

MARINE DISASTERS IN NIGERIA – COLLISION – ACTION PLAN

Unarguably, Nigeria is the hub of West Africa's shipping activities owing to its strategic location by the coastline, vast exclusive economic zone, inland waterways, oil production and large market size¹. In any society where there are booming and consistent shipping activities, accident or disasters around the marine are inevitable and invariably bound to occur.

A marine disaster can be described as an unintended happening to vessels on waterways. It is the mishap of a vessel at sea, either by being swallowed up by the waves, by running against another vessel or thing at sea, or on the coast². Its severity may vary from no vessel damage to the complete loss of the vessel, no cargo damage to loss of the entire cargo and no crew injuries to deaths³. Typically, disasters at sea may result into boat capsizing, collision, sinking, or loss of entire ship cargo.

The focus of this article is on Collision, with a fair attempt at giving an insight to the applicable Laws, action plan, what to do, who to call, claim for damages, insurance claims and instituting actions in court with the appropriate jurisdiction.

COLLISION

It is incontrovertible that mishaps are bound to happen in the course of the voyage of a ship. Collisions between ships can be occasioned by natural causes, unlawful acts or omissions by individuals responsible for the ship, usually the captain of the ship which collides with another. On rare cases, the collision may be inadvertent resulting from miscalculation of distance, adverse weather conditions and the like. Ship collisions are of particular importance in marine accidents, which could lead to damage to ship, loss of human life or personal injury, loss of cargo, damage to coastal or off-shore infrastructure, amongst others, all of which amount to an actionable claims under the Nigerian Admiralty Jurisdiction Act⁴.

APPLICABLE LAWS

The Applicable Nigerian laws to shipping, especially when it relates to Collision are as follows:

1. Merchant Shipping Act;
2. Admiralty Jurisdiction Act;
3. Admiralty Jurisdiction Regulation Procedure Rules;
4. Nigerian Maritime Administration and Safety Agency (NIMASA) Act, 2007;
5. Merchant Shipping (Collision) Rules 2010 (Collision Regulations);
6. Conventions on the International Regulations for Preventing Collisions at Sea, 1972;
7. Nigerian Ports Authority Act;
8. Marine Insurance Act, 1961.

Inasmuch as the Merchant Shipping Act is the enabling principal statute on Maritime issues, the dominant regulation on collision is the Conventions on the International Regulations for Preventing Collisions at Sea, 1972. The Convention was domesticated into our municipal laws in October 20, 1972 but came into force on July 15, 1977. The Convention seeks to regulate and prevent collision of ships or vessels. It regulates the conduct of vessels in sight of one another and the conduct of vessels in restricted visibility, steering and sailing⁵. Amongst other cogent features, the convention was designed to maintain discipline of marine traffic to prevent collisions on high seas. It forms the basis of safe marine navigation by fixing issues like speed restrictions, lights, and sound signals. The convention is akin to the road traffic rules as it relates to approaching, passing, giving way and overtaking to avoid collisions between two vessels on sea voyage.

More so, there is the International Convention for the Safety of Life at Sea, 1974, embedded in the Merchant Shipping Act, which regulates adherence to safety on the sea. A non-compliance with the provisions of this particular Convention will be treated as a criminal offence under the Merchant Shipping Act 2007. Specifically, section 218 of the Merchant Shipping Act provides that any person who fails to comply with and does or attempts to do any act contrary to the provisions of any safety regulations made under the Merchant Shipping Act, commits an offence and is liable on conviction, to a fine not less than three hundred thousand naira.

It is trite that any Nigerian ship that contravenes any international convention or instruments that is applicable in Nigeria may have its certificate of ship registration suspended until rectification is completed.⁶

1. Chidi Ilogu and Adedoyin Adeyoye: *The Shipping Law Review*, 4th Edition, Chapter 31, (first published in 2017, the law review), 340

2. <https://legal-dictionary.thefreedictionary.com/Maritime+Disaster>

(Talley, Jin & Kite-Powell, 2005) quoted in *An Analysis of Determinants of Accident Involving Marine Vessels in*

3. *Nigeria's Waterways* by Donatus E. Onwuegbuchunam Management Science and Engineering, Vol 7. No.3 2013 p 39

