

REGISTRATION, SALE AND TRANSFER OF SHIP IN NIGERIA VIS-À-VIS CREATION AND ENFORCEMENT OF MORTGAGE ON SHIP

Introduction

The general understanding is that ship otherwise called a vessel is a means of voyage on sea or ocean from one country to another or within jurisdiction; it is a means of transportation of goods and passengers. However, it is important to know that ship goes beyond this particularly when it comes to the existence, recognition and operation of ship in any country of its entry or exit.

Also, ship is not just a means of voyage on sea; it enjoys legal personality status and nationality upon registration. Further to this, ship is likened to land when it comes to registration, asserting ownership over same, divesting one's interest or right on it to another person and (or) using it as a means of mortgage transaction.

However, ship is far beyond land or property as it is considered a juristic personality capable of being sued in maritime claims. On that premise, this article examines the registration, sale and transfer of ship in Nigeria as well as how to create and enforce mortgage on ship.

Registration of Ship in Nigeria

Firstly, for one to understand what ship registration is all about, it is important to know the definition of ship and to know how to exercise ownership over same. Hence, recourse shall be made to the **Merchant Shipping Act 2007** and the **Cabotage Act 2003** respectively.

The Merchant Shipping Act (MSA) is the primary legislation for the registration of ships in Nigeria administered by the Nigerian Ship Registration Office (NSRO) under the Nigerian Maritime Administration and Safety Agency (NIMASA).¹ **Section 16(5) of the Act** defined ship to include:

“Any barge, lighter or like vessel used in navigation in Nigeria and however propelled, so however, that no self-propelled vessel which is less than 15 gross tons shall be subject to registration.”²

Section 2 of the Cabotage Act defined vessel to include:

“Any description of vessel, ship, boat, hovercraft or craft, including air cushion vehicles and dynamically supported craft, designed, used or capable of being used solely or partly for marine navigation and used for the carriage on, through or under water of persons or property without regard to method or lack of propulsion.”³

The above definition is that any object will fall within the category of a ship if it is a vessel of any kind used or constructed for use in navigation by water howsoever it is propelled or moved.⁴ Once an object falls into such category of ship as defined above, then it may be subject to registration in Nigeria.

However, before registration can be possible, there must be ownership right or interest in the ship attributed to a person whether wholly or partially. It is the person with such right that can apply for registration of ship in Nigeria.

¹ See Section 28(2) of the Nigerian Maritime Administration and Safety Agency Act 2007.

² Merchant Shipping Act, Part III, Cap. M11 Laws of the Federation of Nigeria 2010.

³ Coastal and Inland Shipping (Cabotage) Act, cap. C51.

⁴ See the case of Mobil Producing Nigeria Unlimited v. His Royal Highness Oba Yinusa A. Ayeni (2010) 4 NWLR (Part 1185) 586

Section 18 MSA is apposite to the category of persons who are qualified to own ship in Nigeria and (or) apply for ship registration. The section specified the following persons as those qualified under the Act to wit: Nigerian citizens; bodies corporate and partnerships established under and subject to Nigerian laws, having their principal place of business in Nigeria; or such other persons as the Minister may, by regulations prescribe.

In addressing this issue further, A. C. Osondu stated in his book⁵ that there are two principal methods by which a person may acquire a ship. He further added a third method and these are:

- a) by entering into an agreement, i.e. placing an order with shipyard for the construction of a new ship for the prospective purchaser, or
- b) by entering into contract with an owner of an existing ship for the purpose of purchase of the ship from existing owner, or
- c) by means of purchase of a ship which is offered for sale pursuant to an order of Court.⁶

From the above qualifications, foreigners can only register a vessel in Nigeria by incorporating a Nigerian company holding registrable ownership of the vessel.⁷ Also, it is only upon establishing title to or ownership of a ship before registration can be considered. This received legal support under the MSA which requires intending applicant for ship registration to make and sign Declaration of Ownership as a condition precedent to registration.⁸

What is Ship Registration?

Ship registration is a process by which a ship is documented and given nationality of the country that the ship has been documented to. The nationality of a ship is like a form of legal backing that enables it to embark on international travels as it is a proof of the national identity of the ship. It is a process whereby States confer the right of flying the flag of the States on the ships and also to issue to such ships documents to that effect.⁹

From the definitions above, any ship or vessel that falls into the above purview is subject to registration otherwise such ship or vessel is not different from a dead man roaming on the street of Rome.¹⁰ Therefore, it is clear that registration is central to the existence and recognition of a ship or vessel by any country just as a state that wants to be recognized by other states under international law must be able to prove itself that it has a defined territory, permanent population, government, and capacity to enter into relations with other states.¹¹

Hence, the registration of a ship makes it has legal backing and recognition nationally and internationally when travelling to and from any country and to receive all benefits that a natural or artificial person may be entitled to within and outside its jurisdiction.

