

Case Review

M/V CAROLINE MAERSIL (SISTER TO M/V "CHRISTIAN MAERSK") & ORS
-V- NOKOY INVESTMENT LIMITED (2000) 7 NWLR (Pt. 666) 587

The Court of Appeal, in a recent judgment delivered on the 10th of April 2000, gave an insight into the interpretation of the "package limitation" clause under Hague Rules contained in Nigerian Carriage of Goods by Sea Act, Cap. 44, Laws of the Federation of Nigeria, 1990.

The facts of the case are as follows: -

The respondent, a seafood exporting Company, shipped 1,202 cartons of frozen Atlantic Gold Shrimps valued at US\$71,516.50 from Lagos to Algeciras in Spain. The consignment deteriorated during transportation and was refused landing by the Spanish Authority. The respondent then sued the vessel, her owners and her agents claiming the full value of the consignment, inter alia.

The Defendants/Appellants contended inter alia that their liability was limited to N200.00 per carton and the highest liability they may be obliged to bear was N240, 400.00 (Two Hundred and Forty Thousand, Four Hundred Naira) only, if the package is taken as 1,202 cartons. However, the Bill of Lading itself provided that the limit of liability should not exceed £100.00 (One Hundred British Pounds Sterling).

In holding that the parties are bound by the limitation stated on Bill of Lading the Court of Appeal took time to consider the application of Article 4(5) of the Hague Rules as contained in the Nigeria COGSA. The court held that the package limitation figure was N200.00 as contained in Article 4(5) of the Hague Rules. However, this provision, according to the court is subject to Article 9 of the same rules which provides as follows:

“The monetary units mentioned in these Rules are to be taken to be gold value.”

In interpreting this provision, the court stated that:

“... the purpose of a gold value clause which is equivalent to a ‘cost of living index clause’ is to take care of inflation. If the commencement of COGSA Cap. 44 was 18/3/1926 as stated clearly in the legislation, then the N200 per package, if applied, will mean that each package would be assessed on the value of gold sold for N200 in 1926 not definitely in 1998 or any other subsequent date.”

Comments

In arriving at its decision the court relied on the English case of Feist -V- Societe Inter Communale Belge D’Electricite (1934) A.C. 161.

The court also relied on the Nigerian case of NNSL -V- Emenike (1987) 4 NWLR (Pt. 63) Pg. 77 at Pg. 89. as well as the Italian case of Fiat Company -V- American Export Inc. (1965) AMC 384.

However, in adopting the decision in Feist’s case, the court failed to take cognizance of the fact that the Privy Council was merely interpreting the provisions of the bond which is completely dissimilar to the provision of Article 9 of the Hague Rules. However, in NNSL -v- Emenike, the Court of Appeal stated as follow:

“Applying the ‘gold clause’ provision as well as Article 9 of the (Hague) Rules made under Cap. 29, Laws of the Federation, 1958, I should take into account the current Naira equivalent of Pound Sterling which is one to seven. I should therefore make a provisional assessment of damages should the limitation of liability apply at 7 x 200, which is N1, 400.00”.

It is difficult therefore to see how the above dictum forms authority for the opinion expressed by the court. If anything, it supports the view that the assessment of the gold value should be at the date of the decision or better still, when the cause of action arose.

In practical terms, it is difficult to assess the gold equivalent of the Naira in 1926 when in actual fact the Naira, as a legal tender in Nigeria, came into existence in 1973.

The controversy rages on and it is hoped that Nigerian superior Courts will be presented with the opportunity to make a definite pronouncement on the issue.

- Kingsley Ohiri –