4. Section 2(3)(a)-(u)

5. Rule 1 of the COLREGS

6. Section 442 of the Merchant Shipping Act

Furthermore, the NIMASA Act empowers any person in the position of the Director General of the Agency to set up a Marine Casualty Investigation Committee.⁷ The committee upon establishment is expected to:

- a) identify the circumstances, reasons and consequences of a marine casualty;
- b) identify the persons at fault in a marine casualty; and
- c) develop measures for the prevention of marine casualties on the basis of experience gained in the course of the investigation.⁸

Additionally, the NIMASA Act enables the Minister of Transportation to establish an Independent Commission for Marine Casualty to receive and evaluate reports on marine casualties prepared by the Agency.⁹ However, any investigation embarked on by the Agency is entirely independent of any enquires made by the police or other authority collecting evidence for a possible prosecution.

WHAT HAPPENS AFTER THERE IS A COLLISION?

At the occurrence of a collision, parties are expected to act quickly, to stop further damage and record the evidence of the damage for possible prosecution.

The master of the ship is required to enter, or cause to be entered in the official log-book, every collision with any other ship and the circumstances under which the collision occurred. The entry must be signed by the master and also by one of the crew.¹⁰ Failure to comply with this, makes the master on conviction, liable to a fine not less than one hundred thousand Naira.¹¹

Furthermore, in every case of collision between two ships, the master or person in charge of each ship shall, if he can do so without danger to his own ship, crew and passengers, if any, render to the other ship, its master, crew and passengers, if any, such assistance as may be practicable and necessary to save them from any danger caused by the collision. The master shall also stay by the other ship until he has ascertained that there is no need of further assistance; and give to the master or person in charge of the other ship the name of his own ship and of the port at which the ship is registered or to which it belongs and also the names of the ports from which it comes and to which it is bound.¹²

If the master or person in charge of a ship fails, without reasonable cause, to comply with this section, he commits an offence and on conviction is liable to a fine not less than five hundred thousand Naira, or to imprisonment for a term not less than two years or to both.

Where any ship has been in collision with another ship, the master shall transmit to NIMASA - where possible, by radio communication in the first instance, a preliminary report; and in all cases, if in port when the accident or damage occurs, within twenty-four hours of the happening, or otherwise within twenty-four hours of first reaching a port, whether in Nigeria or elsewhere, a full report in writing signed by him, of the accident or damage, and of the probable cause thereof, stating the name of the ship, its official number, if any, the port at which the ship is registered or to which it belongs and the place where it is.¹³

Pursuant to section 267(1) of the Merchant Shipping Act (MSA), before a ship sets sail, a Surveyor of ships may carry out inspection of a ship in order to ensure that the ship is properly provided with lights, shapes and the means of making sound signals in conformity with the collision rules, and if he finds that the ship is not so provided, the surveyor of ships shall give to the master, owner or his agent notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

In the same vein, when there is a collision, the ship owner is to engage the services of a Surveyor of Ships as soon he can, to attend the ships and assess the damages. Another important thing to do when there has been a collision is to engage the services of a lawyer for the purposes of instituting or defending possible claims.

DAMAGES IN COLLISION CASE

Where there has been a collision, a claimant shall be entitled to recover only such damages as may reasonably be considered to be the direct and immediate consequence of the collision.¹⁴

The damages recoverable shall be such as to place the Claimant in the same financial position as he would have been, had the collision not occurred.¹⁵ The burden of proof of damages is on the Claimant and damages shall not be recoverable, to the extent that the person against whom the claim is made is able to show that the claimant could have avoided or mitigated the damage by exercise of reasonable diligence.¹⁶



7. Section 49(1) of the NIMASA; Article 2 of the United Nations Law of the Sea (UNCLOS) 1982

8. Section 49(2) of the NIMASA Act

9. Section 50 of the NIMASA Act

10. Sections 204(i) and 270 of the Merchant Shipping Act

11. Section 270 of the MSA

12. Sections 268 and 269 of the MSA

13. Section 276 of the MSA

14. Section 344 of the MSA

15. Section 345 of the MSA

16. Section 346 of the MSA

Division of Loss - Where, by the fault of two or more ships, damage or loss is caused to one or more of them, or to their cargo or freight, or to any property on board, the liability to make good the damage or loss, shall be in proportion to the degree in which each ship was at fault. However, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally, provided that no ship shall be liable for any loss or damage to which her fault was not contributed.¹⁷

