

SUPREME COURT OF NIGERIA

13TH JANUARY, 2012. SC. 238/2001

**CORAM:- A. M. MUKHTAR, F. F. TABAI, I. T. MUHAMMAD,
B. RHODES-VIVOUR, N. S. NGWUTA, JJSC**

PACERS MULTI-DYNAMICS LTD APPELLANT
AND
1. THE M.V. DANCING SISTER
2. THE CHARTERERS OF THE
M.V. DANCING SISTER RESPONDENTS

ADMIRALTY - Action in rem - Meaning - It is a proceeding against an arrested ship - In which the owner is compelled to enter appearance - To defend the ship (H1)

BILLS OF LADING - Contract - Parties to - It is a contract for carriage of goods by sea - Between shipowner and consignor on one part - And consignee on the other - Which allows only parties therein to sue on it (H2)

BILLS OF LADING - Contract - Notify party - Right of action - He cannot sue because he is not a party to the contract - But merely a person to be notified of the arrival of the goods (H3)

LOCUS STANDI - Proof - Duty on plaintiff - Statement of claim must disclose sufficient legal interest - And how such interest arose in the subject matter of the action (H4)

LOCUS STANDI - Test - How determined - The action must be justifiable - And there must be a dispute between the parties (H5)

ACTIONS - Consistency - Need for - Parties as well as counsel must be consistent in the presentation of their case - Both at trial and appellate courts (H6)

BILLS OF LADING - Endorsement - Meaning - This is where consignee writes his name on the back of the bills (H7)

386 Pacers Multi-Dynamics Ltd v. The M.V. Dancing Sister (2012)

APPEALS - Concurrent findings - Supreme Court does not interfere
- Save where the findings are perverse - Or there was a miscarriage of justice (H8)

CARRIAGE OF GOODS BY SEA - Contract - Negligence - Right of action - Where damage to goods occurred during discharge operation
- The owner can sue stevedores and their principals (H9)

ACTIONS - Locus standi - Lack of - Proper order to make - Is to strike out the suit - Hence Court of Appeal was right in its decision (H10)

CHARTER PARTIES - Contract - Exemption clause - Binding nature
- Clause 11 & 14 exempts 2nd respondent from liability - And court as well as the parties are bound by same (H11)

FACTS

On the 7th of April 1995, plaintiff/appellant filed this action at the Federal High Court, Lagos Division. He claimed against defendants/respondents the sum of \$1,007,213.00 (One million and seven thousand, two hundred and thirteen U.S. Dollars) only being cost of damage done to 2,000 metric tones of Brazilian white refined sugar imported via defendants' cargo – M. V. Dancing Sister. Appellant obtained an order *ex parte* arresting and detaining 1st respondent - the M.V. Dancing Sister. On the 25th of April 1995 the Chief Judge of the Federal High Court discharged the arrest order unconditionally on an application filed by 1st respondent on the ground that appellant is not a party to the Bills of Lading either as a consignee or endorsee and so cannot sue on the Bills. His Lordship concluded that the arrest of the vessel, the M.V. Dancing Sister was ordered on a wrong set of facts presented to the court by appellant, and thus ordered the vessel released.

On the 4th of May 1995, 2nd respondent filed an application under order 33 of the Federal High Court (Civil Procedure) Rules for an order striking out the action on the grounds that appellant has no locus standi to institute the action, not having been named either as consignee or endorsee of the relevant Bills of Lading, and that 2nd respondent has been improperly joined in the action. The applica-

tion was heard and the court struck out the action on the ground that appellant lacks locus to institute the action. Dissatisfied, appellant appealed to the Court of Appeal, Lagos Division. The court affirmed the judgment of the high court and equally dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the court below was right when it held that a notify party cannot possibly be a party to the contract evidenced in a Bills of Lading.

2. Whether the court below was right in holding on the evidence before the Federal High Court and the Court of Appeal, that the appellant was neither consignee nor endorsee on any of the three Bills of Lading and thus lacked the locus standi to sue on any of the subject Bills of Lading.

3. Whether a notify party under a bill of lading is necessarily precluded in law from maintaining an action in the tort of negligence for loss or damage to goods carried by sea, by the mere fact of absence of a contract between such party and the owners/charterers of the carrier-vessel.

4. Whether the Court of Appeal was right in holding that the Federal High court should have struck out the action on the 25th of April 1995.”

