Goods (and Hire Purchase) Law in Nigeria*. (Malthouse, Ikeja, 1996) 101.

[14]. Unless he has waived the breach and elected to treat it as a warranty, or the contract is non-severable and he has accepted the vessel or part as provided for in Section 11(4) of the Sale of Goods Act

[15]. [1976] 2 Lloyd's Rep 621, [1976] 3 All ER 570.

Specifically, in *The Diana Prosperity*, the House of Lords held that only those parts of the description of the ship, which could be said to be "substantial ingredient" of the ship's identity, could be regarded as conditions of the contract. As the seaworthiness clause is a condition and a "substantial ingredient," the charterers will have the right to refuse delivery and to treat the charter as terminated provided he can prove that either:

(i). the total effect of the misdescription is so serious that it goes to the root of the contract and deprives the charterers of substantially the whole benefit of the contract; or
(ii). the owners refuse or fail to take steps to make the ship comply with the description in such manner that their refusal or failure shows an intention no longer to be bound by the contract and so amounts to a repudiation of the charter.
(iii). The misdescription is such that the owners are unable by the cancelling date to satisfy the requirements of readiness or fitness, for the purposes of the cancelling clause, and the charterers thereupon cancel.

Be that as it may, the Nigerian courts in *Coastal Shipping & Agencies Co. Ltd. v. Mandilas & Karaberiis Ltd.*,[16] *Narumah & Sons Ltd. v Niger-Benue Transport Company Ltd.*,[17] and *NIMASA v Hensmor Nigeria Ltd.*,[18] respectively, appear not to be limited by the English common law rules in their application of the vessel's seaworthiness obligation in Nigeria. In addition, Sections 216-249 and 417 of the Nigerian Merchant Shipping Act, No. 27 of 2007, (MSA 2007)[19] contain more expansive obligations and rules which exceed the ancient rules. This Paper starts with an examination of the common law requirement of seaworthiness for vessels used in carriage of goods by sea and also reviews the rationale behind the old rules. The Paper then critiques the Nigerian judicial decisions in *Mandilas*, *Narumah* and *Hensmor* and identifies the Nigerian divergence from the English rules. The author then reviews Sections 216-249 and 417 of the MSA 2007. In concluding, the Paper adopts the position that the current Nigerian statutory rules trumps the old common law because MSA 2007 has removed the determination of seaworthiness, safety, and fitness of sea-faring vessels, i.e.,, the safety of passengers, personnel (crew), and cargo on board the vessel, from the hands of private merchants, and conferred such on impartial and qualified ship surveyors and maritime experts. Under Section 218 of MSA 2007, any person who fails to comply with and does or attempts to do any act contrary to the provisions of any safety regulations made under Section 217 above, commits an offence and is liable on conviction to a fine not less than

[16]. (1969) NSC 153 (Mandilas).
[17]. (1989) LPELR-1940 (SC). (*Narumah*).
[18]. (2014) LPELR-22462(CA). (*Hensmor*).
[19]. MSA 2007 (n 2).

Three Hundred Thousand Naira (NGN300,000.00 (about US$300.00 as of November 2023)).[20] Also, ships operating in Nigeria must not proceed to sea without a 'Certificate of Survey.'[21] Section 236 of MSA 2007 also prohibits uncertified vessels from proceeding to sea without appropriate certificates. In particular, the Master and Owner of a ship which proceeds to sea without a certificate in accordance with Section 236, shall be deemed to have committed an offence and on conviction shall be liable to a fine not less than Five Hundred Thousand Naira (NGN500, 000.00(US$500.00)) or to imprisonment for three years or to both.[22] Apart from payment of fine upon conviction for non-compliance with safety regulations either under the MSA 2007, or, under the various international marine safety conventions, the vessel may be detained under Section 222 of MSA 2007. In concluding, Section 417 lists un-seaworthiness as one of the bases for detention of a vessel by Nigerian maritime authorities.[23]

2. Brief Discussion of Major Types of Charterparties

Most charterparties contain well-established terms and are usually in standard form contracts agreed to, setting out by various conferences and known by such code names as Baltime, Gencon, Shelltime etc. However, the implied undertakings at common law in relation to matters like seaworthiness, deviation, delay and dangerous goods apply to charterparties generally. The type of charterparties usually determines other features, and in this connection, there are three main types of charterparties namely: Demise, Time and Voyage charterparties.

2.1.Voyage Charterparty

The voyage charter is one of the oldest forms of contract for the carriage of goods by sea.[24] In a voyage (trip) charterparty, freight is paid by the chatterer.[25] The amount of freight payable can be agreed as a lump sum, but more usually depends on the quantity of cargo carried. It does not depend on the time that the voyage takes. The same principle holds goods for the consecutive

[20]. *Ibid.,* at Section 218.
[21]. *Ibid.,* at Section 222.
[22]. *Ibid.,* at Section 236(3).
[23]. *Ibid.,* at Section 417.
[24]. Here, the ship is engaged to carry a full cargo on a single voyage. The vessel is manned and navigated by the owner. Clearly, such a charter is merely a special kind of contra of carriage. This form is adaptable to any commercial situation in which the thing wanted is the moving of a shipload of cargo from one point to another. In fact, it is the form most frequently encountered.
[25]. The primary payment obligation under a voyage charter is freight. Freight is a fixed price for a particular voyage carrying a particular cargo or cargoes. In other words, it is the remuneration payable to a Ship Owner for the carriage of the cargo. It usually includes the Ship Owner's operating costs such as crew wages, the fuel consumed on the voyage and the Ship Owner's profit margin.

voyage charterparty, except that there, freight is paid for a series of consecutive voyages. The Charterer pays the Ship Owner freight, and the basis on which freight is calculated being independent of the time the voyage (or series of consecutive voyages) actually takes. Thus, the Ship Owner bears the risk of any delay. If the voyage takes longer than expected, the ship owner loses out: he cannot claim any extra freight from the charterer to compensate for the delay; nor can he make use of the vessel for the period to earn freight elsewhere.

2.2.Terms Peculiar to Voyage Charterparty

Although many of the terms of voyage charters are similar, a number are unique to each: (a) voyage charters make provisions for freight, the amount of which usually depends on the amount of cargo loaded; (b) all voyage charterparties have clauses stipulating how much cargo the charterer must load and how quickly it must be loaded and discharged; (c) to encourage as little delay as possible, all voyage charter parties have laytime and demurrage clauses, which are intended to hurry up the cargo handling process; (d) laytime is the time in which (after a valid notice of readiness has been tendered) the charterer is allowed to load and/or discharge. If he exceeds the laytime allowed, demurrage becomes payable at an agreed rate; and (d) demurrage can be technically defined as liquidated damages for the charterer's breach of contract in not completing the handling the cargo within the laytime.

2.3.Time Charterparty

A time charterparty is a contract (between the Ship Owners and the Chatterers for the hire of a ship owned by the Ship Owners, and the services of its crew for a period of time. The contract typically begins with the date of the charterparty, the names and domicile of the contracting parties, and the name, present position, the description and condition of the vessel. The Charterers will have the use of the vessel for an agreed period, which is typically fixed as a number of calendar months. It is obviously difficult for the Charterers to be able to predict exactly when the last voyage will be completed, so a margin is usually agreed at the Charterer's option to allow for the final voyage to be completed. The consideration moving from the Charterer is the payment of 'hire.' There will be a hire clause including a withdrawal provision conferring upon the Ship Owner the right to withdraw the vessel for non-payment of hire. Hire is paid at the contract rate for the period of the charterparty, and does not depend on the number of voyages made, or the tonnage of cargo carried. It follows that it is in the interests of the Charterers to hurry, because they pay hire at the same rate however much, or little use, they make of the vessel over the charterparty period. It also follows

that it is the Charterers who bear the risk of any delay: In other words, delay costs the Charterers money, because they continue to pay hire, whereas the Ship Owners are entitled to the same rate of hire, however much the vessel is delayed. Although the Master (Captain) of the ship and crew members are engaged by the Ship Owner in a time charter, the Master is under the orders and directions of the Charterers and must go where the Charterers direct.

