

**JURISDICTION IN MARITIME INSURANCE CLAIMS:  
A REVIEW OF *LIVERPOOL AND LONDON STEAMSHIP PROTECTION  
AND INDEMNITY ASSOCIATION LIMITED V M/T TUMA***

**Chimezie Onuzulike\***

**ABSTRACT**

*The Admiralty Jurisdiction Act, 1991 creates a category of insurance claim known as 'Maritime Insurance Claim'. This is essentially a claim for an insurance premium concerning a ship, or goods or cargo carried by the ship. This claim falls under general maritime claim in respect of which jurisdiction is conferred on the Federal High Court. This category of insurance claim is considered distinct from a simple contract of insurance in respect of which the State High Court may exercise jurisdiction. Recently, the Supreme Court of Nigeria in Liverpool and London Steamship Protection and Indemnity Association Limited v M/T Tuma & Ors made a distinction between maritime insurance claims under the Admiralty Jurisdiction Act, 1991 and simple insurance claims and held that claims for insurance premiums arising out of insurance covers made in respect of a ship fall within the exclusive admiralty jurisdiction of the Federal High Court. This paper reviews the decision of the Supreme Court in Liverpool and London Steamship Protection and Indemnity Association Limited v M/T Tuma & Ors and argues that the distinction made by the Supreme Court between simple insurance claims and maritime insurance claims is misleading. The paper argues that insurance contracts, whether involving a ship or cargo carried by ship, are simple insurance contracts and not necessarily maritime claims which fall under the admiralty jurisdiction of the Federal High Court.*

**Keywords:** *Admiralty Jurisdiction, Federal High Court, Maritime Claim, Simple Contract, State High Court.*

**INTRODUCTION**

The admiralty jurisdiction of the Federal High Court (the "FHC") is derived from the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the "1999 Constitution"). Section 251 (1) (g) of the 1999 Constitution provides that

"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters [relating to]- any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal ports, (including the constitution and powers of the ports authorities for Federal ports) and carriage by sea".

\* LLB, BL. Senior Associate at G.Elias, Lagos Nigeria.



Notably, the Admiralty Jurisdiction Act, 1991 ("AJA") defines the extent of the admiralty jurisdiction of the FHC. The admiralty jurisdiction of the FHC includes jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of the AJA.<sup>1</sup> A maritime claim under the AJA is divided into two categories, namely proprietary maritime claim and general maritime claim.<sup>2</sup> Claims for an insurance premium, or for a mutual insurance call, concerning a ship or goods or cargo carried by ship are categorised as general maritime claims under the AJA.<sup>3</sup> The simple interpretation, therefore, is that every claim arising out of an insurance contract in respect of a ship or goods carried by ship is a maritime claim which falls within the exclusive admiralty jurisdiction of the FHC. Recently, the Supreme Court of Nigeria (the "Supreme Court") in *Liverpool and London Steamship Protection and Indemnity Association Limited v M/T Tuma & Ors*<sup>4</sup> had to determine the question of whether a claim for insurance premium concerning a ship or cargoes carried by ship is a maritime claim which falls within the exclusive jurisdiction of the FHC and governed by the AJA or a simple insurance contract in respect of which the State High Court may exercise jurisdiction. The Supreme Court resolving this question, held that a claim for insurance premium in respect of a ship is not and does not fall within the scope of a simple insurance contract but is by virtue of section 2(3)(q) of the AJA, within the ambit of general maritime claim for which jurisdiction is conferred only on the FHC.

This paper appraises the foregoing decision of the Supreme Court and argues that although there may have been a reasonable basis for reaching that conclusion, especially given the arguments of the parties and the issues before Supreme Court; the decision is nevertheless incorrect. The Supreme Court appears to have jettisoned the line of reasoning adopted by it in other cases where the Supreme Court resolved in favour of the State High Court on similar issues of jurisdictional conflicts between the FHC and State High Court created by the AJA. This paper is divided into five parts. Part one is the general introduction. Part two considers whether it is the FHC or State High Court that has jurisdiction over simple insurance contracts. Part three reviews *Liverpool and London Steamship Protection and Indemnity Association Limited v M/T Tuma & Ors*. Part four is the author's analysis and commentary. Part five concludes the paper.

