

## A CASE FOR FRESH INITIATIVES IN MARITIME LAWS (II)

In the first part of this article I touched on some of the defects in the Hague Rules in relation to that most vital of shipping documents, the Bill of Lading. Today I propose to look at the phenomenon of maritime frauds. In one of the books on the subject, Barbara Conway says that the term (Maritime Fraud) cover a "multitude of sins which have burgeoned since the mid 1970s. She classified them into three;

1. The ship scuttle
2. Documentary fraud
3. Charter party fraud

and I should perhaps add a fourth, deviation of ships for cargo theft, although these categories do not in anyway exhaust the subject and are not even mutually exclusive. Nigeria has had more than it's fair share of these frauds. I can point to 3 critical periods; the cement armada, the rice implosion and the issue of oil as diplomatic cargo.

One of the most spectacular and eye catching frauds (if discovered) is the ship scuttle. Peter Lowe, Secretary of the International Maritime Bureau has called it "the deliberate sinking of vessels in the pursuance of fraud against cargo interests"

The scuttle is without doubt the classic maritime fraud. Mr. Lowe's has described the form it takes:-

"A dishonest shipowner approaches an exporter/supplier of goods and suggests to him that his next large shipment should be carried on one of his ships. The exporter is to arrange the contract and for the proposed buyer/importer of the goods to open a letter of credit in the exporters favour. The shipowner and exporter agree that no goods are actually to be shipped but the shipowner issues a bill of lading to the exporter to convince the cargo interest that the goods have been loaded on the vessel. The bills of lading together with other relevant shipping documents are presented to the importer's bank and payment is effected in favour of the exporter. The ship without it's by now paid for, but non-existent cargo leaves port. It cannot, of course reach it's destination since should it do so, the missing cargo would make the fraud immediately apparent. To avoid this, the ship is deliberately sunk in a suitable location so as to remove the evidence of the non-existent shipment beyond any hopes of subsequent inspection and investigation. The shipowner enters an insurance claim for his vessel and also receives a share of the proceeds from the letter of credit from the exporter, leaving the hapless buyer to pursue a claim for non-delivery of his cargo".

Chief Omilani of Omilani and Partners, one of the leading loss adjusters in this country says that the period 1977/1979 was very critical because 62 vessels laden with cargo for Nigeria never arrived and were declared missing. The high point for Nigeria remains the case of the JAL SEA CONDOR, which first established that the Federal High Court possessed exclusive admiralty jurisdiction (American International Insurance Company Vs Ceekay Traders, 1981 5 S.C. 81). The Sea Condor was laden full with general cargo, including rice for Ceekay traders, a Nigerian trading house, in Lagos. The ship sank on the 6th July, 1978 just outside the coast of Namibia. Omilani says that "investigations revealed that majority of the shippers knew that the SEA CONDOR would never complete the voyage to Lagos. Even though the bills of lading were issued by SEA CONDOR the shippers at the last minute withdrew cargo and shipped them on JAL SEA FORTUNE, a sister ship. The SEA FORTUNE was not scheduled to call at Lagos but was bound for other West African Ports. After the sinking of SEA CONDOR some of the Nigerian importers submitted total loss claims on their skeptical cargo underwriters who on getting information that the SEA FORTUNE was berthing at Cotonou arranged for a supervised discharge of the ship. The result was that considerable cargo was discharged from the Sea Fortune which were presumed to have sunk with the Sea Condor". These findings shocked the Nigerian Maritime Community no end and was in part the reason the comprehensive import supervision scheme (CISS) was legislated.

In case one wonders why fraudsters will readily sink vessels, Barbara Conway provides the answer when she indicates that the scuttle usually involves a "rustbucket" which is a vessel of considerable antiquity (12 - 25 years old) and is not good for much else except the insurance value. She goes on to describe the biggest scuttle of all time, the sinking of the oil supertanker Salem. "The Salem, all 213,928 tons of her, sank into one of the deepest troughs of the Atlantic Ocean after reporting explosions in her engine room and sending out radio SOS messages". The Salem had been carrying a full cargo of 19,300 tons of light crude oil taken on at the Kuwaiti Port of Min AL Ahmadi. The original destination of the ship was Italy but 4 days out of the Kuwaiti Port, the Genoese Company which had bought the oil from the Kuwaitis sold it on the "spot market" to Shell for 56 million dollars. It was initially assumed the Salem went down with its precious cargo but investigations by Lloyds of London subsequently confirmed that its cargo had been sold to SASOL the South African Oil Company by fraudsters for 43 million dollars and the ship scuttled to hide it.