2.4.Clauses in a Time Charterparty

Many times charter clauses are similar to those found in voyage charters, however, since in a time charterparty, the Charterers bear the risk of delay, there are substantial differences between the two types of charter: (a) the time charterparty always contains stipulations as to the speed of the vessel whereas voyage charterparty needs not and rarely does. The speed of the vessel is of importance to time Charterers because on it directly depends the number of voyages they can complete within the period; (b) since under a time charter it is in the interest of the Charterer to hurry up, there is no need for laytime and demurrage provisions. On the other hand, however, there will be an 'off-hire clause' to prevent hire continuing to be payable when the ship is unusable to the chartered e.g. due to repairs.

2.5.Demise Charterparty

This is in many respects similar to time charterparties. Demise charterparties are also used for a period, with the hire payable depending upon the periods, rather than the number of voyages made, or the tonnage of cargo carried. It must be noted that the time charterparty is the more modern form of agreement. The origins of the demise charter pre-dates those of time charterparties. Currently, the charterparty by demise is rarely used for the general carriage of freight. Charters by demise are usually used for short term hire of passenger vessels. Recently however, longer time charterparties have become more common again, especially in the oil tanker trade.

3. Pre-Merchant Shipping Act 2007: The Position of the English Common Law Rules on Seaworthiness Clause

At common law, a ship is not seaworthy if there is a defect in the equipment or appliances sufficient to render it unfit for the due and safe carrying of the crew or the cargo, not being a defect which can be readily cured during the voyage.[26] In Strouds Judicial Dictionary, 'seaworthy' was defined to mean that the ship shall be in a fit state as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured at the time of sailing upon it. If the

[26]. *Huddart Parker Ltd. v. Cotter* (1942-43) 66 C.L.R 624.

assurance attaches before the voyage commences, it is enough that the state of the ship be commensurate to the risk: and if the voyage be such as to require a different complement of men or state of equipment in different parts of it - as if it were a voyage down a canal or river and thence across to the open sea - it would be enough if the vessel were, at the commencement of each stage of each navigation, properly manned and equipped for it.[27]

The Ship Owner usually warrants that the ship is seaworthy— "tight, staunch and strong, and in every way fitted for the voyage" or that the ship is "with hull, Machinery & Equipment in a thoroughly efficient state."[28] Unseaworthiness can, therefore, cover an enormous variety of matters, such as a leaking vessel, an ill-equipped vessel, a vessel without sufficient supplies for the voyage may be unseaworthy, as well as an undermanned vessel or a vessel without sufficient equipment to handle the cargo. Thus, the warranty of fitness for voyage and seaworthiness mean the same thing. By seaworthiness, the shipowner gives an undertaking that the ship is fit for the purpose for which it is being hired. In maritime contracts, such undertaking is called 'warranty.'"[29]

There is therefore generally an express warranty (if it is included expressly in the agreement between the parties as in Clause 5 herein) or an implied warranty (when not expressed in the contract) whenever a shipowner supplies a vessel, ship or lighter to carry goods for reward. There are a number of other warranties. The obligation to exercise due diligence to make the ship seaworthy "before and at the beginning of the voyage" continued from beginning to the time the ship sank.[30] Also, at common law, it is common in a voyage charterparty for the Ship Owner to warrant that the ship is seaworthy— "tight, staunch and strong, and in every way fitted for the voyage." This undertaking refers to the condition in which the vessel may be at the time of the charter and her fitness for completing the preliminary voyage, that is, the voyage of the vessel to the port named in the charter for loading the cargo. Such clauses probably owe much to the fact that the common law imposes an implied warranty of seaworthiness upon the owners of seagoing cargo-carrying vessels subject to any particular express terms in particular contracts of carriage. Thus, without such a clause, owners would be under an absolute obligation to provide a seaworthy

[27]. *Stroud's Judicial Dictionary of Words and Phrases*, 7th ed., Vol. 3 (P-Z) (Thomson, Sweet & Maxwell, London, 2005) 2460 - 2461.
[28]. *FC Bradley and Sons v Federal Steam Navigation* (n 5).
[29]. *Owners of the Cargo on Ship Maori King v. Hughes* (1895) 2 Q.B. 550, 558.
[30]. *Maxine Footwear Co. Ltd. and Anor v. Canadian Government Merchant Marine Ltd.* (1959) 2 All E.R. 740.

vessel for the carriage in question. It is an absolute obligation and not merely an obligation to exercise due diligence to make a vessel seaworthy.

The charterer is far more interested in the fitness of the vessel for the voyage for which she was chartered, thus, there is an implied obligation. As a matter of general interpretation, the courts assume that the seaworthiness of the vessel "goes without saying." Thus, an obligation on the Ship Owner to provide a seaworthy vessel will be implied unless, at common law, the contract contains an express and unequivocal term inconsistent therewith, allowing the Ship Owner to exempt himself from liability for unseaworthiness. The obligation is so important that particularly clear words must be used for exemption. Further, at common law, seaworthiness is an important part of the Ship Owner's obligations, and if the Charterer is provided with a vessel that is unfit for charter and cannot be made fit before the voyage is to begin, he is entitled to throw up the charter and refuse to load his cargo. However, if on the other hand the voyage has begun, the charterparty cannot easily be rescinded and the Charterer's primary remedy is to sue the Owners for damages to compensate him for losses caused by the unseaworthiness.

In the case of both voyage and time charterparties the vessel is generally guaranteed seaworthy at the port of delivery. This undertaking is variously expressed in the variety of standard forms for example, it is usually required that on delivery the ship is to be "tight, staunch, strong, in good order and condition and in every way fit for the service." or "with hull, machinery and equipment in thoroughly efficient state", or simply that on delivery the ship is to be "in every way fitted for ordinary cargo service." In whatever way that it is couched, it is generally taken to mean that the ship must be seaworthy and in the absence of express undertakings of seaworthiness on delivery, seaworthiness is implied. As stated above, for the meaning of seaworthiness, it was said to mean that "the ship must have that degree of fitness which an ordinary careful owner would require his vessel to have at the commencement of her voyage having regard to all the probable circumstances of it. Would a prudent owner have required that it should be made good before sending his ship to sea, he known of if? [31] At common law, however, as important as it is, the obligation of sea-worthiness is so wide-reaching that it may easily be breached in comparatively trivial ways and it would be unreasonable that for minor breaches the charterers should have the right to terminate the charter. It is perhaps for this reason that the undertakings on to seaworthiness either at the time of the charter is made or at the time of delivery may, sometimes, not be conditions of the contract.

[31]. Per Scrulton, LJ in *FC Bradley and Sons v Federal Steam Navigation* (n 5).

They may usually be treated as intermediate terms and as such whether breach of them allows the charterers to treat the charter as discharged depends on the nature and consequences of the breach.[32] Where therefore a ship is found to be unseaworthy on or before delivery but the unseaworthiness does not go to the root of the contract, the charterers may not refuse delivery and treat the contract as discharged. They may only call upon the owners to make the ship fit for delivery in accordance with the requirements of the charter.

One salient question to ask is that: 'at what point is seaworthiness determine?' Under the received common law rules applicable in Nigeria, Section 39 of the English Marine Insurance Act 1906,[33] states that a ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured.[34] In the case of an insurance for a certain voyage, it is clearly established that there is an implied warranty that the vessel shall be sea-worthy. This means the ship shall be in a fit state, as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured, at the time of sailing upon it: [35] Yet, the implied obligation of seaworthiness must apply at a particular time, because it would be extremely hard upon the Ship Owner if he were to be held to be in breach of the charterparty simply because at some stage of the voyage the vessel was arguably unseaworthy.[36] Nor can there be an overall standard of seaworthiness which could be applied at all time and places and to all vessels and cargoes. At common law, a ship must be seaworthy at the port of departure for the voyage and cargo contemplated. The test to be applied is that of the 'prudent Ship Owner.' If it can be said that a prudent Ship Owner would not have sent the vessel to sea on that voyage, with that cargo, without repairs being carried out or defects remedied, then the ship is unseaworthy. To reiterate, unseaworthiness can, therefore, cover an enormous variety of matters, such as a leaking vessel, an ill-equipped vessel, a vessel without sufficient supplies for the voyage may be unseaworthy, as well as an undermanned vessel or a vessel without sufficient equipment to handle the cargo.