In Nigeria, ships registered under the MSA are based on ships for carriage of goods from one part of the world to another in furtherance of international trade and commerce while ships registered

⁵A. C. Osondu, *Modern Maritime Law and Practice in Nigeria*, First Edition (2020), University of Lagos Press and Bookshop Ltd. at page 358.

⁶ Ibid. See also Section 250 MSA, Order 16 Rule (1) Admiralty Jurisdiction Procedure Rules 2011.

⁷Requirements for Vessel Registration in Nigeria- Oliver Omoredia <https://www.linkedin.com/pulse/requirement-vessel-registration-nigeria-oliver-omoredia> accessed 10th September, 2021.

⁸ Sections 24(1) and 18(3) MSA. See also Supra (n. 5) page 359.

⁹ This is aptly defined by A. C. Osondu (n. 5) page 365.

¹⁰ section 25 of the Admiralty Jurisdiction Act 1991.

¹¹ Article 1 of the Monte Video Convention on the Rights and Duties of States, 1993.

under the Cabotage Act are based on ships for carriage of goods and passengers within Nigeria's internal waters, territorial seas, exclusive economic zone and contiguous zone.¹²

The Cabotage Act makes a comprehensive list of vessels that are eligible for registration under the Act to wit: passenger vessels; crew boats; bunkering vessels; fishing trawlers; barges; off-shore service vessel; tugs; anchor handling tugs and supply vessel; floating petroleum storage; dredgers; carriage on, through or underwater persons, property or any substance whatsoever.¹³

Requirements for Registration of Ship

Upon understanding ship registration in Nigeria, where one decides to venture into the business of acquiring ship in the country by the methods discussed earlier so as to be able to further apply for registration of same just as land, then the following requirements provided by NIMASA on its website are apposite to the registration of ship in Nigeria:

- 1) Send an application to the Director-General with all supporting documents required for your request.
- 2) Liaise with the Nigerian Ship Registration Office (NSRO) for payment of the required fees.
- 3) Apply for reservation and approval of ship names (this application allows an owner to specify a preferred name for a ship and any alternatives, should the preferred name be unavailable. It is also possible to check on name availability before submitting the application and to reserve preferred names).
- 4) Pick up your certificate/document from the NSRO.¹⁴

Sale and Transfer of Ship

Ship is an asset with value; it is likened to a land or property for sale or the transfer of interest in land from a vendor to a purchaser. As land may be profitable upon sale with reference to some challenges attached to it, same profitability is applicable to ship just as how loss and perilous situations may face it.

Section 77 MSA provides for sale and (or) transfer of ship by one person to the other. It states:

“Where a ship or any share in a ship registered is disposed of to persons qualified to own the registered Nigerian ship, they shall be transferred by a Bill of Sale”.¹⁵

Section 61 MSA specifically guaranteed the sale of ship by the ship owner or anyone exercising such right to another person. The sale of ship may also arise by Court Order as a result of its arrest or as a result of its deteriorating state upon arrest. **Order 16 Rule 1 of the Admiralty Jurisdiction Procedure Rules 2011** provides that the Court may make an order that a ship be valued and sold where such ship is under arrest in relation to the proceedings before the Court. Where such ship is

¹² Supra (n. 5) page 369; see also Section MSA and Cabotage Act.

¹³Section 22(5) of Cabotage Act. Under section 8 of the Act, certain foreign ships are exempted from the requirement of registration for the purpose of cabotage operations.

¹⁴ Ship Registration <https://nimasa.gov.ng/services/ship-registration/> accessed 11th September, 2021.

¹⁵ A Bill of Sale is a legal document that transfers ownership of ship from one person to the other. It contains the description of the ship as contained in the surveyor tonnage certificate or any description sufficient to identify the ship. See also Requirement for Sale and Transfer of a Ship in Nigeria by Shipping & Maritime Law Department at Resolution Law Firm. <https://www.resolutionlawng.com/requirement-for-sale-and-transfer-of-a-ship-in-nigeria/> accessed 10th September, 2021.

deteriorating in value and the Court is notified of same, the Court may also make an order that the ship be sold subject to valuation.¹⁶

On the other hand, transfer of ship by anyone with rightful ownership to another person is also guaranteed under **Section 59 and 60 MSA** to the effect that a registered mortgage or ship registered in Nigeria or a share in the ship may be transferred to any person. Therefore, once a ship is sold or transferred, then the title or ownership becomes vested in the other person.