I now turn to examine a second head of maritime frauds. It is about documentary frauds which has been described as the most elaborate form of cargo frauds. It depends largely on the letter of credit system. A letter of credit is a device of international trade where an exporter agrees to ship goods to the importer on the assurance of his bank that the importers bank will ultimately pay.

The vital document to back up the letter of credit is the Bill of Lading and as Peter Lowe notes, it is easily manipulable. One way is to falsify the details of the cargo in the bill of lading. The details of the supposed carrying vessel is also forged. So when the documents arrive at the importers bank for payment he readily authorizes it against the counter part bill (also falsified) he is holding. Belatedly he realizes he has been the

victim of a documentary fraud when he looks out for his cargo only to find that the bill of lading is false and that the vessel described on it does not exist.

A variation of this theme played out in Lagos in 1978. It concerned a consignment of rice shipped aboard the ARETI and landed safely in Lagos port. Savannah Bank had paid for the consignment on behalf of a customer, Nicannar Food Co. Ltd. To secure its exposure on the credit, the original bill of lading was to be retained by the bank until Nicannar Foods came forward to reimburse it. Contrary to the terms of the bill of lading, the ship agent released the cargo of rice to Nicannar Foods without sighting the bill nor did Nicannar pay the bank for the credit before or after taking delivery. The whole mystery of the case was exactly how Nicannar took delivery without the bill of lading. It is sometimes permissible for a cargo interest to take delivery of goods without producing the bill so long as an indemnity is produced. This was not the case here. When the bank realized it had been the victim of sharp practice it filed suit against the ship agent and Nicannar Foods in the Lagos High Court. In what subsequently produced a landmark decision in the area of maritime law, I remember Mr. Justice Aniagolu repeatedly asking the question of Chief Sobo Sowemimo - "Where is the Rice"? an issue which was unfortunately forgotten in a tangle of arguments over whether the jurisdiction of the State High Court extended to admiralty. Today Savannah Bank Vs Panatlantic (1987 I NWLR Part 49) is remembered not on the procedure by which the rice was procured but because it blew apart the exclusive jurisdiction of the Federal High Court in admiralty. I give this example not so much to show that Savannah Bank was a victim of documentary fraud, but to show how manipulable and unsafe shipping is under the Hague Rules which contain little safeguards against forgeries nor says anything about how goods will be released in the absence of shipping documents. The true story of the Savannah Bank case remains a secret. It was reported not too long ago on the subject of oil that Nigerian fraudsters had fastened onto it to execute complicated scams. But the technique is really quite simple because oil is a high value commodity. Two main types of fraudsters can be identified. Type one are those who pass off as allottees of government oil. Type two are those who have some knowledge of crude shipments. It is now fashionable to refer to them as the '419' group. Barbara Conway has suggested that in an oil trading centre as busy as Bonny, where up to 15 shipments of crude oil leave daily, deals are always on offer and buyers looking for interesting opportunities are very easy to find. It is this setting that enabled fraudsters operate with relative ease until quite recently when the Nigerian government at the behest of the International Maritime Bureau moved to stamp out the practice. But before then many had fallen victim. The usual technique was forged documentation but with an interesting twist. For everything, with the exception of one crucial factor, about the cargo would be perfectly genuine. The specified amount of crude oil would be loaded onto the correct ship at the stated date. Only one detail shown on the documents is an outright lie. For the cargo does not actually belong to the company or person stated as its owner. It then dawns on the prospective buyer that he has become a victim of oil cargo fraud.

Let me now consider the problem of charter party frauds. This also presents considerable potential for the fraudulent operator. Because a charter company requires little start up funding and is subject to little regulation and if the market has been very soft, it is quite

simple for a fraudster to entice a shipowner to enter into a charter. The fraudulent charterer then takes advantage of this to canvass for cargo which he is able to attract with relative ease because he will offer low freight rates since he does not intend to complete the voyage. As soon as the charterer collects freight and the ship sets sail, he goes conveniently into liquidation leaving the shippers, shipowners and consignees with a very awkward and expensive problem.