Having discussed above rules, this article argues that issues of fitness and safety of vessels at sea should not be left to contractual and bargaining powers of the parties. Thus, the current Nigerian statutory rules should continue to prevail over the old common law because the MSA 2007 takes

[32]. *Hong Kong Fir Shipping Co. Ltd. v. Kawasaki Kisen Kaisha Ltd.* (1962) 2 QB 26: (1961) 2 Lloyds Rep 478.
[33]. Marine Insurance Act 1906, UK Public General Acts, 1906, 41 (Regnal. 6 Edw_7).
[34]. See, *Narumah* (n 17), where the vessel was inspected prior to the commencement of the voyage, but found to be without fault. Subsequently, during voyage, it started to take in water into its hull, cargo area, and deck
[35]. *Dixon v. Sadler* (1839) 9 L.J. Ex.48 at 50 per Park B.
[36], *Narumah* (n 17).

the task of ensuring fitness of the ship and the safety of passengers, personnel, and cargo on board the vessel from the purview of private agreements, by allowing the public maritime authority to determine the fitness and safety of ships. Thus, ships operating in Nigeria must not proceed to sea without a 'Certificate of Survey,'[37] and Section 236 of MSA 2007 also prohibits uncertified vessels from proceeding to sea without appropriate certificates.

4. A Review of Salient Provisions Under the Merchant Shipping Act 2007

In this part, the Paper reviews the salient parts of the MSA 2007 that have revolutionized the subject of seaworthiness of ships in Nigeria. Currently, Part XII, i.e., Sections 216-249 of the MSA 2007 appear more expansive than the ancient rules. In particular, the exhaustive provisions under Part XII contain innovative rules and general provisions on "Safety of Life at Sea."[38] The MSA 2007 makes provisions for application of some related international maritime Safety Conventions and Protocols in Nigeria.[39] The Minister of Transport is also empowered to make regulations for maritime safety.[40] Under Section 218 of MSA 2007, the breach of safety regulations attracts a conviction and a fine not less than Three Hundred Thousand Naira (NGN 300,000.00—about US$300 as of November 2023).[41] To ensure adequate monitoring of safety of maritime vessels, the MSA 2007 now requires the issuance of proper 'Survey of Ships.'[42] The Minister of Transport is empowered to appoint such number of qualified persons as 'Surveyors of Ships,' as he deems necessary for the purposes of implementing the provisions of Part XII of the MSA 2007.[43] Ships operating in Nigeria are to be surveyed annually.[44] A surveyor shall keep a record of the inspections that he has made as well as the certificates that he has issued in such form and with such particulars respecting the inspection and certificates as the Minister may direct.[45] Ships operating in Nigeria must not proceed to sea without a 'Certificate of Survey.'[46] A breach will attract payment of fine, imprisonment of the Captain and/or Owner, and detention of the vessel.[47] Section 223 of MSA 2007 also states the contents of the declaration of survey and partial surveys

[37]. MSA 2007 (n 2), at Section 222.
[38]. *Ibid.* per MSA 2007, at Part XII, especially Sections 216-249.
[39]. *Ibid.,* at Section 216
[40]. *Ibid.,* at Section 217.
[41]. *Ibid.,* at Section 218.
[42]. *Ibid.,* at Section 219-226.
[43]. *Ibid.,* at Section 219.
[44]. *Ibid.,* at Section 220.
[45]. *Ibid.,* at Section 221.
[46]. *Ibid.,* at Section 222.
[47]. *Ibid.*

accompanying the certificate.[48] Under Section 224, upon a denial of a certificate, an Owner may appeal, if a surveyor refuses such declaration.[49] The ship surveyors are mandated to make returns.[50] There are provisions for recognition of certificate of survey granted by other countries.[51] The MSA 2007 also makes exhaustive provisions regarding due process and all the procedural steps to be followed by the ship surveyors in the issuance of certificates.[52] Section 227 governs the issue of certificates of survey, generally.[53] There are provisions for the elements to be considered for the issuance of safety certificates to passenger ships, e.t.c.,[54] issue to cargo ships of safety equipment and exemption certificates,[55] issue to cargo ships of radio certificates and exemption certificates,[56] and issue of general safety certificates, etc., on partial compliance with rules, respectively.[57] Section 232 of MSA 2007 further provides for the transmission of certificates.[58] There are rules for modification of provisions for exemption of ships.[59] The Minister may give the Ship Owner a notice of alterations and additional surveys.[60] The certificate must be posted on board of the vessel.[61] Section 236 of MSA 2007 prohibits uncertified vessels from proceeding to sea without appropriate certificates,[62] while Section 237 incorporates the modification of Safety Convention certificates in respect of lifesaving appliances.[63] Sections 238 and 239 deal with the duration of certificates and state that the expired and cancelled certificates are to be given up.[64] Section 240 provides for extension of certificates.[65] There are provisions for Safety Convention

[48]. *Ibid.,* at Section 223.
[49]. *Ibid.,* at Section 224.
[50]. *Ibid.,* at Section 225.
[51]. *Ibid.,* at Section 226.
[52]. *Ibid.,* at Sections 227-243.
[53]. *Ibid.,* at Section 227.
[54]. *Ibid.,* at Section 228.
[55]. *Ibid.,* at Section 229.
[56]. *Ibid.,* at Section 230.
[57]. *Ibid.,* at Section 231.
[58]. *Ibid.,* at Section 232.
[59]. *Ibid.,* at Section 233.
[60]. *Ibid.,* at Section 234.
[61]. *Ibid.,* at Section 235.
[62]. *Ibid.,* at Section 236.
[63]. *Ibid.,* at Section 237.
[64]. *Ibid.,* at Sections 238 and 239.
[65]. *Ibid.,* at Section 240.

certificates and their admissibility in evidence.[66] There are rules for issue of certificates by one Government at request of another.[67] Finally, there are stiff penalties for forgery of certificates.[68] The MSA 2007 also contains rules for Safety Convention Ships of other countries.[69] Certificates of Convention ships of other countries are generally recognized in Nigeria.[70] There are also rules for recognition of modified survey of passenger ships holding Convention certificates,[71] and modified survey of cargo ships holding Convention certificates.[72] The MSA 2007 further grants sundry privileges to ships holding Convention certificates.[73] There are also further provisions as to the production of Convention certificates.[74]

Clearly, the maritime rules of yore have undergone significant changes over time, and rather than the merchants' agreement over the fitness and safety of the ship, in Nigeria, the Minister of Transport and the ship surveyors now possess the overriding powers to determine the seaworthiness of ships. The above statutory rules notwithstanding, the common law rules will still help, significantly, in interpreting some provisions of the MSA 2007.

It must be noted that under Sections 218, 222 and 236(1),(2)&(3) of the MSA 2007, a law enforcement authority may detain a vessel sailing without valid certificates. Sub-section 4 of the section makes it a criminal offence to sail without valid or with expired certificates. As shown above, in recognition of the need to incorporate continuous evolution and growth of statutory and codified law, Section 216 of MSA 2007 provides for the application of some related international maritime safety Conventions and Protocols to also govern ships operating in Nigeria. Thus, as from the commencement of the MSA 2007, the following Conventions, Protocols and their amendments relating to maritime safety shall apply, that is- (a) International Convention for the Safety of Life at Sea of 1974 (SOLAS),[75] (b) Protocol relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto,[76] (c) International Convention on

[66]. *Ibid.,* at Section 241.
[67]. *Ibid.,* at Section 242.
[68]. *Ibid.,* at Section 243.
[69]. *Ibid.,* at Sections 244-249.
[70]. *Ibid.,* at Section 244.
[71]. *Ibid.,* at Section 245.
[72]. *Ibid.,* at Section 246.
[73]. *Ibid.,* at Section 247.
[74] *Ibid.,* at Section 248. Section 249 is the interpretation section.
[75]. International Convention for the Safety of Life at Sea, 1974 (SOLAS). Available at: https://www.imo.org/en /About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx.
[76]. Protocol relating to the International Convention for the Safety of Life at Sea, 1988 and Annexes I to V thereto. Available at: https://www.imo.org/en/KnowledgeCentre/Conferenc esMeetings/Pages/SOLAS.aspx.