## JURISDICTION IN SIMPLE INSURANCE CONTRACTS

By and large, the State High Court has exclusive jurisdiction over claims arising from simple contracts. Consequently, one can reasonably argue that the State High Court has exclusive jurisdiction over claims against an insurer arising out of an insurance policy since a contract between an insurer and the insured in respect of the insured property is, by its very nature, a simple contract of insurance. There appears to be no reasonable basis for arguing otherwise. In reality, however, this conclusion is not that simplistic. The question whether it is the FHC or the State High Court that has jurisdiction regarding insurance claims appears somewhat polarising and indeed has been the subject of debate. This is essentially because of the definition of "Court" to mean the FHC in the Insurance Act 2003, which due to lack of contextual consideration in interpretation, has led the courts to conclude that jurisdiction in respect of insurance claims resides exclusively in the

1. Section the Admiralty Jurisdiction Act, 1991, s1(1)(a).
2. Section 2(1) and (2) sets out the claims which are proprietary maritime claims and those that are to be considered as general maritime claims.
3. *ibid.* s.2(3)(q).
4. [2021] 10 NWLR (pt1784) 347.



FHC. Two of the perhaps most recent case laws – *Sun Insurance Nigeria Plc v UECC Ltd*<sup>5</sup> and *Hydro-tech Nigeria Ltd & Anor v Leadway Assurance Co. Ltd & Ors*<sup>6</sup> appear to perpetuate the controversy. However, from a review of both cases and the principle of Nigerian law, it is not difficult to conclude on what the law currently is on the subject.

In *Sun Insurance Nigeria Plc v UECC Ltd*<sup>7</sup> the Respondent, UECC Ltd, in 1998 insured a Toyota Land Cruiser Prado SUV with the Appellant, Sun Insurance Nigeria Plc ("Sun Insurance") under a third party, fire and theft insurance contract policy cover. The insured vehicle was stolen during the subsistence of the insurance contract. Consequently, UECC Ltd instituted an action against Sun Insurance at the High Court of Imo State, claiming the sum of N6,000,000.00 (Six Million Naira) being the vehicle's value. Sun Insurance filed a notice of preliminary objection challenging the jurisdiction of the Imo State High Court because the cause of action, being an insurance policy on the alleged stolen vehicle, was within the jurisdiction of the FHC and not the State High Court. The trial court dismissed the objection and further appeals by Sun Insurance to the Court of Appeal and Supreme Court were dismissed by both courts. The Supreme Court, in determining which court had jurisdiction over the claim, considered the provisions of section 251(1)(s) of the 1999 Constitution and sections 73(1), 80 and 97 of the Insurance Act No 2 of 1997 and held that section 251(1)(s) of the 1999 Constitution does not vest jurisdiction to entertain a claim based on a simple contract of insurance on the FHC and that the jurisdiction conferred on the FHC by the Insurance Act No 2 of 1997 is in respect of the trial of all criminal offences committed under the Act. The Apex court held that the Act conferred no civil jurisdiction at all on the FHC and jurisdiction in respect of simple insurance contracts remains solely with the State High Court. The Supreme Court stated specifically as follows:

The statute is quite plain therefore that it does not confer any exclusive or any jurisdiction at all for that matter on the Federal High Court to entertain and determine simple claims arising from contract of insurance between the parties to that contract. The courts below were therefore right in their judgments that by virtue of section 272(1) of the 1999 Constitution of the Federal Republic of Nigeria, jurisdiction to entertain and determine all simple contracts of insurance claims between parties to such contracts remain with the High Courts of the States.<sup>8</sup>

Curiously, in *Hydro-tech Nigeria Ltd & Anor v Leadway Assurance Co. Ltd & Ors*,<sup>9</sup> the Court of Appeal faced with a similar question of whether it is the FHC or State High Court that should adjudicate over a dispute between an insurer and the insured regarding terms of an insurance policy delivered a diametrically opposed judgment. In *Hydro-tech's* case, the dispute arose out of a *bonds credit guarantee and suretyship* Insurance Policy. The Court of Appeal held that by virtue of the combined reading of sections 69 (1) (a) and 102 of the Insurance Act 2003 the court vested with the requisite jurisdiction to entertain the suit is the Federal High Court.

