

PILOTAGE IN NIGERIA - a consideration of potential liabilities of ship owners.

Most maritime countries have areas designated as compulsory pilotage districts where ships are not allowed to navigate unless navigated by a pilot licensed in such country. The rationale for compulsory pilotage would appear to be based on the need for national security and protection of life and property in the ports and harbours of these countries.

In Nigeria, the Nigerian Ports Authority (NPA) is the body responsible for regulating the use of Nigerian ports and the legislation, which establishes the NPA is the Nigerian Ports Authority Act (NPAA) 1999. Section 41 of the NPAA gives the Minister of Transport power to create areas designated as compulsory pilotage districts.

It is a well-established principle of maritime law that a ship owner, whose vessel is receiving compulsory pilotage services, is vicariously liable to third parties for any loss or damage to their persons or property resulting from the negligence of the pilot. In Nigeria, this principle is given statutory backing in section 54 of the NPAA, which provides as follows:

“The master or owner of a ship navigating in circumstances in which pilotage is compulsory shall be answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner as he would if pilotage were not compulsory”.

Section 59 of the Ports Act¹ (which contains the same provisions as section 54 of the NPAA) came up for interpretation in the case of Palm Line Limited Vs Nigerian Ports Authority². The plaintiff's vessel, the “Ikeja Palm” whilst under the compulsory pilotage of one of the defendant's pilot, proceeded to carry out a turning manoeuvre in the navigable channel near berth 1 of the Lagos port. In the course of the manoeuvre, the vessel collided with an obstruction, which damaged her rudder and associated parts. The collision occurred as a result of the pilot's negligence in failing to give the master adequate warning of the presence of the obstruction. The shipowners contended that the NPA was vicariously liable for the negligence of the pilot. The defendant denied liability. The court held that under section 59 of the Ports Act, the owner of a ship navigating under compulsory pilotage is liable for the negligent acts of the pilot; accordingly the defendant was not liable. The court relied on the English case³ of Workington

¹ The Ports Act was repealed by the Nigerian Ports Decree 1993, which was in turn repealed by the NPAA 1999.

² Nigerian Shipping Cases Volume 1, 144.

³ English decisions are of persuasive authority in Nigeria.

Harbour Dock & Board Vs The "Towerfield"⁴, where the House of Lords interpreted section 15 of the Pilotage Act 1913 from which section 59 of the PA derived.

In the Workington Harbour Board case, the "Towerfield" entered Workington Harbour under the pilotage of a Trinity House pilot. Using his local knowledge of the state of the entrance channel (which was not as depicted on the charts), he took a line to the north of the centreline and the Towerfield went aground and damaged the harbour. The Towerfield also broke her back and became a constructive total loss. The damage to the harbour and the vessel occurred due to the negligence of the pilot. The House of Lords held that the owners of the Towerfield were vicariously liable for the pilot's negligence under section 15(1) of the Pilotage Act 1913, and could therefore not claim in respect of the damage to their vessel.

From the above, it is quite clear that under Nigerian law, ship owners will be held vicariously liable for the negligence of pilots irrespective of whether the pilotage is voluntary or compulsory. What does not seem to be so well settled is whether ship owners can apply to limit their liability in the face of such potential liability for negligence.

Section 363 of the Merchant Shipping Act (MSC)⁵ provides for limitation of ship owners' liability in certain circumstances. It provides that where any loss of life, personal injury or damage is caused to any person, goods or merchandise on board the vessel or any other property, through the act or omission of any person, whether on board the ship or in the navigation or management of the ship, the owner shall be entitled to limit his liability, if the act occurred without the actual fault or privity of the owner.

The right to limit liability is not absolute. It is dependent on the owner being able to prove conclusively that the loss or damage occurred "without his actual fault or privity". The courts have consistently held over the years that these words connote something personal to the owner, and in order to impute liability to the owner, the act or omission causing the damage must have occurred without the fault, consent, actual or constructive knowledge of the owner.

In the MT "Allegra"⁶, the plaintiff's vessel collided with the defendant's vessels, the MV "Bode Thomas" and "Shasha Borodulin" causing extensive damage to both vessels and the quay apron at the port. The MT "Allegra" was about to sail out of Nigeria, when she got on the main

⁴ [1951] A.C 112.

⁵ Cap 224 laws of the Federation of Nigeria 1990.

⁶ Nigerian Shipping Cases Volume 5, 250

channel, a barge suddenly appeared cutting across the vessel and in an attempt to avoid colliding with the barge, the MT "Allegra collided with the defendant's vessels which were anchored. At the time the collision occurred the MT "Allegra was under the compulsory pilotage of an NPA pilot and was properly manned. The plaintiff admitted liability but sought to limit its liability under section 363 of the MSC. The defendants opposed the application on the ground that the collision occurred as a result of the master's negligence for which the owners were liable. The NPA denied liability for the pilot's act on the ground that at the time of collision, the pilot was the agent or servant of the plaintiff under section 35 of the Nigerian Ports Decree 1993⁷. The court held that although the pilot was deemed to be the servant of the owners, the collision occurred without the actual fault or privity of the owners and they were entitled to limit their liability. The court further stated that "without the actual fault or privity of the owner" contained in section 363 of the MSC, infers something personal to the owners and does not include the negligence of the master or pilot.

The right to limit liability will be lost if it is proved that the owners caused or contributed to the loss or damage. In this regard, any omission or failure by the ship owner to do something, which he ought to have done or which a reasonable ship owner would have done, would not relieve him of liability. This was the issue that arose in the Red River. The Red River collided with the plaintiff's vessel, the "Dragon" anchored at Ijora wharf in Lagos, while towing the second defendant's barge. The plaintiff claimed that the collision was caused by the negligence of the defendants, their servants or agents. It was proved that the collision occurred because the master of the Red River navigated the vessel in a compulsory pilotage district without a pilot on board. The defendants denied that they were negligent. In the alternative, they sought an order for limitation. The court held that there was evidence to show that the defendants own and operate several tugs in Nigeria and knew or ought to have known that there was a system of compulsory pilotage in the Lagos Harbour. It was their duty to ensure that the master did not navigate without a pilot and having failed in their duty, the court held that they were privy to the act of the master. Accordingly their application to limit was denied.

In conclusion, it must be stated that since owners cannot avoid liability for the negligent acts of pilots, concerted efforts should be made by ship owners to ensure that their operations are carried out in a way that when incidents do occur, they would be entitled to apply for a decree

⁷ Section 35 of the Nigerian Ports Decree 1993 contained similar provisions as section 54 of the NPAA.

of limitation. In this regard, the need for the proper implementation of the ISM code in their organisations and on board their vessels cannot be over emphasised.

In the final analysis, it would appear that until Nigeria accedes to the Convention on Limitation of Liability for Maritime Claims 1976 which does away with the 'actual fault or privity rule', ship owners will continue to be able to limit their liability for the negligent acts of pilots provided they can establish that such act occurred without their actual fault or privity.

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