Standards of Training Certification and Watch Keeping of Seafarers, 1978 (STCW) as amended,[77] (d) International Convention on Maritime Search and Rescue, 1979 (SAR)[78] (e) International Labour Organisation Convention (No. 32 of 1932) on Protection Against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932),[79] (f) International Convention on Maritime Satellite Organisation, 1976 (INMAR- SA T) and the Protocol thereto,[80] (g) the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990,[81] (h) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol thereto,[82] (i) International Convention on Salvage, 1989,[83] (j) Placing of Seamen Convention, 1920,[84] (k) International Ship and Ports Facility Security (ISPS) Code,[85] and (l) International Convention for Safe Containers, 1972.[86] The sum total of all these applicable related international maritime safety Conventions and Protocols governing ships operating in Nigeria, is that the subject of safety of passengers, seamen, cargo, and the vessel is now measured against strict ascertainable written and codified standards. Unlike the old common law rules that left the standards of international maritime safety with private parties the MSA 2007 and the applicable international maritime safety Conventions and Protocols govern ships operating in Nigeria, is now being regulated by uninterested, impartial, and neutral regulatory authorities in different countries who are most equipped to monitor safety at the sea.

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[77]. International Convention on Standards of Training Certification and Watch Keeping of Seafarers, 1978 (STCW) as amended. Available at: https://www.imo.org/en/OurWork/HumanElement/Pag es/STCW-Convention.aspx.

[78].International Convention on Maritime Search and Rescue, 1979 (SAR). Available at: https://www. imo.org/en/About/Conventions/Pages/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx.

[79]. International Labour Organisation Convention (No. 32 of 1932) on Protection Against Accident of Workers Employed in Loading or Unloading Ships (Dockers Convention Revised 1932). Available at: https://www.ilo.org/ dyn/normlex/en/f?p=NORMLEXPU B:12100:0::NO::P12100_ILO_CODE:C032.

[80]. International Convention on Maritime Satellite Organisation, 1976 (INMAR- SA T) and the Protocol thereto. Available at: https://treaties.un.org/doc/Publication/UNTS/Volume%201143/volume-1143-I-17948-English.pdf.

[81]. The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and its Protocol of 1990. Available at: https://www.imo.org/en/About/Conventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx#:~:text=The%20Convention%20establishes%20 a%20regime,or%20neglect%20of%20the%20carrier.

[82]. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988 and the Protocol thereto. Available at: https://www.imo.org/en/About/Conventions/Pages/SUA-Treaties.asp x#:~:text= The%20 main%20 purpose%20of%20the,to%20destroy%20or%20damage%20it..

[83]. International Convention on Salvage, 1989. Available at: https://www.imo.org/en/About/Conventions/Pages/ International-Convention-on-Salvage.aspx.

[84].Placing of Seamen Convention, 1920. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX PUB:55 :0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C009,/Document

[85]. International Ship and Ports Facility Security (ISPS) Code. Available at: https://nimasa.gov.ng/services/inter national-ship-and-port-facility-security-isps/.

[86]. International Convention for Safe Containers, 1972. Available at: https://www.imo.org/en/OurWork/Safety/ Pages/Containers-Default.aspx.

In addition to the MSA 2007 and the related international maritime safety Conventions and Protocols govern ships operating in Nigeria, Section 217 of MSA 2007 also provide for subsidiary legislation on maritime safety to govern ships operating in Nigeria—Regulations. The Minister of Transport may make such regulations as he deems necessary or expedient for the purpose of carrying out the provisions of Part XII of MSA 2007.[87] Further, without prejudice to the generality of the above powers, the Minister may by regulation provide for- (a) the survey of ships and the issue of certificates; (b) the types and forms of certificates; (c) the construction and equipment of ships including the provision of lifesaving and fire- fighters appliances; (d) radio communications in ships; (e) the safety of navigation; (f) the carriage of grain by ships; (g) the carriage of dangerous goods by ships; (h) the safety of navigation; (i) the design, construction, surveys and marking of nuclear ships; (j) the management and safe operations of ships; (k) the construction, surveys and marking of high speed crafts; and (l) special measures to measures to enhance the memorandum on port state control.[88] These regulations made under Section 217, shall, in the case of ships to which the International Convention for the Safety of Life at Sea, 1974 (SOLAS)[89] applies, include such requirements as appear to the Minister necessary.[90] Section 217 further shows the impact of regulatory authorities on safety standards on Nigerian seas, and that, unlike the old common law rules, seaworthiness is now being regulated by uninterested, impartial, and neutral regulatory authorities in different countries who are most equipped to monitor safety at the sea. Thus, to ensure strict compliance with the provisions of the MSA 2007 and the applicable international maritime safety Conventions and Protocols governing ships operating in Nigeria, Section 218 of MSA 2007 imposes penalties for disobedience of the codified safety rules and for breach of safety regulations. Any person who fails to comply with and does or attempts to do any act contrary to the provisions of any safety regulations made under Section 217 above, commits an offence and is liable on conviction to a fine not less than Three Hundred Thousand Naira (NGN300,000.00 (about US$300.00).

Section 219 of MSA 2007 introduces the requirement for empaneling 'Surveyors of Ships' who will issue survey certificates as evidence of compliance with all safety rules. These certificates are to be issued by Surveyor of Ships or a Radio Surveyor. The Minister may appoint such number of

87. MSA 2007 (n 2) at Section 217(1).
88. *Ibid.,* at Section 217(2).
89. International Convention for the Safety of Life at Sea, 1974 (n 75).
90. MSA 2007 (2) at Section 217(3).

qualified persons as 'Surveyors of Ships,' as he deems necessary for the purposes of Part XII of the MSA 2007, and the Minister may, from time to time, recognise any qualified person as a Surveyor of Ships for the purposes of MSA 2007, whether generally or for any specific purpose, or occasion.[91] Currently, every Surveyor of Ships and every Radio Surveyor shall have and perform the powers, functions and duties conferred on him by MSA 2007 and such other powers, functions and duties as may be necessary to carry into effect the provisions of Part XII. Without prejudice to the generality of Section 219(3), a Surveyor of Ships or a Radio Surveyor may-

> (a) in the execution of his duties, at all reasonable times, go on board any Nigerian ship, wherever the ship may be and any other ship while the ship is in Nigeria, and without unnecessarily detaining or delaying the ship from proceeding on any voyage or excursion, survey or inspect the ship or any part of the ship, or any of the machinery, boats and equipment, cargo and other property or articles on board the ship, and any certificates or other documents which relate to the ship, or to any officer of the ship, and to which this Act applies; and
> (b) in consequence of an accident in a ship or for any other reason he considers necessary, require the ship to be taken into dock for the purpose of surveying or inspecting the hull of the ship. [92]

Finally, the Minister may make more rules as to the powers, functions and duties of surveyors.[93] Under Section 220 of MSA 2007, safety of ships has now been upgraded to a continuous process standard, as ships are to be surveyed annually. The Owner of a Nigerian ship or coastal trade and inland water ship, shall cause the ship to be surveyed in the manner provided under Part XII, at least once every year. If the ship referred to in Section 220(1) is, during the whole of the last month of any annual period prescribed, absent from Nigeria, the Owner shall cause the ship to be surveyed within one month from the date on which the ship next returns to a Nigerian port.[94]

Section 221 provides for the rules governing surveyor's record of inspections and certificates. A surveyor shall keep a record of the inspections he makes and certificates he issues in such form and with such particulars respecting the inspection and certificates as the Minister may direct.[95]

In further ensuring the compliance with the provisions of the MSA 2007 and other applicable international safety marine conventions, under Section 222 of MSA 2007, ships are not to proceed to sea without certificate of survey. This exposes the Ship Owner to both payment of fine and imprisonment upon conviction. There is also the power to detain a ship for non-compliance with

[91]. *Ibid.,* at Section 219(1)&(2).
[92]. *Ibid.,* at Section 219(3)&(4).
[93]. *Ibid.,* at Section 219(5).
[94]. *Ibid.,* at Section 220(1)&(2).
[95]. *Ibid.,* at Section 221.

safety standards. In Nigeria, no ship to which Section 222 applies, shall ply or proceed to sea or on any voyage or excursion unless there is a valid certificate of survey in force in respect of that ship under Part XII, and the certificate must be applicable to the voyage or excursion on which the ship is about to proceed.[96] Section 222 applies to—(a) a Nigerian registered ship; (b) any coastal trade and inland waters ship; and (c) any other passenger ship, while it is within any port in Nigeria. A ship to which Section 222 applies that attempts to ply or go to sea without producing a valid certificate of survey may be detained until the certificate is produced.[97] It was the power to detain a ship for non-compliance with safety standards that was in issue in *Hensmor*.