5. [2015] 11 NWLR (pt1471) 576.

6. [2016] LPELR-40146(CA).

7. *Sun Insurance* (n 5).

8. *Sun Insurance* (n 5) Page 599-600[H]-[B].

9. *Hydro-tech* (n 6).



Section 69 (1) of the Insurance Act 2003 provides,

Where - (a) civil proceedings are taken in court in respect of any claim relating to any risk required to be insured against under this Act or any other law; and (b) a judgment is obtained against the person insured then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to this Section pay to the person entitled to the benefit of such judgment the sum payable (including costs and interest sum) not later than thirty days from the date of delivery of the judgment. Section 102 on the other hand, provides that "In this Act - "Court" means Federal High Court;.

It is essential to state herein that the attention of the Court of Appeal was drawn to the *Sun Insurance's* case, which the Court of Appeal was by law bound to follow. However, the Court of Appeal tried to distinguish the *Sun Insurance's* case and the instant cases. The two distinctions drawn by the Court of Appeal were, (i) *the Sun Insurance's* case was determined by a different law which had been repealed, and (ii) the claim of the respondent/plaintiff in the *Sun Insurance's* case was not governed by any specific provision of the Insurance Act subsisting when the dispute arose. It was simply based on a general insurance policy. Whereas the Insurance Act, 2003 clearly governed the subject matter of the present case; and by virtue of the combined effect of the provisions of sections 69(1) and 102, jurisdiction with regards to any claim under any provision(s) of the extant Insurance Act, 2003 is vested solely in the Federal High Court.

The foregoing distinction made by the Court of Appeal is with respect, misconceived. In the *Sun Insurance's* case, the Supreme Court considered the same provisions which the Court of Appeal considered. The provisions of sections 69(1) and 102 of the Insurance Act, 2003 are verbatim reproductions of sections 73(1) and 97, respectively of the Insurance Act No 2 of 1997. There was no new provision that was not considered in the *Sun Insurance's* case which could have formed the basis for refusing to follow the judgment of the Supreme Court in the *Sun Insurance's* case. The Court of Appeal was in error when it assumed that *court* mentioned in section 69(1)(a) means the FHC by virtue of section 102. Section 69(1)(a) states "where civil proceedings are taken in *court* and not in *Court* or in *the Court*". The use of the lower-case letter in *court* was deliberate and showed that it was not intended that the court mentioned in that section be construed as the **Court** referred to in section 102. Otherwise, there would have been no need for section 80 of the Insurance Act, 2003, which confers explicitly jurisdiction over criminal offences committed under the Act on the FHC. The purport of section 80 of the Insurance Act, 2003, is to indicate that the court with jurisdiction over civil proceedings in respect of claims under the Act is different from the court with criminal jurisdiction.

The judgment of the Court of Appeal in *Hydro-tech's* case was given per incuriam. The facts in the *Hydro-tech's* case are substantially the same as those in *Sun Insurance's* case. The Court of Appeal was bound by the doctrine of stare decisis to follow the decision of the Supreme Court in *Sun Insurance's* case. Until set aside by the Supreme Court, the *Sun Insurance's* case remains the law on the point. Consequently, the State High Court has exclusive jurisdiction to entertain and determine all claims arising from simple insurance contracts.



## A REVIEW OF THE CASE OF LIVERPOOL AND LONDON STEAMSHIP PROTECTION AND INDEMNITY ASSOCIATION LIMITED V M/T TUMA & ORS

### Facts of the case

In *Liverpool and London Steamship Protection and Indemnity Association Limited v M/T Tuma & Ors*<sup>10</sup> (the *Liverpool Case*) the Appellant instituted an action on December 5, 2006 against the Respondents at the Federal High Court, Lagos claiming (i) the sum of USD517,808.56 as the total outstanding amount and interest owed by the Respondents to the Appellant on insurance cover provided for the 1st Respondent's vessel MT Tuma on various policies for the periods 1996 to 2001, and (ii) cost of prosecuting the action. According to the Appellant, the amount claimed represented the total outstanding sum and interest due from the Respondent due to unpaid premium calls on various insurance covers provided for the vessel.