HELD (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

ADMIRALTY - Action in rem - Meaning

1. An admiralty action in rem is a proceeding against a ship, the res, where the ship is arrested. By the arrest the owner of the ship is compelled to enter appearance and defend the ship. The owner is enjoined to answer to the judgment of the court to the extent of his interest in the property. (p. 397 B)

BILLS OF LADING - Contract - Parties to

2. A bill of Lading is a contract between the shipowners/carriers, the shipper/consignor on the one part and the consignee/endorsee on the other part.

The obligations therein are the receipt of goods and the delivery to a designated party stated in the Bill of Lading. Put in another way, an

agreement between the carrier and the consignee for the delivery of goods mentioned in the Bill of Lading and it is binding between the parties.

Parties to a bill of Lading are the Ship-owner/Carrier, the Shipper/consignor on the one part and the consignee/endorsee on the other part. A bill of Lading contains a contract and that contract is carriage of goods. To sue on it one must be a party to the contract.

A plaintiff who is a consignee or endorsee to a Bill of Lading is in Law a party to the Bill of Lading. Where he has a cause of action in contract, or/and in the tort of negligence, he has a right to sue in both contract and in tort. (pp. 397 C/398 A/403 B)

BILLS OF LADING - Contract - Notify party - Right of action

3. A Notify party or addressee is the party who is to be notified of the arrival of the goods and is often an agent for the receiver of the goods who arranges for their clearance. He has no right of audience before the court.

I have examined the three bills of Lading, Exhibits FA1, FA2, and FA3 and found that nowhere on them does appellant posses the status of an endorsee. The appellant on the three bills of Lading appears as a Notify Party. Furthermore I do not see anywhere where the appellant is shown as an assignee, nor are any of the three bills of Lading endorsed to the appellant. As quite rightly pointed out by learned counsel for the appellant a party can be a Notify Party and a consignee under the same bills of Lading, but this fact must be clear for all to see on the bills of Lading. The appellant was not a party to the contract of carriage by goods, since he was neither a consignee nor endorsee. The fact that he claims ownership of the property is irrelevant to a suit founded on contract of carriage of goods. Broadline Enterprises Ltd Monterey Maritime Corporation (Supra) is of no help to the appellant since the appellant is only a Notify party.

A Notify party, which the appellant is, is not a party to the contract contained in a bill of Lading. The appellant not being a consignee or endorsee in respect of the subject bills of Lading (Exhibits FA1, FA2, and FA3) ought not to have instituted an action on the subject bills as it cannot sue on them. The appellant is a total stranger to the contract contained in the bills of Lading and the fact that the appellant claims ownership to the goods is irrelevant to a suit founded on contract in

the bills of Lading. The appellant cannot sustain a claim on the bills of Lading. The courts below were correct when they held that the appellant, being only a notify party cannot be a party to the contract evidenced in the bills of Lading.

In carriage of goods by sea, suits are contested on bills of Lading. The appellant claims to be the consignee and owner of the goods shipped from Brazil on board the Dancing Sister (1st respondent). The appellant appears on the three bills of Lading as the Notify Party and not the consignee. The right of action on the bills of Lading is restricted to parties to the bills of Lading. Ownership of the goods is irrelevant in a suit on the contract in the bills of Lading. Since the appellant is a Notify party on the three bills of Lading, he is not a party to the contract in the bills of irrelevant in a suit on the contract in the bills of Lading and so he had no locus standi to sue upon it. There can only be a justifiable action in contract if there is a dispute between the parties to the contract. Since the appellant is not a party to the bills of Lading there can be no dispute to resolve. The Court of Appeal was correct to confirm the finding of the learned trial judge that the appellant had no claim on the three bills of Lading.

The appellant being a Notify party is not a party to the contract in the bills of Lading and so cannot sue on it in contract, negligence. The appellant has no cause of action on the bills of Lading and being the owner of the goods makes no difference. The appellant cannot sue on the bills of Lading because he is a Notify Party.
(pp. 397 E/398 B/400 F/406 F)

LOCUS STANDI - Proof

4. A person has locus standi to sue in an action if he is able to show to the satisfaction of the court that his Civil rights and obligations have been or are in danger of being infringed.

To have locus standi the plaintiff's statement of claim must disclose sufficient legal interest, and show how such interest arose in the subject matter of the action.

