

ESSAYS IN ADMIRALTY

An Introduction
to Legal Issues
in Shipping from
a West African
Perspective



Jean
Chiazor Anishere



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Dedication

This book is dedicated to the Late Honourable Justice Mahmud Babatunde Belgore, Retired Chief Judge of the Federal High Court of Nigeria and Past President of the Nigeria Maritime Law Association – for all of the times he encouraged me in the practice of Maritime Law – and to all persons desirous of carving a niche in Maritime.

Jean Chiazor Anishere



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An Introduction to Legal Issues in Shipping from a West African Perspective

by

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Member of the Executive Council of the Comité Maritime International
Member of the Committee of Judicial Sales of Ships

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Foreword

During the past 35 years, Nigeria has witnessed the emergence of maritime law as a major specialty for legal practitioners. Nigeria, being a predominantly cargo-importing country, has witnessed a tremendous growth in the development of shipping-related industries – from shipping companies to ships' agents; from ships' chandlers to surveyors; from dockyard operators to clearing and forwarding agents and stevedores – to mention the most important. Government agencies have become very visible players in the field, with parastatals such as the Nigerian Maritime Authority and Safety Agency (NIMASA), the Nigerian Ports Authority, the Nigerian Shippers Council and the Inland Waterways Department all playing a major role. The work of the maritime lawyer has accordingly extended beyond the pursuit of actions *in rem* and cargo claims to providing advice and guidance to all the aforementioned bodies and organisations.

With the formation of the Nigeria Maritime Law Association and the development of the specialty in maritime law, a number of lawyers have attained a mastery of the subject and have become invaluable resources in the dissemination of knowledge and in the explanation of the considerable technicalities inherent in the subject. The pioneer practitioners in the field are gradually being succeeded by what I would term the 'second generation' of maritime lawyers. One of the most prominent and distinguished amongst this generation is the author of this highly impressive volume of essays, Mrs Jean Chiazor Anishere LL.M; M.T.M.; M.CI Arb; F.IoD. She is the principal counsel in the law office of Jean Chiazor & Co., a leading maritime law firm in Lagos. The range of maritime legal services offered by her firm is most impressive.

The learned author has, over the years, been called upon to deliver papers at seminars and conferences and to prepare articles for publication in journals. It is a selection of the said papers and articles that are featured in this book. It is evident from the papers featured that she has acquired an impressive depth of knowledge of the subject on which she has turned the searchlight.

This volume of *Essays in Admiralty* is an important addition to the growing body of publications on maritime law and practice in Nigeria. The title '*Essays*' follows the nomenclature which, for want of a better word, I used as a title to my own collection of papers and articles either presented at seminars or published in journals. The word 'essay' somehow denotes an academic treatise. However, Jean Chiazor Anishere's book goes beyond academic treatise; it is also a manual which should be kept at the side of everybody connected with the shipping industry.

The book covers a wide range of subjects and these are treated with the author's characteristic lucidity. She simplifies and analyses the provisions of complex international rules and regulations, and practical subjects such as the use of inland container depots and bonded terminals, as well as ship chandling, multimodal

transport and ship financing, are explained with clarity. Very substantive maritime law subjects such as marine insurance, carriage of goods by sea, maritime liens and cargo claims are presented in a manner that will be appreciated by lawyers in general.

The writer shows her versatility by venturing into the arcane subjects of oil and gas investment in Nigeria, and bunkering. The controversial *Cabotage Act* which purports to restrict the carriage of goods within Nigerian territorial waters to vessels owned by Nigerians, built in Nigeria, crewed by Nigerians and registered in Nigeria, is highlighted in Chapter 15. She dwells on the modalities for the implementation of the cabotage vessel financing fund. I fully share her conclusion where she states:

‘An overall view of the Act seems to suggest that all the very critical items that the Act sought to preserve for Nigerians is subject to waivers. The Act thus effectively shot itself in the foot! Eight years on, since the coming on stream of the Act, not much empowerment of the Nigerians has taken place in the maritime sector, due largely to the rampant and unbridled wielding of the waiver baton.’

One is tempted to go further and query the rationale in purporting to exclude foreigners from a crucial activity in which Nigerians possess neither the means nor the know-how!

In Chapter 19, the author discusses the various modes of dispute resolution. She examines the relative advantages and disadvantages of litigation and arbitration and relates the discourse to admiralty matters in Nigeria. In the second article on the subject, she defines alternative dispute resolution and makes a case for arbitration, conciliation and mediation as means of resolution of disputes in the maritime industry.

Chapter 21 starts with an interesting comparison of the *Merchant Shipping Acts* of Nigeria and Ghana and contrasts the maritime laws of Ghana, South Africa and Nigeria.