The Respondents filed a memorandum of appearance and subsequently, without filing a statement of Defence, filed a notice of preliminary objection seeking to dismiss the suit on the ground that the action was statute barred under section 18 of the AJA.<sup>11</sup> In response, the Appellant filed a counter affidavit. The trial court in its ruling, upheld the preliminary objection and dismissed the Appellant's suit.

Dissatisfied with the ruling, the Appellant appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and affirmed the trial court's decision. The Appellant being dissatisfied with the judgment of the Court of Appeal, appealed to the Supreme Court.

### The Argument of the Parties and Judgment of the Supreme Court

The Appellant argued<sup>12</sup> that the claim presented at the trial court was simply one for breach of contract to pay insurance premiums even though it is a marine insurance contract; both the State High Court and FHC can validly entertain the action. The Appellant argued that the claim could have been initiated at the State High Court, where the applicable limitation period that governs the Appellant's cause of action is the limitation laws of Lagos State which allows the Appellant up to a maximum period of 6 years to commence the action having regard to the fact that the action was commenced just after 5 years of the accrual of the cause of action.

The Respondents, on the other hand, argued that the insurance contract between the Appellant and the Respondents is not just a simple contract but a marine insurance contract being that the subject matter in the claim is what differentiates it from other insurance claims and jurisdiction in respect of the subject matter is conferred solely on the FHC. The Respondent added that the Appellant could not approbate and reprobate by asserting that both the State High Court and FHC can validly entertain the action. And since the Appellant has chosen the FHC, it is therefore bound by the provisions of the AJA. The Respondent further submitted that if the action had been instituted at the State High Court, the court would have been in want of jurisdiction as the claim of the Appellant is strictly an admiralty matter for which the FHC has exclusive jurisdiction.

10. *Liverpool* (n4).

11. Section 18 of the AJA requires any proceeding under the Act in respect of a maritime claim to be brought within a period of 3 years from the date that the cause of action arose. The Appellant instituted his action after 5 years.

12. The Appellant raised two issues for determination. The first was whether having regards to the provisions of the AJA, the Appellant's action is statute barred whilst the second was whether the notice of preliminary objection filed by the Respondent at the trial court is competent under applicable rules of Court. However, this paper focuses on just the first issue where arguments on jurisdiction related to maritime insurance claim under the AJA were canvassed.



In determining the appeal, the Supreme Court considered the provisions of sections 1(1)(a) and (c), 2(1) and (3)(q) and 18 of the AJA, section 251(1)(g) of the 1999 Constitution, and sections 3 and 4 of the Marine Insurance Act<sup>13</sup> and held that from the foregoing constitutional and statutory provisions, the FHC enjoys total jurisdiction to the exclusion of the State High Courts in admiralty matters and this exclusive jurisdiction of the FHC by section 2(3)(q) of the AJA extends to the determination of claims arising from a maritime insurance policy. Consequently, the Appellant's claim for insurance premium in respect of the Vessel MT Tuma is not and does not fall within the scope of a simple insurance contract.

## COMMENTARY

Whilst there may have been a reasonable basis for reaching that conclusion, especially given the arguments of the parties and the issues before it, the decision of the Supreme Court in the Liverpool Case is incorrect. The distinction being drawn between simple insurance contract and maritime insurance contract in order to determine jurisdiction is needless and misleading. The categorisation by the AJA of Claims for an insurance premium in relation to a ship or goods or cargo carried by a ship as a maritime claim and conferment of jurisdiction on the FHC in respect of those claims is an encroachment on the jurisdiction of the State High Court. A claim does not simply become a maritime claim and consequently be within the jurisdiction of the FHC simply because a ship is involved. The nature of the claim and the reliefs sought must be considered to determine whether jurisdiction is conferred on the FHC or State High Court.<sup>14</sup>