The above explains Section 375 (1) supra and the dilemma of the appellant in this appeal. To have locus standi the appellant must disclose sufficient legal interest and show how that interest arose in the subject matter of the action. (pp. 399 D/G/400 E)

LOCUS STANDI - Test - How determined

5. There are two tests for determining if a person has locus standi. They are:

1. The action must be justifiable; and
2. There must be a dispute between the parties.

B In applying the test a liberal attitude must be adopted. Senator Adesanya v. The President of Nigeria 1981 5 SC p.112 lays down the rule for locus standi in Civil Cases, while Fawehinmi v. Akilu 1987 vol.18 NSCC pt. 2 p. 1269 lays down the for more liberal rule for locus standi in criminal cases. (p. 399 D)

ACTIONS - Consistency - Need for

D 6. In the claim, the appellant says it is the consignee and owner of the goods. The appellant now says that it is an endorsee - in-blank. A party should be consistent in stating its case and also consistent in proving it. He will not be allowed to take one stance in the trial court and another stance on appeal. Such a shifty attitude must be condemned in strong terms. For the streams of justice to remain pure counsel must at all times be consistent in the presentation of his case. E (p. 401 B)

BILLS OF LADING - Endorsement - Meaning

F 7. An endorsement in blank is where the shipper or consignee writes his name on the back of the bills of Lading. The primary meaning of to endorse is to write on the back. An endorsee's name must appear on the bills of Lading. A close examination of the three bills of Lading reveals that there is no endorsement. The appellant's name never appeared on any of them as consignee, endorsee or endorsee in blank. It appears only as Notify party. (p. 401 C)

APPEALS - Concurrent findings

H 8. Both courts below found that the appellant is a Notify party, and not a consignee or endorsee to the bills of Lading and so cannot sue on them. Where findings of the trial court have been confirmed by the Court of Appeal this court would rarely interfere, but this court would be compelled to interfere where it is satisfied that the findings are perverse, or cannot be supported by the evidence before the court, or there is/was a miscarriage of justice or violation of some

principle of law or procedure.

Concurrent findings of fact by the two courts below that the appellant is a Notify party, and so not a party to the bills of Lading is correct. The finding would not be disturbed by this court. (p. 401 E)

CARRIAGE OF GOODS BY SEA - Contract - Negligence

9. In Mitsui & Co. Ltd v. Fiota Mercante Grancolombiana S.A 1988 2 Lloyds Law Reports p. 208. The Court of Appeal in England observed that there are four means by which a claim can be made for damage to goods on board a ship.

(a) the shipper may sue in contract, assuming that he has not divested himself of his rights by endorsement of the bill of Lading.

(b) a consignee named in the bill of Lading or an endorsee of the bill of Lading can sue in contract under of the bill of Lading can sue in contract under Section 1 of the bills of Lading Act, 1855

(c) an implied contract can arise out of the circumstances in any particular case in which delivery is taken at the port of discharge.

(d) the person who was the owner of the goods at the time when damage occurred can sue in tort.

In the Aliakmon 1986 2 Lloyds Law Reports p. 1, the House of Lords reasoned in the same way when it said that the owner of goods carried on board a vessel can claim in

negligence for loss caused to him by reason of loss or damage to the property, if he had either the legal ownership of or a possessory title to the property at the time the loss or damage occurred. What both cases are saying is not new. All they are saying is that the owner of the goods at the time of damage to them can sue.

When the ship berths and shipping documents are handed over to the owner, the contract in the bill of Lading comes to an end. The shipper has divested himself of his rights and legal ownership to the goods now resides with the owner of the goods.

My Lords, affidavit evidence, viz pages 17 and 62 of the Record of Appeal reveals that the goods were also damaged during discharge operations. At that time the appellant was the owner of the goods. He has a cause of action for negligence against the stevedores and their principals. Damage to goods on the high seas and damages to goods occurring during discharge operations are thus completely different as regard the right to sue and liabilities. (pp. 403 F)

Locus standi - Lack of - Proper order to make

10. Where as in this case the appellant has no locus standi to institute the action the proper order to make is to strike out the suit. The Court of Appeal was correct to hold that the Federal High Court should have struck out the action on the 25th of April, 1995.
(p. 406 G)

Contract - Exemption clause - Binding nature

11. I now turn to examine whether the 2nd respondent is answerable in negligence. There is a charter party.

Relevant Extracts reads:

“Clause 11. Charterer’s liability to cease when cargo is shipped and bill of Lading signed, except as regards payment of freight, dead freight and demurrage (if any).