Requirements for the sale or transfer of Ship

In order to sell a ship in Nigeria, the requirement of the law is that consent must be sought and obtained from the Director General and Registrar of Ships. After such sale also, the new purchaser must show evidence that the consent of the Director-General was obtained before the sale.¹⁷

In the case of transfer of ship, where a ship is transferred, the transferee shall not be registered as the owner of the ship until the transferee makes a Declaration of Transfer in a form approved by the Minister.¹⁸

Creation and Enforcement of Mortgage on Ship

Mortgage is generally considered as an interest in land created by a written instrument given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms.¹⁹

With the above definition, some might have the thought that mortgage is only applicable to interest in land or that only land can be mortgaged as valuable asset to secure a loan. However, it is apt to make it known that ship can also be a subject of mortgage and (or) considered as mortgaged property to secure a loan.

What is Ship Mortgage?

The term ship mortgage is said to denote the use of a ship by the ship owner or master to obtain a loan facility using the ship as security for the repayment of the loan. In other words, ship mortgage enables a creditor or the mortgagee to acquire a property interest in the ship as a way of providing security or an assurance that the loan will be repaid or that some other obligations connected with the transaction will be performed or discharged by the borrower or the mortgagor. It is a common way of providing finance for the construction of a ship or for its purchase or for carrying out substantial repairs on the ship or indeed to secure any financial obligation involving the operation of the ship.²⁰

In another breath on a ship mortgage, a ship owner gives a lender (or mortgagee) a security interest in a ship as collateral for a mortgage loan. Similar to other types of mortgages, a ship mortgage legally consists of three parts: the mortgage loan, the mortgage document (deed) and the rights derived from the mortgage deed onto money lender. Ship mortgages differ from other types of mortgage in three ways. First, some privileged claims could have a higher ranking over that of

¹⁶ The procedure for the sale of the ship is provided for under Order 16 Rule 2 of the AJPR that the sale shall be conducted by the Admiralty Marshal, the sale shall be by auction subject to the court's discretion, and shall be concluded in not less than 21 days after the advertisement of the auction has been placed in two (2) national newspapers inserted by the Admiralty Marshal.

¹⁷ Supra (n. 15)

¹⁸ Ibid.

¹⁹ Black's Law Dictionary, Tenth edition, Page 1163.

²⁰ Supra (n. 5) page 321-322.

mortgagee against the ship. Second, ships naturally move between jurisdictions. And third, a ship is always at risk of partial or total damages at sea.²¹

Some other reasons why ship can be subject of mortgage transaction include inter alia that ships are very expensive to acquire, maintain and operate; it is exposed to the perils of the sea on daily basis, and could run into misfortunes requiring emergency remedial actions by the master and crew.²²

Creation of Ship Mortgage

Just as mortgage may be created on land statutorily or by equitable means, ship mortgage could also be statutory or equitable.

Section 54 MSA states that mortgage could be created in respect of “a ship registered in Nigeria, or a share in the ship”, which “may be made a security for a loan or other valuable consideration, and there shall be a proper written instrument creating the security (in this Part of this Act referred to as “a mortgage”).²³

By the above provision, once there is a properly drafted instrument in writing relating to a ship registered in Nigeria or a share in such a ship, then it is considered a legal mortgage. On the production of a mortgage on ship, the Registrar at the ships port of registry shall record it in the Register for records mortgages in the order they are produced to him and the Registrar shall endorse and sign a memorandum in each mortgage stating the date and time of registration.²⁴

The registration of that mortgage is deemed to be notice to the public of that transaction since the ship’s register is a public document available for search by interested parties.²⁵ However, mortgage executed in respect of an unregistered ship cannot be registered but same is still enforceable in certain instance and this brings us to equitable ship mortgage.²⁶

Equitable ship mortgage on the other hand may be created by way of an agreement to enter into a legal mortgage in consideration of a loan, it may be created on a registered ship which was mortgaged but not registered, it may be in respect of an unfinished ship by the deposit of the builder's certificate with another person in consideration of a loan, or by the deposit of the legal deed relating to the registered mortgage with another person in consideration of another loan.²⁷

Where ship mortgage is created between the mortgagor and the mortgagee, then each of them are entitled or saddled with all rights and responsibilities attached to mortgagor and mortgagee under land mortgage transaction with additional rights and (or) responsibilities provided for under the Shipping law to wit:

- a) Mortgagor: i) equity of redemption, ii) legal right to redeem, iii) equitable right to redeem, iv) right of ownership of mortgaged ship, v) duty of disclosure, vi) duty to discharge prior claims

²¹https://en.m.wikipedia.org/wiki/Ship_mortgage accessed 15th September, 2021.