Section 227 of MSA 2007 governs, the issuance of certificates of survey. The Minister on receipt of a declaration of survey from the Surveyor, shall, if satisfied that Part XII has been complied with, issue in duplicate a certificate of survey stating the compliance, and stating-(a) the limits, if any, beyond which the ship is not fit to ply or proceed; (b) the number of persons, including the master, comprising the crew of the ship for whom accommodation is provided; (c) the number of passengers, if any, that the ship is fit to carry, distinguishing if necessary, the number of passengers to be carried in each part of the ship, and conditions and variations to which the number is subject; and (d) any other particular as may be prescribed.[98] A certificate of survey issued under Section 227 shall bear as its date of issue a day not later than fourteen days after the day on which the Minister received the declaration of survey relating to the ship.[99]

Section 236 of MSA 2007 also prohibits proceeding to sea without appropriate certificates. Thus, no Nigerian ship shall proceed to sea on an international voyage from a port in Nigeria unless there is in force in respect of the ship-(a) if the ship is a passenger ship, a safety certificate which, subject to the provisions of Section 236 relating to short voyage safety certificates, is applicable to the voyage on which the ship is about to proceed and to the trade in which it is for the time being engaged; or (b) if the ship is a cargo ship, both-(i) a safety equipment certificate or a qualified safety equipment certificate; and (ii) a radio certificate, a qualified radio certificate or a radio exemption certificate.[100] The provisions of Section 236(1) shall not prohibit a cargo ship from proceeding to sea, if there is in force in respect of the ship such certificate or certificates as would

[96]. *Ibid.,* at Section 222(1)
[97]. *Ibid.,* at Section 222(2)&(3).
[98]. *Ibid.,* at Section 227(1).
[99]. *Ibid.,* at Section 227(2).
[100]. *Ibid.,* at Section 236(1).

be required if the ship were a passenger ship.[101] The master and owner of a ship which proceeds to sea without a certificate in accordance with Section 236 shall be deemed to have committed an offence and on conviction shall be liable to [102]a fine not less than Five Hundred Thousand Naira (NGN500,000.00(US$500.00)) or to imprisonment for three (3) years or to both. For the purposes of Section 236, a qualified safety equipment certificate shall not be deemed to be in force in respect of a ship unless there is also in force in respect of the ship, the corresponding exemption certificate and an exemption certificate shall be of no effect unless the certificate is, by its terms, applicable to the voyage on which the ship is about to proceed.[103] The Master of every Nigerian ship shall produce to the collector of customs from whom a clearance for the ship is demanded for an international voyage, any certificate required by Section 236(1),(2)&(3) to be in force when the ship proceeds to sea, and the collector of customs shall not grant clearance to and may detain the ship until the required certificate is produced.[104] Where the Minister permits a passenger ship in respect of which a short voyage safety certificate is in force, whether qualified or not, to proceed to sea on an international voyage from a port in Nigeria not exceeding twelve hundred nautical miles in length between the last port of call in Nigeria and the final port of destination, the certificate shall, for the purposes of Section 236, be deemed to be applicable to the voyage on which the ship is about to proceed, notwithstanding that the voyage exceeds six hundred nautical miles between those ports.[105] Where an exemption certificate, including a valid exemption certificate issued under Part XII in respect of a Nigerian ship specifies conditions on which the certificate is issued and those conditions are not complied with, the owner and master of the ship shall each be deemed to have committed an offence and on conviction be liable to a fine not less than five hundred thousand naira.[106]

Under the MSA 2007, the issuance of a valid Certificate of Survey by qualified and experienced surveyors now represent a *prima facie* status of seaworthiness of vessel. The certificate of survey must be renewed annually. The absence of a certificate will lead to payment of fine between Three Hundred Thousand Naira (NGN300,000.00 (US$300.00))[107] and Five Hundred Thousand Naira

[101]. *Ibid.*, at Section 236(2).
[102]. *Ibid.*, at Section 236(3).
[103]. *Ibid.*, at Section 236(4).
[104]. *Ibid.*, at Section 236(5).
[105]. *Ibid.*, at Section 236(6).
[106]. *Ibid.*, at Section 236(7).
[107]. *Ibid.*, at Section 218.

(NGN500,000.00(US$500.00))[108] or to imprisonment for three years or to both. Both the Master and the Owner may be imprisoned.[109] In addition, under Section 222 of the MSA 2007, the vessel may be detained. Clearly, the MSA 2007 is much more expansive and far-reaching than the common law rules towards ensuring fitness of sea-faring vessels and for achievement of safety of passengers, crew members, cargo and the vessel, while at sea.

5. **Other Statutory Rules and Regulations Governing Seaworthiness and Safety of Ships in Nigeria.**

In Nigeria, generally, ships may be arrested or detained either for the enforcement of debts, liens, and maritime claims[110] or for ensuring compliance with the requirement of survey certificates and maritime safety standards or obligations.[111] Maritime lien is a privileged charge upon a vessel, aircraft or other maritime property in respect of services rendered to, or injury caused by that property. It attaches to the property the moment the cause of action arises and remains with the vessel irrespective of who is in actual possession. According to Christopher Hill,[112] it is a right which arises from general maritime law and is based on the concept that the ship has itself caused harm, loss or damage to others, or to their property and must itself make good that loss or damage. In that case, the ship is the wrongdoer, not its owners, it is the instrumentality by which its owners or their accredited representatives do wrong. Section 66 of MSA 2007 categorizes the following inventory of claims as maritime liens on the ship:

(a) Wages and other sum due to the master, officers and other members of the ship's compliment in respect of their employment;
(b) Disbursement of the master on account of the ship;
(c) Claims in respect of loss of life or personal injury occurring whether on land or water in direct connection with the operation of the ship;
(d) Claims for salvage, wreck removal and contributions in general averages;
(e) Claims for ports, canal and other water ways dues and pilotage dues.

[108]. *Ibid.,* at Section 236(3).
[109]. *Ibid.,* at Section 236(4).
[110]. *Ibid.,* at Section 66. A ship mortgage is different from a maritime lien. A maritime lien does not vest title in the vessel or the lien holder, whereas the mortgage vests title on the mortgagee. A lien holder does not have a right sale in the event of default without due process of law whereas a mortgagee has a right of sale. Furthermore, while mortgage transactions are registrable in most ship registries, lien interest are not. There are two types of liens in maritime namely maritime liens and statutory maritime liens. See *Mercantile Bank of Nigeria v E.R Tucker & Others (The Bosnia)* (1978) 1 NSC 428
[111]. Izimah (n 2).
[112]. Christopher Hill (n 6) at 560.

Furthermore, Section 5(3) of the Admiralty Jurisdiction Act[113] lists claims for salvage, or damage done by ship or wages of the master or of a member of the crew of a ship or masters disbursement as constituting maritime liens. According to Mfom Usoro,[114] maritime lien is inchoate in nature and unlike a mortgage it creates no immediate right of property, it is devoid of any legal consequence unless and until it is carried into effect by legal process, by a proceeding in rem. Further, the claimant must of necessity, bring an action in rem against the ship to enforce his claim. A maritime lien is different from the common law possessory lien. Under the possessory lien, the lienee has the right to retain possession of a chattel pending payment of an outstanding obligation for services rendered. Once possession is relinquished, the right to lien is lost.