Where there is a total loss of a vessel, the claimant shall be entitled to damages equal to the cost of purchasing a similar vessel in the market at the date of the collision. Where no similar vessel is available, the claimant shall be entitled to recover as damages, the value of the vessel at the date of the collision, calculated by reference to the type, age, condition, nature of operation of the vessel and any other relevant factors.¹⁸

Where the damage to the vessel does not result in total loss, the Claimant shall be entitled to recover as damages, the cost of temporary repairs reasonably effected, and the reasonable cost of permanent repairs.

INSURANCE CLAIMS

A ship should be insured against marine disasters by either taking out a marine Hull and Machine Insurance Policy or a policy with a Ship Protection and Indemnity (P & I) Club or both. While the Hull and Machine Insurance Policy covers all collision liabilities, the P & I covers $\frac{3}{4}$ of the claims. Where there is a collision, the master immediately informs the insurance company or the P & I Club, of the incidence, who shall in turn, set off the collision liabilities, after satisfying that the party is entitled to the claims.

INSTITUTING AN ACTION IN COURT.

The court with the appropriate jurisdiction to hear Maritime Claims is the Federal High Court, pursuant to section 1 of the Admiralty Jurisdiction Act.

The master and crew or the owner of a ship who is in breach of the collision regulations, may be liable in negligence. However, the claimant must establish breach of the duty of care, standard of care, and damage.

Furthermore, the following persons may be held liable for any breach of the collision regulations:

- (i) The employer of the wrongdoer in personam.
- (ii) Salvors if in breach of the duty of care during a salvage operation.
- (iii) Port Authority if it has been careless in providing navigational safety in breach of its statutory duties.
- (iv) Ship Builders and Repairers who build defective ships, fail to carry out proper repair to ships, or supply defective equipment, by reason of which collision or death or personal injury occurs, will be held liable for negligence.

Liabilities in collision cases are both criminal and civil. A contravention of statutory regulation on collision and safety of lives on the sea is a punishable offence under the Merchant Shipping Act.

The claimant may also institute a civil action against the defendant in tort, but the burden of proof is upon the claimant to prove that the incident occurred due to negligence or want of good seamanship.

Limitation of Action - no action shall be maintainable to enforce any claim or lien against a ship or its owners in respect of any damage or loss to another ship, its cargo or freight, or any property on board, or damages for loss of life or personal injuries suffered by any person on board, caused by the fault of the former ship, whether such ship is wholly or partly in fault, or in respect of any salvage services, unless proceedings in respect of the damages are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered. This period of Limitation can however be extended by the court, depending on the circumstances of each case.¹⁹

Upon the determination of the suit in respect of a Collision claim, the court may rule in favour of the Plaintiff and award Damages, grant a Maritime Lien,²⁰ or Arrest of Ship.



17. Section 340 of the MSA

18. Section 347 of the MSA

19. Section 343 of the MSA

20. Section 5(3) of the Admiralty Jurisdiction Act; This is a privileged charge on a ship or maritime property. It accrues from the moment the event which gives rise to a cause of action arises. It is principally a claim against the ship, as opposed to the claim against the ship owner.

CONCLUSION

From the foregoing, the Action Plan in the event of a Collision can be summarised as follows:

1. The Master of the ship shall enter the Collision in the log book;
2. The Master shall render assistance to the other ship, if doing so will not jeopardise his own ship;
3. The Master of the ship shall transmit to NIMASA, a preliminary report and NIMASA shall in turn, set up a Marine Casualty Investigation Committee who shall gather evidence for possible prosecution and give its report to the Agency;
4. The Master shall inform the insurance company it has an insurance policy with, or the Ship Protection and Indemnity Club to which it belongs;
5. The Ship P & I Club shall in turn, engage the services of a Surveyor of Ships, to assess the damages to the ships;
6. The Ship P & I Club shall also engage the services of a lawyer for possible claims and institution or defending of actions in court.

The actions to take in the event of a collision are not exhaustive, however, we have attempted to give the basic steps to take in any event. The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.



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