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An Examination of Maritime Dispute Resolution Mechanisms in Nigeria: Lessons from Malaysia

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Abstract

The maritime sector is not exempted from disputes which sometimes unavoidably occur in commercial transactions. This article examines the various ways these disputes may arise and the current resolution mechanisms in place to resolve them. This article will examine the dispute resolution mechanisms used to resolve maritime disputes in Nigeria in comparison to Malaysia and to recommend ways the Nigerian mechanisms can be improved on. This article found that the main mechanisms are litigation and arbitration. It also suggests that arbitration is seen as more advantageous over litigation for the resolution of disputes, including maritime disputes as it appears that resolution of maritime claims solely through litigation in Nigeria is confronted with the limitations of delay through interlocutory applications as well as higher costs, which make the method less desirable. The research methodology used in this article is the doctrinal research method. This article concluded that both mechanisms should be used effectively to resolve disputes. It is recommended that a specialist Court be set up as a division of the Federal High Court of Nigeria. Such court can be called "Admiralty Court" as it is in Malaysia. It is further recommended that maritime disputes should be resolved as often as possible by way of arbitration for speedy resolution as it is useful in technical cases, or ones involving specialized knowledge.

Keywords: a*rbitration, maritime contract, marine facility, litigation, maritime disputes, admiralty jurisdiction, semi-judicial capacity, maritime contract,*

1. Introduction

A dispute is the controversy or conflict between people or parties, especially the one that has given rise to a law suit.[1] The occurrence of disputes in societies across the globe is inevitable. In fact, human beings are bound to disagree at a particular point in life, so long as there is interaction taking place in the societies.[2] Man has been viewed as a gregarious animal hence, disputes must occur in the course of co-existence as well as interactions in our daily activities. As expected, the maritime sector is not free from this challenge. The same way there are different types of transactions, there are also many parties involved in the maritime sector or industry. Some of the parties in various disputes arising from activities in the maritime industry are ship owners or designated handlers, crew members, charterers, port administrators, dock workers, insurance companies, inspection agents, sellers and buyers, bankers, and so on.[3]

As a result, the many contractual relationships generated in the maritime sector are possible sources of disputes.[4] Disputes in the maritime sector cover a wide variety of areas to wit; sale of ships, bills of lading, charter parties, ship financing, ship building contracts as well as contracts of marine insurance. These disputes usually span oceans and tend to be international in nature.[5] The maritime industry is internationally renowned as one of the most economically sustainable industry capable of expediting viable development. Consequently, harmonious resolution of maritime disputes is vital to assure unimpeded trade and commerce.

Just like any other types of disputes, the first step in the resolution of maritime dispute is to ascertain what the dispute is about, the parties to the dispute(s), its nature, causes, what agreement (if any) the parties may have as to the mode of resolving any controversy or claim arising out of or relating to the Agreement, or the breach thereof, and in the absence of any agreement by the parties, which national court may have jurisdiction over their dispute. In the absence of an agreement by the parties as to who

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to resolve any controversy or claim arising out of or relating to their Agreement, or the breach thereof, the parties have so many choices available to them for the resolution of their dispute. Parties to a dispute have the following major options available to them for the resolution of their dispute, negotiation, mediation, expert evaluation or early neutral evaluation, arbitration and litigation.

1.1 Context of Maritime Disputes

Maritime disputes can be contextualized within the framework of specialized legal, administrative and commercial concerns. The context under which these concerns may apply are relatedly incidental to some fundamental factors that can guide or influence the choice of dispute resolution method that would be appropriate. Incidentally, these factors are considerably varied. They include[6]:

1. Type of dispute;
2. Amount involved in the dispute;
3. Relationship between the parties;
4. Geographical location of the parties;
5. Expectation of the parties;
6. Involvement of legal representatives;
7. Influence of third-party interests, such as insurers, charter parties, etc.
8. Mindset of the parties-commercial or legalistic?[7]

In view of the foregoing factors, it should be note that in Nigeria and any other maritime law operational jurisdiction, maritime disputes may arise from:

1. Shipping and navigation on any inland waterways or international waters;
2. Any action or application relating to any cause or matter by any ship owner or operator or any other person under any Merchant Shipping Act or under other enactment relating to a ship for the limitation of the amount of his liability in connection with the shipping or operation of ship or other sea-faring vessel;
3. Any matter arising within a federal port or national airport and its precincts, including claims for loss of or damage to goods occurring between the offloading of goods across space from a ship and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee;
4. Any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer;
5. Any cause or matter arising from the constitution and powers of all port authorities, airport authority and the National Maritime Authority.[8]

Maritime disputes may also arise where there is no proper maritime boundary or maritime boundary delimitation. Maritime boundary is a theoretical decision of the water surface areas of the earth with the use of geopolitical or physiographic criteria. It bounds areas of exclusive national rights over marine resources, including maritime features, its limits and zones. It is a representation of the borders of a maritime nation which serves as a means of identification of the edge of international waters. Maritime boundary is usually demarcated and at a particular distance from the jurisdiction of a coastline.[9]

In the Nigerian context, the frequency of commercial transactions in the maritime space in Nigeria is associated with the existence of maritime disputes which calls for timely and viable intervention.[10] Although in some instances, parties may successfully resolve such disputes without much ado, in several other situations, a neutral third-party involvement is inevitable. In such an instance, where recourse is not made to court, an efficient dispute settlement mechanism becomes a must-have. Due to the nature of commercial transactions in Nigeria, disputes are bound to happen. This is because the parties involved are usually not guided by the rules of the trade and misunderstanding can occur. In addition, due to the volume of transactions handled by the ports, the event of dispute is inevitable.

In furtherance of this point, maritime contracts may be relatively complex, whether in form of stowage agreement, charter party or other similar transactions which may cause disputes. Consequently, in order for Nigeria to make the most of her maritime facilities and international trade potentials, a robust, effective and efficient maritime dispute settlement system must be created. Where maritime disputes arise, the first port of call is usually turning to the Court, subject to the inclusion of dispute settlement clauses in the agreement binding the parties. This is in line with Part XV of United Nations Convention on Law of the Sea (UNCLOS) 1982 which allows parties to a maritime dispute to make recourse to a dispute settlement mechanism of their choice in the failure of which a compulsory dispute

settlement procedure is then triggered. It does appear that the higher level of awareness of the merits of ADR over litigation has increased preference of parties for ADR in cases involving maritime disputes, with preference for arbitration because of its enforceability;[11] applicable rules needs be reviewed to provide equal protection for parties, especially in this present time in a developing economy as Nigeria. Nigeria needs to apply ADR in a more effective way in order to overcome the challenges confronting Nigeria's involvement in maritime business.

Sovereignty over land can also cause maritime disputes. Maritime disputes are prevalent where States struggle or compete over both inhabited and uninhabited Islands. These forms of disputes equally involve questions bordering on sovereignty over certain islands. Two States may lay claim over the same Island or an area of mainland as was the case between Nigeria and Cameroon over the Bakassi Peninsula. In this case: *Cameroon v Nigeria*,[12] Cameroon filed a suit against Nigeria before the International Court of Justice (ICJ) on dispute bordering on the issue of sovereignty over the Bakassi Peninsula. The plaintiff later extended the subject of the dispute in 1994 to include question relating to sovereignty over her territory in the area of Lake Chad as well as the frontier between her and defendant from Lake Chad to the sea. The matter took many years of hearing before the ICJ finally delivered judgment on 10/10/2002. The case was decided in favour of the plaintiff with the International Court holding that the boundary between the two countries is delimited by the Anglo-German agreement of March 11, 1913. Therefore, maritime disputes are very common where States compete or lay claim over inhabited as well as uninhabited islands. Such disputed areas may often contain important natural resources, such as mineral resources.

In the foregoing regard, Kleinsteiber noted that:

> *…while these disputes have the potential to die down if they are 'shelved' in favour of pursuing more mutually beneficial goals, they can flare up at any time, especially when driven by nationalist sentiments. This has the potential to be the troubling future of maritime conflict, when conflicts in question may be impossible to separate from national identity.*[13]

This all goes to show that an effective mode of dispute resolution is necessary for the continuous growth and development of a coastal State's economy. This paper aims to examine the dispute resolution mechanisms in Nigeria especially resolution of maritime disputes in comparison to what is operational in Malaysia. It identifies the major dispute resolution mechanisms, with focus on maritime disputes, and examines the effectiveness of these mechanisms in order to suggest ways to improve on them, particularly through lessons from Malaysia.