Clause 14. Stevedores for loading, stowing trimming and discharging to be employed by charterers or shippers/Receivers of their expense and under Masters control. Stevedores shall be considered as owner’s servants and the charterers/shippers/ Receivers are not to be responsible for any negligence of whatever nature, default or error in judgment of the stevedores employed.”

By the terms of the charter party, the parties have expressed clearly their intention and it is not the practice for the court to make a new contract for them. The court is to give effect to the terms of the contract. Clause 11 and 14 are exemption clauses. They exempt the 2nd respondent from liability. Exemption clause 14 is a complete answer to any claim the appellant might file for damages. Furthermore the charter party is binding on the parties to the contract in the bills of Lading. The 2nd respondent is not liable in view of the exemption clause and the fact that it is not a party to the contract for the discharge of the goods at Apapa Port. (p. 406 H)

H REPRESENTATION

Mr. Adeniyi Adegbonmire with Cephass Caleb, for the Appellant
No appearance for the 1st Respondent
Mr. Ayo Olorunfemi for the 2nd Respondent

CASES REFERRED TO

- Adesanya v. Leigh Hoegh (1968) 1 ANLR 330
 Allied Trading Co. Ltd v. G.B.N. Line (1985) 2 NWLR (pt. 5) 74
 Seatrade v. Fiogiet (1987 – 1990) 2 NSCC 453
 M.N.S. Ltd v. J.P. Ent. Ltd. (2006) 5 NWLR (Pt.972) 127
 Enang v. Adu (1981) 1-12 SC 25 B
 Senator Adesanya v. The President of Nigeria (1981) 5 SC 112
 Fawehinmi v. Akilu (1987) vol.18 NSCC (pt. 2) 1269
 Ogbuehi v. Gov. of Imo State (1995) 9 NWLR (Pt. 417) 53
 Cameroon Airlines v. Otutuizu (2011) 1-2 SC (pt. 111) 200 C
 Onwubuariri & 3 Ors v. Igboasoiki & 4 Ors (2011) 1-2 (Pt. 111) 109
 Mitsui & Co. Ltd v. Fiota Mercante Grancolombiana S.A (1988) 2
 Lloyds Law Reports 208
 Ekpenyong v. Nyong (1975) 2 SC 71
 Broadline Enterprises Ltd v. Monterey Maritime Corporation (1995) D
 9 NWLR (Pt. 417) 1 at 28
 The Vessel “Leona II” v. First Fuds Ltd. (2002) 18 NWLR (pt.799)
 439
 Nigeria Airways Ltd. v. Lapite (1990) 7 NWLR (pt.163) 329 E

STATUTE & RULES REFERRED TO

- Merchant Shipping Act Cap 224 LFN 1990, s. 375 (1)
 Federal High Court (Civil Procedure) Rules, O. 33

BOOKS REFERRED TO

- Cashmore - Parties to a Contract of Carriage p. 214
 John F. Wilson - Carriage of Goods by Sea 3rd Ed. P. 146-147

LEAD JUDGMENT BY RHODES-VIVOUR JSC

The claims of the appellant as plaintiff/applicant in an Admiralty
 Action in Rem reads-

*“The plaintiff as the consignee and owner of 13,600 Metric
 TONNES of Brazilian white refined Sugar covered by the “Congenbill”
 Edition 1978 bills of Lading Nos. 1, 2, and 3 shipped on Board the
 Defendants’ vessel “DANCING SISTER” for carriage of the said 13,600
 Metric Tonnes of Brazilian white refined Sugar from RECIFE in BRAZIL
 to APAPA, LAGOS, claims against the Defendant’s jointly and severally
 for the value of 58.9 metric tonnes short landed cargo (refined sugar)*

and damages for breach of contract and/or breach of duty and/or negligence of the Defendants, their servants, or Agents in respect of Damage done to 2,000 Metric Tonnes of the said goods during the said voyage in the sum of \$1,007,213.00 (One Million and seven thousand, Two hundred and thirteen U.S. Dollars) only.”