A claim (i) by the insurer for insurance premium against an insured and (ii) for indemnity by an insured against the insurer is essentially an action for breach of the insurance contract and the fact that a ship or a cargo on board a ship is the subject of the insurance contract does not change the nature of the claim as a claim rooted in simple contract or make the claim a maritime claim. In *TSJK (Nig) Ltd v Otochem (Nig) Ltd*,<sup>15</sup> the Supreme Court resolving a similar jurisdictional conflict between the FHC and the State High Court created by the AJA, held that the mere fact that a ship is involved in a simple contract does not automatically make that simple contract a subject for jurisdiction in admiralty matters. The facts of the case are that sometime in February 1997, the Appellant (TSKJ Nig. Ltd) issued a Local Purchase Order (LPO) to the Respondent (Otochem Nig. Ltd) for the supply of a houseboat for the temporary use of its staff. The terms and conditions of the contract were spelt out in the LPO. After the houseboat was delivered, the Appellant requested that it be upgraded to European executive standards. Pursuant to the request, the Respondent alleged that it carried out further modifications to the boat at the cost of N12,000,000.00. However, upon completion of the modifications, the Appellant refused to settle the Respondent's bill. Consequently, the Respondent instituted an action against the Appellant at the High Court of Rivers State, Port Harcourt Judicial Division, claiming against the Appellant (a) N14,800,000.00 representing hire rentals for 148 days which the Appellant was in possession of the houseboat, (b) N12,000,000.00 special damages, and (c) N40,000,000.00 general damages.

The Appellant denied the Respondent's claims and contended that it did not take delivery of the houseboat because (i) the Respondent failed to meet the delivery deadline and (ii) the houseboat did not meet the required standard. The trial court entered judgment in favour of the Respondent. The



13. Cap M2 Laws of the Federation of Nigeria 2004.

14. See *FUTA v BMA Ventures (Nig) Ltd*. [2018] 17 NWLR (pt 1649) 477.

15. [2018] 11 NWLR (pt 1630) 330.

Appellant, dissatisfied with the judgment, appealed to the Court of Appeal, which partially allowed the appeal. Still dissatisfied, the Appellant appealed to the Supreme Court. At the Supreme Court, the Appellant raised the issue of jurisdiction. The Appellant contended, relying on section 2(3)(f) of the AJA,<sup>16</sup> that a houseboat falls squarely within the definition of a ship and an agreement for the hire of same is an agreement for the hire of a ship. Consequently, the Respondent's claim fell within the admiralty jurisdiction of the FHC and the State High Court lacks jurisdiction to entertain the claim. The Supreme Court, per I.T. Muhammad JSC, resolving the issue of jurisdiction held as follows:

...the transaction between the parties is that of houseboat hire. This, in my view, is a simple contract and not an admiralty or maritime matter. By the constitutional provisions of a State High Court, it is the Port Harcourt High Court and not the Federal High Court that has jurisdiction over this simple contractual engagement. This is because, careful observation and literal construction of the averments of the statement of claim is to the effect that the action filed before the trial court is for the recovery of the accrued and unpaid hire rentals for a houseboat let to the Appellant by the Respondent and damages for breach of contract... The mere fact that a ship is involved in a simple contract does not automatically make a simple contract a subject for jurisdiction in admiralty matters. To hold to that supposition will be ridiculous... This case of a simple contract of debt recovery is, I hold, within the civil jurisdiction of the Rivers State High Court and it properly assumed jurisdiction on the matter.

Also, in *Texaco Overseas (Nig) Unltd v Pedmar (Nig) Ltd*,<sup>17</sup> the Supreme Court held that the fact that a ship is involved does not make a simple action for debt recovery to be an admiralty claim which falls within the jurisdiction of the FHC. In that case, the Appellant (Texaco Overseas Nig. Unltd) chartered two vessels from the Respondent (Pedmar Nig. Ltd) for valuable consideration. The Respondent alleged that the Appellant failed to pay the sums due for the charter, including interest of 1% per month from the date that the sums fell due for payment as agreed by the parties. Consequently, the Respondent instituted an action at the Lagos State High Court claiming the sums due for the charter as well as the interests. The Appellant in defence admitted the charter agreement with the Respondent but claimed to have paid the costs of the charter of the vessels.