2. Conceptual Framework on the Basis of Alternative Dispute Resolution

The concept under which this study was carried out draw inspiration from the various dispute resolution framework or practices available to the maritime services practitioners. This is based on the fact no one particular method can resolve all maritime sector disputes, hence a range of accepted and effective methods is crucial. Thus, Alternative Dispute Resolution is viewed by the International Labour Organisation (ILO) as being a substitute for the Court system, namely: a set of processes that comprise of negotiation, conciliation, mediation and arbitration.[14] According to Mnookin:

> *Alternative dispute resolution (ADR) refers to a set of practices and techniques aimed at permitting the resolution of legal disputes outside the courts. It is normally thought to encompass mediation, arbitration, and a variety of "hybrid" processes by which a neutral facilitates the resolution of legal disputes without formal adjudication. These alternatives to adjudication are advocated on a variety of grounds. Potential benefits are said to include the reduction of the transaction costs of dispute resolution because ADR processes may be cheaper and faster than ordinary judicial proceedings; the creation of resolutions that are better suited to the parties' underlying interests and needs; and improved ex post compliance with the terms of the resolution.*[15]

In the Nigerian context ADR is seen as a quick, relatively non-adversarial and objective process for resolving disputes when compared to legal proceedings in Courts. Thus, ADR mechanisms in Nigeria are comprised of *mediation, arbitration and conciliation.* The term ADR has been defined by several scholars within the Nigerian context. For instance, Aina describes ADR as mechanisms used in settling differences of opinion fast and without altering the relationships that exist between the parties.[16] ADR has also been described as the procedures used to resolve disputes as alternatives to the traditional resolution mechanism of the Court.[17] ADR processes are intended to be less formal, shorter and simpler, and therefore more accessible and affordable than official proceedings in courts, civil or international. In civil cases, they are increasingly encouraged by courts and governments around the world, as they also have the potential to decrease the workload of an already overburdened

Court system.[18] The choice of arbitration has been strengthened in Nigeria by the enactment of the Arbitration and Conciliation Act 2004. In international disputes (affecting two or more nation States), where negotiations, mediation and arbitration are often preferred to International Courts, ADR frameworks and tools have grown and improved continuously since the 1950s.[19] In terms of international maritime law, the United Nations Convention of the Law of the Sea (UNCLOS), particularly, encourages parties to resolve maritime disputes through ADR, stating that disputing parties should first attempt to resolve conflicts by "peaceful means of their own choice".[20]

In view of this admonition of UNCLOS, the study shall concisely discuss the merits of each of these methods of ADR as follows:

(i) Arbitration

This is a form of Alternative Dispute Resolution (ADR) mechanism that is usually used in the resolution of dispute without reference to a formal Court procedure.[21] It is the reference of a dispute between parties for determination to a person or institution besides a Court of competent jurisdiction, in a manner that is semi-judicial, after hearing both sides.[22] Parties who are in dispute agree to submit their disagreement to a person whose expertise or judgment they trust. This is an effective way of obtaining a final and binding decision on the dispute or series of dispute without reference to a court of law.[23] In fact, the justifying basis for arbitrating a dispute is most often found in an actual contract. Parties explicitly agree to utilize Arbitration as a mechanism for ending disputes that they cannot resolve by themselves alone. The parties gain more control over the procedure for the resolution of their dispute, but substantive rules of decision remain beyond them. Arbitration may also be undertaken as fact-finding process to clear key issues out of the way before litigation.[24]

Parties are allowed ample latitude to make their contract which will bind them on whatever terms they chose. However, the Courts have been very keen to protect their own rights to adjudicate upon disputes. The Courts have developed the principle that it is against public policy and illegal for parties to expressly incorporate into their contract any provision which ousts the jurisdiction of the Courts.[25] However, in some considered issues, arbitration institutions are allowed some freedom to flourish and the range of that freedom is as manifested in the *Scott v Avery Clause*,[26] which stipulates that where parties make arbitration agreement and award a condition precedent to an action of law, its essence is that the parties agree to forego their rights of access to the Courts until after an arbitral award has been made. [27]