B On the 7th of April, 1995 the appellant as plaintiff filed this action in the Federal High Court, Lagos Division. The appellant obtained an order *ex parte* arresting and detaining the 1st defendant, the M.V. Dancing Sister. On the 25th of April, 1995 the Chief Judge of the Federal High Court discharged the arrest order unconditionally on an application filed by the 1st respondent on the ground that the appellant is not a party to the Bills of Lading either as a consignee or endorsee and so cannot sue on the Bills. His Lordship concluded that the arrest of the vessel, the M.V. Dancing Sister was ordered on a wrong set of facts presented to the court by the appellant, and ordered the vessel released. On the 4th of May, 1995 the 2nd respondent filed an application under order 33 of the Federal High Court (Civil Procedure) Rules for an order striking out or dismissing the action on the grounds:

E (a) That the appellant has no locus standi to institute and/or maintain the action, not having been named either as consignee or endorsee of the relevant Bills of Lading, and/or

(b) That the 2nd respondent has been improperly joined to the action.

F The learned Chief Judge of the Federal High Court Belgore CJ, heard the application and in a considered Ruling delivered on the 23rd of November, 1995 held in the penultimate paragraph of the Ruling as follows:

G *“I do therefore hold that the plaintiff has no locus under the Bills of Laden Exhibits FA1, FA2, and FA3 to institute this action. And the action being an Admiralty one cannot through the back door be converted to a common law case of tort.”*

H The learned Chief Judge struck out the case. That means there was no trial. The appellant appealed. That appeal was heard by the Court of Appeal Lagos Division. That court in a well considered decision delivered on the 8th of February, 2000 agreed with the Federal High Court and concluded thus:

“.....the appellant has no locus standi to institute an action

against the respondents not having been named either as consignee or endorsee of the relevant Bills of Lading. I hereby make consequential order striking out the action, which the court ought to have done, I also strike out the name of the 2nd respondentas no reasonable cause of action has been disclosed in the relevant clauses of the charter party.” B

Concluding, the Court of Appeal dismissed the appeal with costs of N5,000 in favour of the respondents: This appeal is against that judgment. In accordance with rules of this court both sides filed and exchanged briefs. The appellants’ brief was deemed filed on the 18th of October, 2006, and the respondents’ brief deemed filed on the 22nd of February, 2010. A reply brief was filed by the appellant on the 19th of February, 2010. The 1st respondent did not file a brief and was unrepresented at the hearing of the appeal on the 17th of October 2011. Learned Counsel for the appellant formulated four D

“1. Whether the court below was right when it held that a notify party cannot possibly be a party to the contract evidenced in a Bills of Lading.

2. Whether the court below was right in holding on the evidence before the Federal High Court and the Court of Appeal, that the appellant was neither consignee nor endorsee on any of the three Bills of Lading and thus lacked the locus standi to sue on any of the subject Bills of Lading. E

3. Whether a notify party under a bill of lading is necessarily precluded in law from maintaining on action in the tort of negligence for loss or damage to goods carried by sea, by the mere fact of absence of a contract between such party and the owners/charterers of the carrier-vessel. F

4. Whether the Court of Appeal was right in holding that the Federal High court should have struck out the action on the 25th of April 1995.” G

Learned Counsel for the 2nd respondent also formulated four issues. They are: H

“1. Whether the court below was right when it held that “a notify party cannot possibly be a party to the contract evidenced in a Bills of Lading.

2. Whether the court below was right in holding, on the

evidence before the Federal High Court and the Court of Appeal, that the appellant was “neither consignee nor endorsee” on any of the three Bills of Lading and thus lacked the locus standi to sue on any of the subject Bills of Lading.

B 3. Whether a notify party under a bill of lading is necessarily precluded in law from maintaining an action in the tort of negligence for loss or damage to goods carried by sea, by the mere fact of absence of a contract between such party and the owners/charterers of the carrier-vessel.

C 4. Whether the Court of Appeal was right in holding that the Federal High Court should have struck out the action on the 25th of April, 1995.

The four issues formulated by the 2nd respondent are identical with the four issues formulated by the appellant. I would consider the D issues formulated by the appellant, which in effect would be considering all the issues formulated by the 2nd respondent.

At the hearing of the appeal on the 17th of October, 2011 learned counsel for the appellant, Mr. A. Adegbonmire adopted the E appellants’ brief and reply brief filed on the 1st of November, 2005 and 19th of February, 2010 and urged this court to allow the appeal. Learned counsel for the 2nd respondent adopted his brief deemed filed on the 22nd of November, 2010 and urged on the court to dismiss the appeal.