In a recent case, Supermaritime Limited, a Nigerian Ship Agent was confronted with substantial port dues and bunker charges accumulated by the charterer of the ICOS N.V Antwerp in the Lagos Ports. The charterer went into liquidation leaving the owners in the U.K locked in battle with the ship agent over who should then bear the burden. Under a charter party the burden of payment for port dues and bunkers is borne by the person in whose control and management the ship was when liability arose. In this case it was obviously the charterer and the owners were in no mood to bear his burden. Neither was the ship agent as the charterer would be in no position to refund having gone into liquidation. The owners then attempted to retrieve their vessel from the Port of Lagos. On instructions, I obtained by urgent application, an arrest and stop clearance order on the 19th March, 1991 to defeat the attempt. The owners were then obliged to settle the bills incurred by the charterer.

Chief Omilani also gives the example where charterers conniving with shipowners deliberately employ unseaworthy vessels and collect substantial freight only to declare a general average on the vessel a few days out in the sea either reporting a major engine or steering breakdown. The shipowner then executes salvage operations alone, to the detriment of cargo interests who are forced to pay huge salvage costs on demand to save their cargo from auction.

Finally, I turn to illegal deviation and cargo theft. As its name suggests this class of maritime fraud occurs when a dishonest shipowner or charterer having loaded ship diverts it into a port of convenience on the slightest pretext. The cargo is then sold and the shipowner pockets the proceeds. Such an act is often followed by a change of the vessel's name or a subsequent scuttling in order to hide the evidence of cargo theft. A slight variation to this scheme is when the shipowner sells off cargo to an unsuspecting third party leaving the original purchaser and the subsequent buyer in combat over ownership when the ship eventually docks. In one paper on this subject, Chief Omilani spoke about a ship, the Emmanuel Kamateros, which set sail for Lagos and Port Harcourt in March 1978, laden with goods valued about 10 million dollars. On arrival in Nigeria, she was diverted from Port Harcourt without discharging any cargo, to Kalamata, Greece on the allegation of outstanding mortgage payments. It was later reported that her owners had gone bankrupt and the vessel was sold by public auction and renamed. Barbara Conway reveals that Nigeria has been a fertile ground for complex marine fraud. She says the primary victim of the 1970s appears to be the Maduako transport company for which a certain greek had been contracted to deliver 100,000 tons of cement to Nigeria. The operation which followed involved a welter of documents that enabled the greek to receive 1.7 million U.S dollars. Actually the bulk of the consignment was delivered to gain Maduakos confidence but that was the end. On enquiry about the delay in delivering

the remaining consignment, Maduako was assured that matters were well in hand. This offered the shipowner the opportunity to lure another Nigerian company by offering it Maduako's fictional cargo. With this payment the required balance of the consignment was then purchased and shipped to Nigeria on a chartered vessel. The fraud only became apparent when two very angry consignees were engaged in a dispute for ownership of the goods as the greek had given both title over them.

Fraudsters, Nigerian and foreign alike do incalculable damage to shipping. As I mentioned at the outset the 67 year old Hague System never really protected shipping from the point of view of the cargo interest. Neither did it provide measures to deal with maritime frauds largely because frauds were not then rampant. The Hamburg rules on the other hand provided solutions to some of the defects in the Hague Rules. The time bar provision is 2 years, and the duty of the shipowner for consigned goods are considerably expanded. But in the context of maritime frauds the Hamburg Rules says nothing, so it is up to us to aggressively pursue international and domestic legislation which, for instance remove barriers to the apprehension and trial of maritime fraudsters and abolish registration of ships under flags of convenience because this procedure enable fraudsters register ships with little difficulty mostly in perpetration of fraud. It is clear that the time has come to take a closer look at criminal responsibility in admiralty. I am not unmindful of the fact that legislation has been introduced on occasion to combat maritime frauds. Indeed the Merchant Shipping Amendment Act 1978 was passed into law to disallow ships of 15 years registration and above calling in Nigerian waters. The point remains nonetheless that the time has come for a comprehensive review of shipping laws. This then is the case for a new initiative.

OLISA AGBAKOBA.

***OLISA AGBAKOBA & ASSOCIATES  
APAPA, LAGOS.***