The Black's Law dictionary defines arbitration as "a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding".[28]Arbitration as a procedure for resolution of dispute involves reference of the disputes between parties to a third party that is considered impartially neutral. This third party is referred to as an "arbitrator" and acts in a semi-judicial capacity through the delivery of Award which is usually final as well as binding on the subject matter arbitrated upon[29] and between the parties. An arbitral Award delivered by an arbitrator has a similar consequence as the judgment of a Court.[30] Although, arbitration is not considered as ADR *per se* and this is as a result of its unique characteristics. Unlike other ADR mechanisms, arbitral awards are final as well as binding and the decision or advice of the neutral third party in the case of applying other mechanisms does not have the effect of a Court's judgment.[31]

(ii) Litigation

Litigation refers to the actions between two opposing parties working in the interest of enforcing or defending a legal right in Court. It is the process of resolving a dispute by way of adjudication in the Courts. It is adversarial in nature and involves filing a process or suit in courts as well as subsequent appearance of parties and presentation of evidence in support of one's cases.[32] The concept of litigation is simply defined as "the process of carrying on a lawsuit. A lawsuit itself".[33]

(iii) Mediation

here the parties allow a neutral third party (called a "mediator) to help them arrive at or come to a consensus on their own. The mediator does not impose a decision on the parties but works with them to explore the interests underlying their positions, so as to arrive at a mutually acceptable decision.[34]

(iv) Negotiation

This is the "formal discussion between people who are trying to reach an agreement.[35]" Thus, when disputants negotiate, they consensually discuss and bargain, they attempt to reach agreement on a disputed or potentially disputed matter.

(v) Expert evaluation or early neutral evaluation
Here a neutral third party, with relevant expertise and experience, provides an objective and impartial evaluation of both sides of a dispute. The neutral evaluator considers each side's position and renders an evaluation of the case. Parties utilize this tool in order to avoid litigation. The evaluation provided is not binding on the parties; however, it can provide valuable assistance in settling disputes.[36]

3. Appraisal of the Mechanisms for Maritime Dispute Resolution in Nigeria

The most common and usual methods of resolving maritime disputes in Nigeria are litigation and arbitration. Any of these methods is allowed so long as it is not unknown to the extant law of the country. Therefore, these methods of resolving maritime disputes will be discussed in detail in this section.

The Constitution of the Federal Republic of Nigeria, 1999 vests the Federal High Court with powers to exercise jurisdiction to the exclusion of any other court[37] in civil causes and matters relating to any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their effluents and on such other inland waterway as may be designated by any enactment to be international waterway, all federal ports, (including the constitution and powers of the ports authorities for federal ports) and carriage by sea[38].

The Federal High Court is also empowered by the Constitution to exercise "other jurisdiction as may be conferred upon it by an Act of the National Assembly"[39]. Thus, the Court has exclusive jurisdiction to try causes and matters provided in the Admiralty Jurisdiction Act[40]. The Court is vested with jurisdiction with respect to the following matters:

> *1. (l) The admiralty jurisdiction of the Federal High Court (in this Decree referred to as "the Court") includes the following, that is-*
> *(a) jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Decree. This will include (i)*
> *(b) any other admiralty jurisdiction being exercised by any other court in Nigeria immediately before the commencement of this Decree*
> *(c) any jurisdiction connected with any ship or aircraft which is vested in any other court in Nigeria immediately before the commencement of this Decree;*
> *(d) any action or application relating to any cause or matter by any ship owner or aircraft operator or any other person under the Merchant Shipping Act or any other enactment relating to a ship or an aircraft for the limitation of the amount of his liability in connection with shipping or operation of aircraft or other property;*
> *(e) any claim for liability incurred for oil pollution damage*
> *(f) any matter arising from shipping and navigation on any inland waters declared as nation waterways*
> *(g) any matter arising within a Federal port or national airport and its precincts, including claims for loss of or damage to goods occurring between the off-loading of goods across space from a ship or an aircraft and their delivery at the consignee's premises, or during storage or transportation before delivery to the consignee*
> *(h) any banking or letter of credit transaction involving the importation or exportation of goods to and from Nigeria in a ship or an aircraft, whether the importation is carried out or not and notwithstanding that the transaction is between a bank and its customer.*
> *(i) any cause or matter arising from the constitution and powers of all ports authorities, airport authority and the National Maritime Authority.*
> *(j) any criminal cause and matter arising out of or concerned with any of the matters in respect of which jurisdiction is conferred by paragraphs (a) to (i) of this subsection.*