Once jurisdiction is established, a vessel can be arrested by the court with jurisdiction,[115] as an admiralty courts assume jurisdiction based on the presence of the vessel within its territorial jurisdiction irrespective of whether registered or not and wherever the residence or domicile of the ship owners may be.[116] Further, according to Kingsley Izimah:

> If the vessel cannot be seized, the court may have no power over the vessel. Arrest is the physical process by which, a court official, the Nigeria Customs or Ports Authority goes aboard the vessel and physically takes charge of it. In instances of arrest of a ship, the notice of arrest must be posted on the vessel, a copy given to the master or person in charge, as well as to the owner and all other lien holders who claim an interest in the vessel.[117]

5.1.The Nigerian Maritime and Safety Agency (NIMASA)

Nigerian Maritime and Safety Agency (NIMASA) is also empowered to arrest ships to enforce safety regulations and requirements. Clearly, Section 222(1),(2),(3)&(4) of the MSA 2007 empowers the maritime authority in Nigeria to detain a vessel sailing without valid certificates.

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[113]. Admiralty Jurisdiction Act (n 2).

[114]. Mfom Ekong Usoro, "Third Party Claims: An Appraisal of the NIMASA Act, 2007" in L. Chidi Ilogu, ed., *Essays on Maritime Law and Practice*, (Academic Press Plc, Lagos 2006) 173.

[115]. Section 1 of the Admiralty Jurisdiction Act1991 (n 2), covers the admiralty jurisdiction of the Federal High Court (FHC). Section 1(e) of the Act encompasses any claim for liability incurred for oil pollution damage. Thus, the FHC has jurisdiction in matters arising from any claim for liability incurred for oil pollution damages. The Admiralty Jurisdiction Act confers on the FHC the jurisdiction over maritime claims. Section 2(1) of the Act also stipulates that a reference to a maritime claim is a reference to a proprietary maritime claim or a general maritime claim. Section 2(2) of the Act sets out the claims that fall within a proprietary maritime claim while Section 2 (3) of the Act contains a list of the nature of general maritime claim. Section 2 of the Act shows the classification of maritime claims and such claims are related to ships. Thus, for a claim to be described as a maritime claim, the act complained of must have arisen from a ship and must fall within the category of acts listed under section 2 (2) and (3) of the Admiralty Jurisdiction Act. The damages averred to have been suffered and the consequent claim must arise from or be related to a ship or vessel. See, Izimah (2).

[116]. *Ibid.* per Izimah.

[117]. *Ibid.*

Sailing without valid or with expired certificates amount to a criminal offence and under Sections 218, 222, 236 and 417 of the MSA 2007. Unworthiness and unseaworthy include discovery that any of the ship's certificates has expired.[118]Also, Section 40(1),(2)&(3) of Nigerian Maritime Administration and Safety Agency Act, 2007 (NIMASA Act),[119] empowers NIMASA to detain unsafe ships, i.e., that, notwithstanding the provisions of any other law, where NIMASA has reason to believe that any ship, being in any port or place in Nigeria, is an unsafe ship and a security risk and is, by reason of any of the matters mentioned in Section 40(2) of NIMASA Act, unfit to proceed to sea without serious danger to human life having regard to the nature of the service for which it is intended, such ship is liable to be detained.[120] The matters referred to in Section 40(1)&(2) of NIMASA Act are:

1. The condition or unsuitability for the purpose of:
   i. the ship, its machinery or equipment; or
   ii. any part of the ship, its machinery or equipment;
2. Under-manning;
3. Overloading, unsafe or improper loading; and
4. Other matters relevant to the safety and security of the ship.

NIMASA can detain a ship without a valid certificate in order to maintain safety.

5.2.The Nigerian Ports Authority (NPA)

Under Sections 8 and 9 as well as Part III of the Third Schedule of the Nigerian Ports Authority Act, 2004 (NPA Act),[121] the Nigerian Ports Authority (NPA) is the body corporate charged with the responsibility of administering all shipping-related issues in Nigeria. The NPA may perform or exercise any of its functions or powers under the Act other than the power to make regulations, through an officer or agent of the Authority or through any other person authorized by the NPA in that behalf. Thus, the NPA has wide discretionary powers under the NPA Act to impose levies in respect of activities at various ports and harbours in Nigeria.[122]

Furthermore, Section 75 (1) (2) and (3) of the NPA Act empowers the NPA to distrain or arrest ship, etc for non-payment of dues and rates as follows:

> (a) if the master of a ship in respect of which any dues or rates are payable refuses or neglects to pay the dues or rates on demand, the shipping-relatedNPA may distrain or arrest the ship

[118]. *Narumal* (n 17); *Hensmor* (n 16).
[119]. Nigerian Maritime Administration and Safety Agency Act, 2007 (NIMASA Act).
[120]. *Ibid.*, at Section 40.
[121]. Nigerian Ports Authority Act, No 38 of 1999. The Act can be found in Cap N126 LFN 2004 (NPA Act).
[122]. *Total Nigeria Plc. v. New Cargo Handling Co*. (2015) 17 NWLR (Pt. 1489) 558 at 584, paras. E; 585, paras. A-E.

and the tackle, apparel and furniture of ship and may detain them until the amount of the dues or rates is paid,

(b) If for a period of fourteen days following a distrain or an arrest –

i. any dues or rates; or
ii. any of the expenses of distrain or arrest or of the detention of the ship and its tackle, apparel and furniture, remain unpaid, the Authority may cause the ship or tackle, approach and furniture distrained or arrested to be sold.

(c) the NPA may, out of the proceeds of the sale, retain the amount of dues, rates or expenses which are owed and shall deliver the balance to the master of the ship on demand.

Where a ship has not fully paid for its survey certificate, the NPA can detain it.

6. Nigerian Judicial Approaches To Seaworthiness and Safety of Vessels At Sea

The Nigerian Court of Appeal and Supreme Court have both issued opinions on the scope of the seaworthiness and fitness of ocean faring vessels in Nigeria. While both the 1969 and 1989 Supreme Court's decisions in *Mandilas* and *Narumah*, respectively, were based on the old English common law rules of implied warranty of seaworthiness which solely applied before the introduction of the MSA 2007, the 2014 Court of Appeal's decision in *Hensmor* was based on the power to detain unfit vessels under MSA 2007.

6.1. ***Coastal Shipping & Agencies Co. Ltd. v. Mandilas & Karaberiis Ltd. (Mandilas)***[123]

In *Mandilas*,[124] Mandilas (the Charterers) hired the lighter (Toni) and cargo boat (Windsor) belonging to Coastal Shipping & Agencies Co. Ltd. (the Ship Owner/Coastal) for the transport of Mandilas' 1040 bags of palm kernels from Lagos to London. While the boat was still berthed on the Lagos lagoon, the palm kernels were loaded by Coastal's employees onto their lighter—*Toni* to transfer the goods on board *Windsor*. It appeared that the lighter was crooked on sea and it subsequently sank into the lagoon totally destroying all of Mandilas' goods. Mandilas sued for the value of its destroyed goods based on *res ipsa loquitur*[125] and breach of the implied warranty of seaworthiness. The Supreme found for Mandilas and held that the lighter was not seaworthy causing the damage.[126] First, since the doctrine of *res ipsa loquitur* is dependent on the absence of explanation, the court held that it was the duty of Coastal to give an adequate explanation of the