The book ends with a useful glossary of shipping terms and a comprehensive bibliography.

The learned author, Jean Chiazor Anishere, deserves our loud encomium for this excellent volume which will be a handbook for lawyers, students and the entire shipping industry. We shall eagerly look forward to future volumes.

Louis Nnamdi Mbanefo S. A. N.

President of the Nigerian Maritime Law Association

Member of the Executive Council of the Comité Maritime International

Member of the Committee of Judicial Sales of Ships

Lagos, Nigeria

January 2012

Preface

The dearth of knowledge in Admiralty matters spurred me to write this book, which is a compilation of many of the papers I have published (duly revised) and some useful contributions from some of my learned colleagues and stakeholders in the industry.

In the words of the Administrator of the National Judicial Institute (NJI) in Nigeria, the Hon. Justice Umaru Eri (retired) OFR, whose views I fully support: 'The importance of admiralty law and maritime practice to the development of the national economy and advancement of international trade cannot be over emphasised.' I have been encouraged to write this book by my 'students' from different sectors – who eventually became my clients and friends, all of whom I fondly call 'Mi Lords Admiral' – because they believe that there is merit in having one book that covers all the different aspects of maritime.

The shipping issues highlighted and discussed in this book are written for the benefit of Nigerians and other West African practitioners, who either work in the industry or have an interest in exploring it, and for non-Nigerians who may wish to trade with Nigerian companies. However, this book is not intended as a definitive legal volume and should not be relied upon to solve legal disputes. If you need legal advice, always consult an experienced lawyer, arbitrator or mediator.

My ultimate aim in publishing this collection of essays has been to share the outcome of some of my research with a wider audience, with a fervent hope that it will provide them with the basic knowledge with which to investigate further this particular field of study.

The title, *Essays in Admiralty*, was suggested by the erudite Professor Bamidele Badejo, the former Hon. Commissioner for Transport for Lagos State, whose intellectual suggestions mark a fitting close to this book. Thank you, Sir!

My immense gratitude must also go to Louis Mbanefo S. A. N., whom I fondly call 'Uncle Louis', for graciously contributing the foreword to this book despite his very busy schedule. Louis Mbanefo S. A. N. is a gentleman of the finest distinction and Nigeria's pride in Maritime Law and Practice. I am so privileged that he has honoured me in this way. Thank you, Uncle Louis.

It is my hope and desire that *Essays in Admiralty* will be read and used as a handy reference, as a useful guide and as a navigational tool for all those who wish to carve a niche for themselves in this global industry.

Ahoy!

Jean Chiazor Anishere

January 2012

About the author

Jean Chiazor Anishere has enjoyed a long and productive career in the legal profession in Nigeria.

She graduated from Obafemi Awolowo University, Ile-Ife, with a Bachelors degree in Law in 1985. She went on to achieve a Masters degree in Law from the University of Lagos, Akoka, and a Masters degree in Transport Management from the Ladoke Akintola University in Ogbomosho.

Jean was called to the Nigerian Bar in 1986 and, in 1990, was sworn as a Notary Public by the late Chief Justice of Nigeria, the Hon. Justice Mohammed.

She has attended many international courses on maritime law and maritime-related issues, earning numerous certificates of merit, including a Certificate in Shipping from the Cambridge Academy of Transport in England.

Her interest in maritime law was ignited during her time at the law firm of Olisa Agbakoba and Associates, when the Maritime Institute in Lagos State University, Ojo, was inaugurated.

Jean served at the Lagos State Ministry of Justice in Lagos State from 1986-1987. She was a solicitor in the law firm of Jane Afolabi & Co in Lagos from 1988-1989, Head of Chambers at Bayo Kehinde & Co. in Lagos from 1989-1994, Managing Solicitor at Olisa Agbakoba & Associates from 1994-1996 and has been Principal Counsel at Jean Chiazor & Co. (Ofianyi Chambers) since 1996.

Jean has won many awards and accolades, including the International Woman of the Year 1997-1998 award presented by the International Biographical Centre of Cambridge, England in recognition of her services to law, and the International Professional of the Year 2005, presented by the same organisation, for her excellent practice in the field of law.

She has served as a maritime legal consultant to the House of Representatives' Committee on Marine Transport and on some international conventions. She trained the first set of the cabotage enforcement officers for the Nigerian Maritime Administration & Safety Agency (NIMASA) on cabotage law and implementation. She is a founding member of and sits on the Committee of the Nigerian Shippers' Council, working in collaboration with the National Judicial Institute on the bi-annual Maritime Seminar for Judges.

