

## **No Limitation Period Where Admiralty Claim is Enforceable *in rem*, Says Court**

By Emeka Akabogu

### **Introduction**

In a recent ruling a judge of the Nigerian Federal High Court held that there is no limitation period in any cause of action within the admiralty jurisdiction which is enforceable *in rem*. Taken literally, this decision could have absurd practical consequences. It means that an action could be brought at any time whatsoever in respect of a relevant cause of action. In the case in which the decision was given, the cause of action accrued ten years earlier. It is therefore important to throw light on the issue and put the decision in perspective.

### **Analysis**

The background to the judge's position is section 8 of the Limitation Law applicable in various states of Nigeria which provides a limitation period of six years within which relevant actions can be brought. The judge relied on the exception in section 8(3) which provides:

***“Save as provided in subsection (2) of this section, this section will not apply to any cause of action within the Admiralty Jurisdiction which is enforceable in rem.”***

The provision seems to suggest that the general limitation period of six years set out in the preceding provision of the section is not applicable to causes of action in the admiralty jurisdiction enforceable *in rem*. However, the applicability of this provision is called into question in the face of the provision of the Admiralty Jurisdiction Act which provides –

***18.-(1) A proceeding may be brought under this Act on a maritime claim or on a claim on a maritime lien or other charge, at any time before the end of –***

***(a) The limitation period that would have been applicable to the claim if a proceeding on the claim had been brought otherwise than under the Act; or***

***(b) If no proceeding on the claim could have been so brought, a period of three years after the cause of action arose.***

***(2) The provisions of subsection (1) of this section shall not apply if a limitation period is fixed in relation to the claim by any enactment or law.***

From the provision it is evident that the period within which an action can be validly brought in an admiralty matter is three years save where otherwise agreed by the parties. However, where a limitation period is fixed by another law, the Admiralty Jurisdiction Act will not apply.

### **Comment**

It could be that the judge deemed the limitation provisions of the Limitation Law as one “fixed in relation to the claim by any enactment or law” for the purpose of avoiding the application of section 18(1). If that is the case, the question is whether the provisions Limitation Law applies to admiralty proceedings, and if indeed they do apply, whether they can be construed to foreclose the application of section 18(1) of the AJA.

The judge in the instant case did not refer to it but seems to have relied on the Supreme Court decision in **RHEIN MASS UND SEE & ORS v. RIVWAY LINES LIMITED** where the court applied section 7(3) of the Limitation Act 1966 to the admiralty jurisdiction and held that though brought more than eight years after the accrual of the claim, the action was not statute barred. This decision could however be rationalised given that the claim was instituted in 1986 when there was no Admiralty Jurisdiction Act, which upon its enactment in 1991 did not have retroactive effect. Thus at the time the matter was instituted, there was no specific provision which set out a limitation period for admiralty actions. However in the face of the existence of the Admiralty Jurisdiction Act which elaborately covers maritime claims, the decision in Rhein Mass (*supra*) is clearly distinguishable.

It is also submitted that even if the Limitation Act is argued to apply to admiralty proceedings, it does not provide nor imply that 'there is no limitation period in any cause of action within the Admiralty Jurisdiction which is enforceable *in rem*' as suggested by the learned judge. It only exempts such causes of action from the specific provisions of section 7(1) **of the Limitation Act**. It cannot be interpreted to exempt them from the application of the provisions of the Admiralty Jurisdiction Act, as that would be reading absurdity into the law. In the circumstances, it is submitted that the decision of the court was made *per incuriam*, and cannot be binding. Happily, it is a first instance decision which may not necessarily bind courts of coordinate jurisdiction.