[123]. Mandilas (n 16).
[124]. Judgment of the Nigerian Supreme Court dated 17th October 1960, per Lewis, Madarikan and Fatayi-Williams (who read the lead judgment), JJSC.
[125]. *Kuti v. Tugbobo*, (1967) NMLR 419. The doctrine puts the onus of proof on the defendant, to explain that it was not liable an injury caused by an item within his control and which was within its sole control.
[126]. *Mandilas* (n 16) at 154

cause of the accident, which Coastal failed to do in the case.[127] Further, since Coastal's witnesses at trial had admitted that the lighter "got bowed" meaning "bent or crooked," Coastal should have called evidence to show why the lighter was bent and crooked at sea. The court then held that if the lighter was bent by whatever cause with Mandilas' cargo on board, the lighter was not seaworthy.[128] Further, if the lighter was allowed to be loaded in that condition, notwithstanding its unseaworthiness, and the lighter then sank, the doctrine of *res ipsa loquitur* applied, and the onus would shift onto Coastal to explain why the lighter sank, and since Coastal had given no explanation whatsoever, Coastal had not discharged the onus and so Coastal was consequently liable, *ex facie*, for the losses.[129]

In particular, the Supreme Court held that underlying the whole contract of affreightment (contract for carriage of goods at sea), was an implied condition upon the operation of the usual exceptions from liability namely, that Coastal, as the Ship Owners, should have provided a seaworthy ship, and if they have not, and damage resulted, in consequence of the unseaworthiness, no exception would absolve the Ship Owners from its liability.[130]

6.2. *Narumah & Sons Ltd. v Niger-Benue Transport Company Ltd.* (*Narumah*)[131]

The facts in *Narumah* necessitating the institution of the case at the trial court are that sometime in 1976, the Ship Owner (Niger-Benue Transport or NBT) and the Charterer (Narumah) entered into an agreement for the hire of NBT's tug and two barges by Narumah to convey Narumah's cargo from Warri to Lagos. The voyage started at about 6.30 a.m. on 8th February, 1976 and ended on 12th February, 1976, when the vessel arrived Iddo, Lagos. There was the evidence of Alhaji Baba Braimoh,[132] who moved the tug and barges from Warri to Lagos, that before he commenced the voyage on 8th February, 1976, he checked the two barges in the presence of two security men and found no water in any of the barges. He testified further that at about 2 p.m. on 9th February, 1976, i.e., about 32 hours, after he departed from Warri, he discovered some water in Hatch No.1 of Barge B6 which he pumped out with a water pump. He said that he continued to pump out water from the same Hatch twice everyday until he arrived Lagos on the 12th February, 1976.

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127. *Ibid.*
128. *Ibid.*
129. *Ibid.*
130. *Ibid.*
131. *Narumah* (n 17). Judgment of the Supreme Court of Nigeria, dated Friday, the 21st day of April, 1989. Suit No: SC.58/1987.
132. Plaintiff (Narumah)'s witness at trial.

In the end, Narumah's merchandise got soaked with sea-water, broken, lost and depreciated in value. Narumah therefore refused and willfully neglected to pay the sum due for the hire of the barges. NBT thus filed an action at the High Court while Narumah filed a counter-claim. The learned trial judge, at the end of the trial gave judgment to NBT on their hire claim in the sum of NGN 89,356.45. There was no appeal against this judgment. The court also gave judgment to Narumah on their counter-claim in the sum of NGN 120,256.00. It is this judgment that has necessitated this appeal. NBT first appealed to the Court of Appeal, which on 22nd May, 1986 allowed it and dismissed the counter- claim. Narumah then appealed to the Supreme Court. First, the Supreme Court defined "seaworthiness" in *Narumal* to mean that:-

> *"*Seaworthiness for our purpose relates to the suitability of the ship in terms of crew, equipment (and even carrying the particulars cargo) for the journey being undertaken... *"*[133]
> Further, the learned Kawu JSC defined seaworthiness to mean *"*That the ship shall be in a fit state as to repairs equipment and crew and in all other respects, to encounter the ordinary perils of the voyage insured at the time of sailing upon it... *"*[134]

Further, Justice Chukwudifu Oputa stated that seaworthiness of a vessel relates to the fact that the vessel shall be in a fit state as to repairs, equipment and crew all other respects to encounter the ordinary perils of the voyage insured at the time of sailing upon it.[135] As seen above, Section 39 of the English Marine Insurance Act 1906,[136] states that a ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured. Thus, the Supreme Court held that the perils of the sea that could lead to lack of seaworthiness would be relevant, and the reference to perils of the sea

> is not confined to heavy storm blowing across the sea, but would include the perils starting from the shore or as soon as the vessel moves. Thus, the constant lashing of waters against the hulls of the vessel would constitute perils to which all vessels are subject. If the vessel can cope with the initial perils, it is seaworthy. A vessel can sink as soon as it moves from the port if it is not seaworthy. Seaworthiness is therefore not determined by the perils that have overwhelmed the vessel days after setting out.[137]

The Supreme Court, further held that there was no evidence of unseaworthiness at commencement and that as to the issue of seaworthiness, there was evidence that the barge No.6 was inspected before the tug lighter and barge set sail. The barge was water free for 32 hours from 6.30 a.m. of

[133]. *Narumah* (n 17) at 26.
[134]. *Ibid.*, at 66.
[135]. *Ibid.*, at 65, paras. A-D.
[136]. Marine Insurance Act 1906, (n 33).
[137]. *Narumah* (n 17) at 65-66.

8th February, 1976 to about 2.00 p.m. on 9th February, 1976.The court noted that the barge was in motion on the sea all the time, and that it was then it began to take in water. With the three hatches of 'B6' and 'B12′ checked by Braimah, before the tug set sail and no water was found in any of them. When after 36 hours journey he discovered water in hatch No.1 of B6, Braimah pumped out the water with a 2″ pump. Braimah did this twice a day, morning and evening until they arrived Lagos two days later. The question was whether the very fact of the barge B6 springing a leak 36 hours after the commencement of the voyage was evidence that the vessel was not seaworthy. The court held that it was settled by judicial authorities in a long line of cases that a vessel is seaworthy at the point of departure,[138] and that it was therefore not the law that a ship or vessel was unseaworthy if it springs a leak 36 hours after it set sail or at the end of the voyage to Lagos. The court further held that the trial judge was in error in holding that the barge B6 was not seaworthy when it set sail, and so held that the appeal therefore failed and was dismissed with N500.00 costs to NBT.

However, it must be noted that this case predated the enactment of the MSA 2007.

6.3.*NIMASA v Hensmor Nigeria Ltd.,* (*Hensmor*)[139]

The *Hensmor* decision was a much later case and was decided after the passage of MSA 2007, and the court stated the effect of a ship being held under detention for being unsafe, unfit and/or unseaworthy under Section 417 of the MSA, 2007 as follows:

> Where a ship is held under any provision of this Act requiring detention until the happening of a certain event, the ship shall be deemed to be finally detained for the purposes of Chapter [XII] of this Act (which relates to unseaworthy ships) and the owner of the ship shall be liable to pay to the Government of the Federation the cost of and incidental to the detention and survey if any of such ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.[140]

Hensmor was an appeal against the judgment of the Federal High Court (FHC), Lagos Division, where Hensmor, (as the plaintiff at the trial court), brought an action against NIMASA that was sued as 1st defendant. Hensmor's facts as pleaded were that Hensmor was a private limited liability company engaged in the business of shipping, tanker vessel ownership, tank farm operator,

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[138]. *Cohn v Davidson* (1877) 2 Q.B.D. 455 at 461-2; *Steel v State Line SS Co* (1877) 3 App Cas. 72, 76, 90 at 90-91; *Readhead v The Midland Railway Co*. (1987) 2 LR Q.B.D. 412, 440; *Svenssons Travaruaktiebolag v. Cliffe Steamship Co.* (1932) 1 K.B. 490.

[139]. *Hensmor* (n 18). Judgment of the Court of Appeal, (Lagos Judicial Division), dated Friday, the 14th day of March, 2014. Suit No: CA/L/62/2012.