Provision of the above law is applicable to maritime disputes in Nigeria as it further enlarges the power of the Federal High Court to entertain such matters. The Chief Judge of the Federal High Court is empowered to make relevant rules and procedures on the matters relating to admiralty/maritime matters.[41] The current rules and procedures on admiralty in Nigeria as made by the Chief Judge of the Federal High Court of Nigeria is the Admiralty Jurisdiction Procedure Rules 2011. Litigation as a mechanism for settlement of maritime disputes is faced with several challenges. One of the challenges usually faced in adopting litigation in the resolution of maritime disputes is unnecessary delay mostly caused by interlocutory applications by parties through their counsel. This leads to frustration of the litigants. This is evidenced in the case of *Maersk and Anor v. Adidide Investment Limited & Anor*,[42] a maritime dispute that lasted in Court for seven years as a result of interlocutory applications, hence, leading to delay in the determination of the matter which was filed in 1996. The problem in the judicial determination of maritime disputes in Nigeria has been captured in the statement of Uwais, JSC (as he then was) in the case of *Amadi v. NNPC*[43] thus:

> *The chequered history of this case once more brings to light the dilatory effect of interlocutory appeals on the substantive suit between the parties. The action in this case was brought on the 29th day of April 1987... the final judgment on the interlocutory appeal is delivered today by this court. It has taken thirteen years for the case to reach this stage... the case is to be sent back to the High Court to be determined hopefully on the merits after a delay of 13 years... I believe that counsel owe it as duty to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections, as the one here, so that the adage of "Justice delayed is justice denied" may cease to apply to the proceeding in our courts.*[44]

Other problems associated with litigation as a method of resolving maritime disputes is the high cost of litigation in Nigeria. Thus, adopting the option of litigation will make the litigants to suffer more financial burdens. It is important to note that the outcome of litigation is always uncertain and it is a win-lose thing, and destroys the relationship between the parties.

On the other hand, arbitration as another method for resolution of maritime disputes as even ADR is not unknown to traditional as well as historical practice in Nigeria.[45] This fact was reiterated by Niki Tobi, JSC in the case of *John Onyenge and Ors v. Chief Loveday Ebere and Ors.*[46] Arbitration is viewed as a good alternative which is well-established in the settlement of maritime disputes in the advanced jurisdictions of the world[47] including Malaysia. It has emerged as an effective as well as efficient system for resolving disputes. Parties to a maritime dispute have autonomy over their matters when resorting to arbitration for their resolution. This is different from the regular Courts. Parties to the dispute freely conduct their affairs through agreement and can also opt out of the jurisdiction of the Courts and freely decide before who the dispute is to be resolved.[48]

In the foregoing regard, arbitration is a more preferred way of settling maritime disputes as the business is time related and capital intensive.[49] Settlement of such disputes amicably and taking into account commercial considerations like the desire to ensure the maintenance of the trading arrangement existing between the parties and the avoidance of the delay and expense associated with litigation increases its suitability.[50] Carriage of goods by sea is one of the foremost maritime activities often leading to disputes to be resolved by way of arbitration.[51] Others include the building, construction, financing, sale, acquisition or repair of ships; the deployment of ships; salvage; fishing; charter parties; damage to goods and liability therefrom; damage to ship; lay days and demurrage including damage resulting from late entry to late access to the wharf, maritime insurance and force majeure.[52]

Arbitration is often recommended for the resolution of maritime disputes mostly where there is need for the preservation of confidentiality, avoidance of delays in the resolution of the dispute, avoidance of excessive expenses and publicity of the trial as is the case with court trial, and where those with specialized expertise will assist the parties in the resolution of their dispute. Parties may agree on resolution of their disputes in advance by way of arbitration through contractual agreement, they may also be ordered by a Court during the pendency of a substantive lawsuit to resort to arbitration, this can also be voluntarily initiated after the dispute has arisen. Unlike courtroom proceedings, the parties in arbitration can agree on the schedule and location for the hearing, the method of obtaining evidence and their use, the use of declarations or live testimony, the identity and number of arbitrators, the confidentiality of proprietary information, and the scope of issues to be arbitrated upon. The decision of the arbitral tribunal can be final and binding or not, depending on the rules of the arbitration, which are usually set in advance by the parties themselves, by law or contract, or by the Court. The arbitral tribunal may spell out the reasons for a particular decision in writing, but often it gives only the decision. That Award of Decision of an Arbitration panel can have the same weight and effect as a formal Court judgment when properly filed in a Court for enforcement. The speedy nature of this mechanism for the resolution of disputes in a confidential manner makes it appropriate for maritime disputes.[53]