After the trial, the trial court entered judgment in favour of the Respondent. Dissatisfied with the trial court's judgment, the Appellant appealed to the Court of Appeal, which dismissed the appeal. Still dissatisfied, the Appellant appealed to the Supreme Court. At the Supreme Court, the Appellant raised the issue of the jurisdiction and argued, relying on section 2(3)(f) of the AJA, that the matter was one which fell within the admiralty jurisdiction of the FHC, being the only court vested with the jurisdiction to hear and determine matters that relate to the chartering of vessels. Therefore, the Lagos State High Court had no jurisdiction to entertain the claim. In dismissing the appeal, the Supreme Court held that the Appellant's contention that the claim is an admiralty claim simply because a ship was involved is wrong. According to the Supreme Court, the case was simply

16. Under section 2(3)(f) of the AJA, a claim out of an agreement relating to the carriage of goods or persons by a ship or to the use or hire of a ship, whether by charter-party or otherwise is considered to be a general maritime claim for which jurisdiction is conferred on the FHC.

17. [2002] 13 NWLR (pt 785) 526.



one for recovery of debt and the Lagos State High Court rightly assumed jurisdiction over the matter. In *Chevron (Nig) Ltd v Lonestar Drilling (Nig) Ltd*,<sup>18</sup> the Supreme Court made the position clear that an action for breach of contract for the supply of goods conveyed by sea is not an admiralty action and the mere fact that the transaction between the parties giving rise to the claim involved conveyance of a rig purchased from India to Nigeria by sea did not give the transaction the character of an admiralty action.<sup>19</sup>

The following facts can be deduced from the *TSJK* and *Texaco* cases above: (i) the jurisdictional issues/objections raised by the appellants in both cases were based on the provision of section 2(3)(f) of the AJA, (ii) going by strict interpretation and application of the said section 2(3)(f) (as was done in the *Liverpool Case*), the objections of the appellants in both cases ought to have been sustained. However, the Supreme Court in both cases was not swayed by the fact that the AJA provides that the FHC should have jurisdiction over claims arising from the use or hire of a ship. Rather, the Supreme Court took the proper approach of determining the nature of the action and the reliefs sought in both cases to determine which court had jurisdiction to entertain the claims in both cases. The claims in both cases were claims for breach of contract/recovery of sums due under a simple contract. The FHC does not have the jurisdiction to entertain claims rooted in simple contracts<sup>20</sup> and the fact that a ship is the subject of the contract does not change the nature of the claim.<sup>21</sup>

A related issue came up for determination in *The Vessel MT Sam Purpose (Ex MT. Tapti) & Anor. V Amarjeet Singh Bains & Ors*<sup>22</sup> where the Court of Appeal held that section 2(3)(r) of the AJA, which purports to confer jurisdiction on the FHC in respect of maritime labour claims (claims for wages by a master or crew member of a ship) is inconsistent with the 1999 Constitution and therefore void since jurisdiction over labour claims has already been conferred on the National Industrial Court by section 254C of the 1999 Constitution. If the Court of Appeal had taken the restrictive view in the *Liverpool's Case*, it probably would have ended up drawing a distinction between maritime labour claims and ordinary labour claims and holding that the FHC has jurisdiction over maritime labour claims whilst the National Industrial Court has jurisdiction over other labour claims not involving claims for wages by a master or crew member of a ship.

The facts in the *Liverpool Case* are similar to those in the *TSJK* and *Texaco* cases and the principle of law laid down by the Supreme Court in those cases are applicable to the *Liverpool Case*. There is no reasonable basis for arguing otherwise. Unfortunately, the Supreme Court failed to follow its earlier

18. [2007] 16 NWLR (pt 1059) 168.

19. Note that the Supreme Court reached that decision despite the provision of section 1 (3) of the AJA which provides that any agreement or purported agreement, monetary or otherwise connected with or relating to carriage of goods by sea, whether the contract of carriage is executed or not, shall be within the admiralty jurisdiction of the FHC.

20. *Petroleum (Special) Trust Fund v Fidelity Bank & Ors* [2021] LPELR-56621 (SC); *Dec oil & Gas Ltd v Shell Nig. Gas Ltd* [2019] LPELR-49347 (SC).

21. Subsequent decisions of the Supreme Court and the Court of Appeal followed the decisions in the *Chevron*, *TSJK* and *Texaco* cases. See *B.B Apugo & Sons v O.H.M.B* [2016] 13 NWLR (pt 1529) 206 where the Supreme Court held that the mere fact that goods were conveyed to Nigeria by sea does not bring the claim within the admiralty jurisdiction of the FHC. See also *Bank of Industry Ltd v Obeya* [2021] LPELR-56881 (SC); and *Shield Petroleum Co. (Nig) Ltd. v Nimex Petroleum Ltd* [2019] LPELR-49503 (CA).