[140]. *Ibid.*, in *Hensmor*, per Iyizoba, JCA, at 46.

petroleum marketer, sea bunkering, customs licensed agent and agro-allied farming with its tank farm at 26 Dockyard Road, Apapa, Lagos. Hensmor was also the owner of a Nigerian registered Tanker vessel, M.T. Agbomien. NIMASA is the agency of the Federal Government of Nigeria charged with the statutory responsibility of maintaining and regulating maritime administration and safety in Nigeria whilst the 2nd defendant was a marine engineer employed by NIMASA as a District Surveyor of ships. Hensmor contended that the detention order issued against its vessel was a ruse and a smokescreen to relocate the vessel and facilitate the intended evacuation (theft) of Hensmor's hidden product in the vessel by the Captain and the crew. Hensmor also contended that the indefinite detention of the vessel on ground of unseaworthiness by NIMASA did not conform to the guidelines stipulated under the MSA for detention of vessels. After several demands for the release of the vessel by Hensmor were not heeded, it instructed its solicitor to write NIMASA but counsel's letter did not produce any result. Hence the institution of this suit. Both sides called one witness each in proof of their case at the trial. At the end of the trial, the court granted all the claims of Hensmor except the order setting aside the detention order. Aggrieved by this judgment, NIMASA appealed to the Court of Appeal.

The *Hensmor* Court of Appeal, in deciding on when a ship is not seaworthy, held that it was not in dispute between the parties that Hensmor's vessel was detained by NIMASA on ground of un-seaworthiness as shown in NIMASA's notice. NIMASA's engineer also admitted that apart from inspecting the certificates of the vessel which he found to have expired, hence the issuance of the detention notice, he did not carry out any further tests to determine whether in fact the vessel had serious mechanical problems as represented by the Harbour Master. The area of dispute was that while Hensmor contended that a ship can only be unseaworthy if there is a defect in the equipment or appliances of the ship sufficient to render it unfit for the due and safe carrying of the crew or cargo not being a defect which can be readily cured during voyage,[141] NIMASA contended that under Section 417 of MSA 2007, unseaworthiness includes any ground upon which a ship may be detained under the MSA 2007. Hensmor placed heavy reliance on the possible grounds itemised in the detention notice upon which a ship may be detained which are separated with the article 'or' to contend that they are disjunctive and that one cannot be used in place of another.

The court in *Hensmor* case held that since both sides, in presenting their cases agreed that the MSA 2007 was the governing statute in the matter, the conduct of NIMASA in the detention notice and

[141]. See *Narumah* (n 17) at 17.

articles attached thereto cannot be construed without considering the provisions of the MSA 2007.[142] The *Hensmor* court adopted the ruling in *Narumah* that:[143]

> A ship is not seaworthy if there is a defect in the equipment or appliances sufficient to render it unfit for the due and safe carrying of the crew or the cargo, not being a defect which can be readily cured during the voyage. [144]

However, the *Hensmor* court noted that seaworthiness that was considered in *Narumah* in the light of implied warranty of seaworthiness into which the owner of a ship enters with the owner of her cargo (usually the Charterer) being conveyed.[145] The *Hensmor* court also noted[146] that the implied warranty of seaworthiness attaches at the time when the perils of the intended voyage commence that is, when the ship sets sail with the cargo on board for her port of destination. The warranty is broken if the ship is unfit to encounter these perils, although she may have been seaworthy whilst lying in the port of loading.[147] The implied warranty was considered in *Narumah*,[148] and so therefore, the definition of seaworthiness as given in the *Narumah* case must be understood in the context of implied warranty of seaworthiness, while the provisions of the MSA 2007 were not considered in *Narumah*.[149] More importantly, Section 417 of the Merchant Shipping Act provides:

> 417. Where a ship is held under any provision of this Act requiring detention until the happening of a certain event, the ship shall be deemed to be finally detained for the purposes of Chapter [XII] of this Act (which relates to unseaworthy ships); and the owner of the ship shall be liable to pay to the Government of the Federation the costs of and incidental to the detention and survey if any of such ship, and those costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable."[150]

The *Hensmor* court held that under Section 222(1),(2)&(3) of MSA 2007, NIMASA may detain a vessel sailing without valid certificates, and that Section 222(4) of the MSA 2007 makes it a criminal offence to sail without valid or with expired certificates.[151] NIMA showed that the vessel

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[142]. *Hensmor* (n 18) at 43-44.
[143]. *Ibid.*, at 44.
[144]. See, *Narumah* (n 17) at 10-11.
[145]. This is the common law's implied warranty of seaworthiness imposed of the Ship Owner for the benefit of the Charterers.
[146]. *Hensmor* (n 18) at 45.
[147]. *Cohn v. Davidson* (1877) 2 QBD 455, at 461-462
[148]. See, *Narumah* (n 17) at 11.
[149]. *Hensmor* (n 18) at 45-46.
[150]. MSA 2007 (n 2) at Section 417. This Setion contains the same provisions as Section 388 of the old Merchant Shipping Act, Cap M.11 2004.
[151]. *Hensmor* (n 18) at 46.

M.T. Agbomien at all material times to the appeal had no valid certificates and NIMASA's engineer in his evidence maintained that he issued the detention notice upon inspection which revealed that the vessel has expired certificates. The *Hensmor* court found that that was a valid ground for detaining the vessel which the trial Judge also acknowledged.[152]

However, in issuing the detention notice, NIMASA's engineer gave the ground for detention of M.T. Agbomien as un-seaworthiness, and since un-seaworthiness must be construed with reference to the MSA 2007, by the express provision of Section 417, un-seaworthiness includes detention of a vessel based on discovery that any of its statutory certificates have expired:

> The evidence elicited from DW1 by learned counsel for the Respondent under cross-examination at page 87 of the record of appeal is as follows: "I am aware, the Merchant Shipping Act defines what un-seaworthiness means. The definition provided by Merchant Shipping Act of un-seaworthiness includes expired certificate". I am of the view that the detention of the vessel M.T. Agbomien based on Exhibits B and H is valid particularly with regard to the contradicted evidence led with respect to Exhibit H. [153]

The *Hensmor* court further noted that the issue of time of preparation or issuance of detention notice or the validity of the signature of the Master of the vessel thereon was never raised by Hensmor at trial, with the failure of NIMASA's engineer to indicate on the detention notice that the vessel was detained on ground of non-renewal of statutory and mandatory certificates will not render such detention unlawful in the face of the provisions of Section 417 of the MSA 2007 which extends the meaning of un-seaworthiness to include lack of certificate.[154] Also, the evidence of NIMASA's engineer, quoted above, constituted an explanation as to why he did not add the issue of expiration of the certificates as a separate ground of detention, and so, it was correct to say that he endorsed the detention notice incorrectly.[155] The *Hensmor* court was of the strong view that the detention notice which owed its origin and validity to the MSA 2007 was valid, and that the clear intention of the law makes that the definition of 'un-seaworthiness' with reference to power of detention of ships be extended beyond common law and to include instances of expiration of or non-renewal of statutory and mandatory certificates of a vessel, was valid. In the end, the *Hensmor* court found that the vessel, M.T. Agbomien, was lawfully detained by NIMASA.[156]

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[152]. *Ibid.,* at 46-47.
[153]. *Ibid.,* at 47.
[154]. *Ibid.,* at 48.
[155]. *Ibid.*
[156]. *Ibid.,* at 48-49.

7. Conclusion

While we agree that every vessel must possess a Certificate of Survey to operate in Nigeria, as evidence of seaworthiness, this author observes that there may be situations where a vessel may possess a current and valid certificate, but may subsequently become unsafe and/or unfit, sometime after obtaining the certificate of survey. It is submitted that the common law rules would apply to determine the extent of the Ship Owner's liability. In other words, the common law rules would continue to be applicable to instances of subsequent lack of seaworthiness which occur while the vessel possesses a current certificate. Yet, it must be reiterated that under current dispensation in Nigeria, possession of valid and unexpired certificate of survey and other safety certificates represent the *prima facie* evidence of fitness, safety and seaworthy status of a vessel. It would appear that the 'prudent reasonable' man's test would no longer apply. Every vessel operating in Nigeria must obtain valid certificates and renew all such certificates annually. In addition to payment of damages to the Charterers, the Master and the Ship Owner would be liable to payment of fine and/or imprisonment for operation of unfit vessels. Further, the vessel may be detained by the maritime authorities.