Resolution of maritime disputes through arbitration is statutorily recognized in Nigeria in the Arbitration and Conciliation Act, which referred to maritime arbitration when it provides that arbitration may be explored for the settlement of different commercial transactions including trade in carriage of goods or persons by sea, and so on.[54] Maritime Arbitrators Association of Nigeria, established in 2005, aims to ensure and encourage advancement and encouragement of professional knowledge of maritime arbitration in Nigeria and to ensure the development of Nigeria as a channel for arbitration in dispute resolution.[55]

However, it is important to note that not all matters are suitable for arbitration because arbitration can only be used in commercial disputes.[56] This means that criminal matters are ineligible for

arbitration. Matters bordering on tax, crime, matrimony, rape and labour related issues are out of the ambit of arbitration.[57] Therefore, litigation, despite its shortcomings, cannot totally be cast aside. The law will not allow it. What this implies is that in creating or improving on the dispute resolution mechanisms, a system cannot do without one or the other, rather, there must be a way to use the two major methods maximally and in the way that best suits each dispute on a case by case basis. This is something that Malaysia has been able to achieve as we will examine next hence the need to learn from them.

4. Lessons from Malaysian Maritime Sector and Jurisdiction

It is important to note that Nigeria and Malaysia have similar historical and cultural characteristics. Both are plural societies, that is, a society consisting of different ethnic groups and cultural traditions; both were colonized by Britain and both inherited federal and "democratic" structures at independence.[58] This independence was gained around the same time (Nigeria in 1960 and Malaysia in 1963). However, Malaysia has been able to harness its maritime domain in a way Nigeria has not. These similarities between the two countries are the basis for the comparison made in this study as the dispute resolution infrastructure for maritime claims in Malaysia has seen much improvement. Arbitration as one of the methods of alternative dispute resolution is recognized and practiced in Malaysia with the Malaysia Arbitration Act 2005 as amended in 2011 and 2018 respectively as the principal legislation. Just like Nigeria, most commercial disputes often resort to either Court or arbitration in Malaysia.[59]

The maritime sector of Malaysia has a well-defined set of domestic as well as international maritime regulations, laws, standards and practices. Although, the increase in the complexity of the sector has demanded a system that is with adequate laws to enable governments and other maritime stakeholders ensure their interests are protected.[60] The International Malaysian Society of Maritime Law was established in 2015 for the promotion and protection of the maritime sector of the country with the aim of building capacity and making provision for ADR services for maritime disputes in the country.[61] Maritime disputes are resolved by means of litigation and arbitration in Malaysia. The jurisdiction recognizes the importance of arbitration in the resolution of maritime disputes.

The importance of confidentiality in arbitration in Malaysia was emphasized in a judgment delivered by Justice Darryl Goon J in the case of *Dato' Seri Timor Shah Rafiq v. Nautilus Tug and Towage Sdn Bhd.*[62] This was the first case that bordered on the interpretation of confidentiality provision in arbitration proceedings as recognized under Arbitration Act 2005 of Malaysia. This is contained in the new section 41A of the amended Arbitration Act 2018. The provision does not permit publication or disclosure of information relating to arbitral proceedings as well as the arbitral award. The only exceptions to the provision are where such publication or disclosure is aimed at the pursuit of a legal right or interest, for the enforcement or to challenge the award, or where it is obliged by law. Malaysian Courts are often required to consider matters related to arbitration proceedings in arbitral-related Court matters.[63]