²² Supra (n. 5) page 322.

²³ See also section 54(2) and (3) MSA. Note that ship mortgage is required to be registered at its port of registry and not any other place.

²⁴ Section 233 (2) and (3) MSA.

²⁵ Priority in Maritime Liens and Mortgage Claims in Nigeria by Dr. Olisa Agbakoba SAN <https://oal.law/wp-content/uploads/2017/09/Priority-in-Maritime-Liens-and-Mortgage-Claims-in-Nigeria.pdf> accessed 10th September, 2021.

²⁶ Supra (n. 5) page 330.

²⁷ Ibid. page 338-340.

or liens, vii) duty to maintain ship, viii) duty to engage in legal trading, ix) duty not to sell or grant a charge over the ship, x) duty as regards movement of the ship, and xi) duty as regards charter parties.

- b) Mortgagee: i) power of sale, ii) right to take possession, iii) right to appoint a receiver, iv) rights to realise his security, v) right of mortgagee to freight, and vi) duty not to assert ownership rights.²⁸

For further understanding, the registration of mortgage ship and the above rights and obligations applicable to mortgagor and mortgagee are so important to note under mortgage ship because of priority attached to mortgage on ship when it comes to laying claims before the Court. **Section 57 MSA** provides:

“1) If there are more mortgages than one registered in respect of a ship or share, the mortgage shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other, according to the date on which each mortgage is recorded in the register and not according to the date of each mortgage itself.

2) A registered mortgage of a ship or share in the ship shall not be affected by any act of “bankruptcy” committed by the mortgagor after the date of the record of the mortgage, notwithstanding that the mortgagor at the commencement of his bankruptcy had the ship or share in his possession, order or disposition, or was the reputed owner of the ship, and the mortgage shall be preferred to any right, claim or interest in the ship of the other creditors of the bankruptcy, or of any trustee or assignee in their behalf.”²⁹

Enforcement of Mortgage on Ship

Where there is a breach in ship mortgage and the mortgagor has been in full default to the mortgage agreement, the mortgagee, in accordance with the laid down procedure of the law, has the right to enforce such claims he is entitled to under the ship mortgage agreement. Here, the first approach is for the mortgagee to apply to the Court for the arrest of such ship as he is protected by the Admiralty Jurisdiction Act (AJA) that is the main legislation governing maritime claims and the arrest of ships in Nigeria.³⁰

However, the application to Court for the arrest of the ship simpliciter for the purpose of obtaining security of the mortgage ship cannot be acceptable except there is a proper claim on its merit before the same Court.³¹

Therefore, once there is a claim on its merit before such Court, then the mortgagee in ship mortgage transaction has the right to have the ship arrested so as to be able to prevent the ship from being removed from jurisdiction and (or) defeating the purpose why the case was instituted. Where the mortgagee’s right is placed and proved before the Court, the remedy available to him is that he stands to benefit from the ship’s value upon being sold by the order of the Court.

Conclusion

²⁸ Ibid. page 346-355.

²⁹ See also section 2 of the Admiralty Jurisdiction Act 1991.

³⁰ See Section 2 AJA.

³¹ See [Q&A: ship arrest in Nigeria by Dentons ACAS-LAW - Chisa Uba and Funke Agbor, https://www.lexology.com/library/detail.aspx?g=cac39902-e5d0-42ec-adc9-9154a5bc79a0&utm_source=Lexology+Daily+Newsfeed&utm_medium=H... accessed on 11th September, 2021.

We know that ship is a means of voyage on sea from one country to another or within jurisdiction, but at the same time, we now have basic understanding about ship, its operation in Nigeria and other issues relating to its existence or recognition in any country of its entry or exit as well as claims or rights that may be asserted over same or its share.

It is concluded that before a ship can enjoy any benefit or right, it must be duly registered and before registration can be possible, ownership must be established or proved. On the other hand, before ship can be sold or transferred, consent of the Minister or Director General must be sought for and obtained, and where ship is registered and conferred with all those rights, before it can be used as mortgage ship, such mortgage must be registered in order to ascertain which claim rank in priority to the other.

Lastly, upon creation of mortgage on ship and there is breach after equitable grace, then the ship may be arrested by making application to the Court for the arrest and such arrest may lead to laying further claims to the ship which may warrant the ship being sold by auction to satisfy maritime claims on same.

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