Jean has helped to establish viable maritime desks for some commercial banks in Lagos, Nigeria.

Jean's professional memberships and affiliations are numerous and include: The Nigerian Bar Association; Nigerian Chamber of Shipping; International Bar Association; Founding Member and President of the Women's International

Shipping & Trading Association – Nigeria (WISTA-Nigeria); Nigeria Maritime Law Association; Enterprise Network for West Africa; Nigeria-Britain Association; Fellow of the International Biographical Centre, Cambridge, England; Fellow of the Institute of Directors – Nigeria; Founding Member of the National Judicial Institute/Nigerian Shippers' Council Committee on the Maritime Seminar for Judges; Member of the Chartered Institute of Arbitrators (UK); Panel Member of the Maritime Arbitrators Association of Nigeria; Member of the International Chamber of Commerce – Nigeria (ICC-N); and an Associate Member of the Indigenous Shipowners Association of Nigeria (ISAN).

Jean has published many articles on legal and maritime issues in several journals and books in contribution to the development and growth of the maritime industry and she initiated and wrote the *Admiralty Matters* column for Nigeria's *Ships and Ports* media house. Jean also regularly contributes to the training programme and annual career summit organised by Ships and Ports Communications and the Nigerian Chamber of Shipping.

Above all, Jean Chiazor Anishere is a widely travelled, well known and highly respected individual whose undying enthusiasm for maritime law and the shipping industry to which she relates is an inspiration to everyone.

Llewellyn Bankes-Hughes
Managing Director
Petrospot Limited
Oxford, UK

January 2012

About the Firm

Jean Chiazor & Co. (Ofianyi Chambers) has extensive experience in the specialist field of Maritime Law. The firm operates from the Nigerian Shippers' Council Towers, in Lagos, Nigeria, and has a deep understanding of the unique aspects of the Nigerian Jurisdiction. It provides efficient and cost-effective enforcement and defence of all maritime-related claims, ship arrests and legal advisory.

The Maritime and Transport department of Jean Chiazor & Co. is recognised internationally as offering leading expertise throughout all major Nigerian ports. This reputation has been built on extensive experience, 24-hour availability and speed of response.

Jean Chiazor & Co. has been involved in many significant cases, several of which were ultimately settled by negotiation in Nigeria. These include: *MV Crete*; *MV Paraskevi*; *MV Dieke Rickmers*; and *MV Actuaria*. Other cases that have been of particular academic and practical importance include: *MV Adventurer*; *MT Progress*; *MV Vanguard*; *MV Samskip*; *MV Ace Ornolo*; *MV Dongzin 8*; *COSCO Seattle*; *MV Maersk Pascad*; *MV Casy*; *MT Ozay 6*; *MV Maersk Athens* and several others.

The Maritime and Transport department represents a wide range of Nigerian and international clients, including major shipowners, P&I Clubs, hull and cargo underwriters and banks involved in ship financing.

The firm's expertise covers a full range of maritime legal services, including:

- Arrest
- Access and examination orders
- Bills of lading
- Cargo claims
- Charter parties
- Carriage of goods
- General average
- Hull and cargo insurance
- Judicial sales and foreclosures
- Liens
- Maritime training
- Maritime arbitration

- Mortgage foreclosures
- P&I
- Personal injuries
- Pollution
- Salvage and stowaways
- Security arrests
- Ship sale and purchase
- Ship finance.

In recent years, interest has grown in the broader subject of alternative dispute resolution (ADR), including arbitration and other methods of settling disputes, such as mediation.

The skills acquired in maritime litigation have been applied to commercial and general litigation, including product liability, environmental and regulatory work, insurance matters, bank and trade-related litigation and project finance.

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Special thanks must also go to her two secretaries, Miss Glory Ozioma David of blessed memory and Miss Eunice Udo Akpan, for those long hours and late nights and their admirable patience throughout the period of putting the articles together.

A very special thank you is due to the Nigeria Maritime Administration and Safety Agency (NIMASA) for its financial support and also to Chief Bolaji Ayorinde S.A.N. for his enthusiastic call on all serious advocates of Nigeria to financially support this book. And, of course, to Professor Bamidele Badejo, the former Hon. Commissioner for Transport for Lagos State, for his incisiveness and discussions which provided much of the inspiration for this book.

To my darling son, Oludamilare Chukwuemeka Philip Anishere, I say thank you, sweetheart, for your love and understanding.

The author also extends her immense gratitude to her friend Llewellyn Bankes-Hughes, his wife Lesley and his team at Petrosport, for their doggedness and professionalism in seeing this project through.

Thank you all, for producing and bringing this book to life.

Jean Chiazor Anishere

January 2012

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