Determination of maritime disputes in Malaysia saw significant increase in speed after the Admiralty Court located at Kuala Lumpur was conceived by the former Chief Justice of the country, the Right Honourable Tun Dato' Seri Zaki Bin Tun Azmi and established on 30th day of September 2010.[64] The Court is entirely supported by the Government of Malaysia as well as the Malaysian maritime industry[65]. The Court plays a crucial role in creating a dependable link between the maritime industry and the law. The Court functions as a specialist Court having the power to respond to maritime disputes with skill, efficiency and speed, to ensure that the rights of litigants are effectively and efficiently protected and enforced. It has the capacity and the expertise to resolve every type of maritime claims both of domestic and international content. Cases are heard by special judges with experience in maritime and commercial law in this court.[66] Another characteristic of the Admiralty Court is that it gives itself a 9-month deadline within which to complete a trial from the first day of filing. It even costs less than regular courts to litigate in this particular Court.[67]

The Court entertains admiralty matters as prescribed by the provision of section 20 of the Malaysian Supreme Court Act 1981. These include those relating to ownership or possession of ships or shares in a ship; possession, employment or earnings of a ship as between co-owners of a ship; damage received by a ship; mortgage of or charge on a ship or share in a ship; damage done by a ship; loss of life or personal injury sustained as a result of a defect in a ship or neglect of persons in control of ship; any agreement relating to the carriage of goods on a ship or to the use or hire of a ship; loss or damage to goods carried on a ship; towage of a ship; pilotage of a ship; salvage of a ship; construction, repair or equipment of a ship or dock charges or dues; goods or materials supplied to a ship for her operation

or maintenance; master or crew's wages; master or agent's disbursements made on account of a ship; bottomry; general average; forfeiture or condemnation of a ship or goods carried in a ship.

In addition to the above, other maritime-related cases to be handled by the Admiralty Court of Malaysia include: claims relating to transaction of international trade and commerce; marine insurance and reinsurance including marine and shipping agency and brokerage matters; limitation actions; claims related to ship financing and documentary credit for the carriage of goods by sea; civil claims arising out of marine pollution; marine related agency, multimodal transport and warehousing; marine regulation and compliance; and disputes pertaining to the welfare of seamen; death or personal injury, loss or damage arising out of a marine activity in or about a marine facility. With regards to arbitration, the Court also has the power to entertain interim applications for the preservation of assets pending final arbitration awards, disputes on appointments of arbitrators; and the review, setting aside and enforcement of maritime awards.[68]

A distinct feature of the Malaysian Admiralty Court and Admiralty jurisdiction is the invocation of its jurisdiction. This is mostly invoked at any time a party intends to take step geared towards the arrest of a vessel. The Court has unlimited jurisdiction and in the exercise of its jurisdiction, the importance of arbitration is recognized. Before the 2011 amendment of the Arbitration Act of Malaysia, a ship can only be retained or arrested as security in respect of a maritime dispute referred to arbitration, except the plaintiff can satisfy the requirements under the principles of Rena K.[69] This means the Admiralty Court has the power to order retention of vessels or its security pending the final determination of an arbitration proceeding in relation to maritime disputes.[70]

5. Conclusion and Recommendations

This paper has established that both arbitration and litigation are necessary for maritime dispute resolution, although, arbitration can be considered as a more desirous means to be adopted. Resolution of maritime claims through litigation in Nigeria, despite being confronted with several limitations which make the method less desirable, is still imperative and therefore must be improved on for better and more efficient resolutions especially considering that the maritime sector is business-based and serves as one of the most positive, alternative sources of income in Nigeria. Accordingly, the following recommendations are made for effective and efficient resolution of maritime disputes in Nigeria:

1. There should be enactment of legislation for the establishment of a special Court to be saddled with the responsibility of entertaining maritime cases in Nigeria, that are ineligible for arbitration. Such a Court can be called "Admiralty Court" as it is in Malaysia.
2. The Admiralty Court can also operate a deadline, such as 9 months or less, within which to ensure the completion of maritime matters.
3. The Judges appointed to this Court must be Maritime/Admiralty experts or professionals. This would take care of the problem of understanding complex maritime transactions and the disputes that arise from them.
4. Maritime disputes should be resolved by way of arbitration for speedy resolution by an arbitrator. Arbitration is confidential in nature and does not follow the formal courtroom proceedings. It is mostly useful in technical cases, or one involving specialized knowledge like maritime disputes. Parties have the liberty to choose their own arbitrator(s).
5. Parties to maritime transaction should always have an arbitration clause in their agreements and include that the decision made will be binding and legally enforceable and Courts should always advise/direct parties involved in maritime disputes to resort to arbitration.

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