22. [2021] LPELR-56460 (CA).





decisions in the plethora of cases already discussed above. The reason for the volte-face is not far-fetched. The Respondents' objection in the *Liverpool Case* was not that the FHC lacked jurisdiction. On the contrary, the Respondents accepted that the FHC before which the Appellant instituted the action was the court with jurisdiction to entertain the claim.

However, the Respondents argued that the Appellant's claim was a marine insurance claim; consequently, by section 18 of the AJA, the claim was statute barred. The Appellant had shot itself in the foot by instituting the action at the FHC. The Appellant's argument at the Supreme Court was that the claim at the trial court was simply one of breach of contract to pay insurance premiums and even though it is a marine insurance contract, both the State High Court and FHC can validly entertain the action. This argument is fundamentally flawed for many reasons. First, the FHC does not have jurisdiction to entertain claims rooted in simple contracts, so it is a misconception to argue (as the Appellant in *the Liverpool Case* did) that both the FHC and the State High Court can validly entertain the suit. Second, the Appellant, by admitting that the claim is a marine insurance claim, had tacitly admitted the applicability of the AJA to the claim and cannot, therefore, argue that both the State High Court and the FHC can validly entertain the Suit. That would amount to approbating and reprobating.

The Appellant's case was destined to fail due to its faulty foundation, and the Appellant's argument at the Supreme Court did not help matters. The Appellant was merely clutching at straws. This is understandable because the Appellant, who instituted the action at the FHC, could not turn around to argue that the FHC lacked jurisdiction to entertain the suit in order to exclude the application of the AJA and the 3 years limitation period provided in the AJA. The Appellant's argument that the 6 years limitation period provided in the Limitation Law of Lagos state (and not the 3 years limitation period provided in the AJA) was applicable to the action which it instituted at the FHC and which it admitted was a marine insurance claim made no sense at all. Consequently, the Supreme Court had no difficulty in (i) holding that the claim was a marine insurance claim within the exclusive jurisdiction of the FHC, (ii) holding that the AJA was applicable to the claim, and (iii) dismissing the appeal.

Unfortunately, the Appellant in *the Liverpool Case* did not draw the Supreme Court's attention to its earlier decisions in *Chevron*, *TSJK* and *Texaco* cases and a plethora of other cases. Presumably, the Appellant did draw the Supreme Court's attention to those cases because that would mean that to rely on those cases properly, it would have to argue that its claim is a claim for breach of contract and the FHC lacks jurisdiction to entertain the claim. The Appellant would not be in the position to make such an argument being the party who instituted the action at the FHC in the first instance. At any rate, the decisions in *Chevron*, *TSJK* and *Texaco* cases apply to the *Liverpool Case* and the Supreme Court was wrong to have decided that the Appellant's claim for insurance premium in respect of the Vessel MT Tuma is not and does not fall within the scope of a simple insurance contract. The Appellant's claim in *the Liverpool Case*, which was for the outstanding amount and interest owed by the Respondents to the Appellant on insurance cover provided for the Respondents' vessel, was rooted in a simple insurance contract.



## CONCLUSION

The principle of law laid down by the Supreme Court in the *Chevron*, *TSJK* and *Texaco* cases are clearly applicable to the *Liverpool* Case. The decision of the Supreme Court in the *Liverpool* Case is incorrect. The distinction being drawn between a simple insurance contract and a maritime insurance contract for the purpose of determining jurisdiction is needless and misleading. The Supreme Court would have reached a different finding in the *Liverpool* Case had the Supreme Court's decisions in *Chevron*, *TSJK* and *Texaco* cases been considered. A claim by the insurer for insurance premium is an action for breach of the insurance contract and the fact that a ship or cargo on board a ship is the subject of the insurance contract does not change the nature of the claim as a claim rooted in simple contract or make the claim a maritime claim. The *Chevron*, *TSJK* and *Texaco* cases are still good authorities for deciding future cases with facts similar to those in the *Liverpool* Case.