F Issue 1

Learned Counsel for the appellant observed that the appellant has the status of Notify Addressee under the three Bills of Lading and also possesses the status of endorsee in respect of the subject Bills of Lading. Referring to *Broadline Enterprises Ltd v. Monterey Maritime Corporation* 1995 9 NWLR pt.417 p.1 he argued that the Court of G Appeal was wrong to hold that a notify party or addressee cannot possibly be a party to a contract evidenced in the bills of Lading. He urged this court to hold that the Court of Appeal erred in law in coming to that finding. Learned Counsel for the 2nd respondent H observed that the three bills of Lading relied on by both sides in the court are, all the same in content, further observing that the appellant is not named as consignee as alleged by them but only as Notify parties. He observed that section 375 (1) of the Merchant Shipping Act, Cap 224 Laws of the Federation of Nigeria 1990 recognises only

two classes of people who can sue on a bill of Lading contending that the two classes are the consignee, or the endorsee. He submitted that the appellant was neither a consignee nor endorsee on any of the three Bills of Lading. Relying on *Adesanya v. Leigh Hoegh* 1968 1 ANLR p.330. He submitted that the appellant is a total stranger to the contract evidenced by and/or contained in the bills of lading, not having been named as consignee or endorsees of the relevant Bills of Lading. B

An admiralty action in rem is a proceeding against a ship, the res, where the ship is arrested. By the arrest the owner of the ship is compelled to enter appearance and defend the ship. The owner is enjoined to answer to the judgment of the court to the extent of his interest in the property. A bill of Lading is a contract between the shipowners/carriers, the shipper/consignor on the one part and the consignee/endorsee on the other part. See Adesanya v. Leigh-Hoegh 1968 1 ANLR p.330, Allied Trading Co. Ltd v. G.B.N. Line 1985 2 NWLR pt.5 p.74. The obligations therein are the receipt of goods and the delivery to a designated part stated in the Bill of Lading. Put in another way, an agreement between the carrier and the consignee for the delivery of goods mentioned in the Bill of Lading and it is binding between the parties. A Notify party or addressee is the party who is to be notified of the arrival of the goods and is often an agent for the receiver of the goods who arranges for their clearance. He has no right of audience before the court. C D E F

I have examined the three bills of Lading, Exhibits FA1, FA2, and FA3 and found that nowhere on them does appellant possess the status of an endorsee. The appellant on the three bills of Lading appears as a Notify Party. Furthermore I do not see anywhere where the appellant is shown as an assignee, nor are any of the three bills of Lading endorsed to the appellant. As quite rightly pointed out by learned counsel for the appellant a party can be a Notify Party and a consignee under the same bills of Lading, but this fact must be clear for all to see on the bills of Lading. The appellant was not a party to the contract of carriage by goods, since he was neither a consignee nor endorsee. The fact that he claims ownership of the property is irrelevant to a suit founded on contract of car- G H

riage of goods. Broadline Enterprises Ltd Monterey Maritime Corporation (Supra) is of no help to the appellant since the appellant is only a Notify party. Parties to a bill of Lading are the Ship-owner/Carrier, the Shipper/consignor on the one part and the consignee/endorsee on the other part. A bill of Lading
B contains a contract and that contract is carriage of goods. To sue on it one must be a party to the contract. A Notify party, which the appellant is, is not a party to the contract contained in a bill of Lading. The appellant not being a consignee or endorsee in respect of the subject bills of Lading (Exhibits FA1,
C FA2, and FA3) ought not to have instituted an action on the subject bills as it cannot sue on them. The appellant is a total stranger to the contract contained in the bills of Lading and the fact that the appellant claims ownership to the goods is
D irrelevant to a suit founded on contract in the bills of Lading. The appellant cannot sustain a claim on the bills of Lading. The courts below were correct when they held that the appellant, being only a notify party cannot be a party to the contract evidenced in the bills of Lading. See Adesanya v. Leigh Hoegh
E 1968 1 ANLR p.330, Seatrade v. Fiogiet 1987 - 1990 2 NSCC p.453. ISSUE 2:

Learned Counsel for the appellant urged this court to set aside concurrent findings of fact of the Court of Appeal and the Federal
 F High Court that the appellant was neither consignee nor endorsee of any of the bills of Lading. He observed that there are three sets of bills of Lading and the appellant is an endorsee in blank. Reference was made to Bills of Lading on pages 83 to 85A of the Record of Appeal. He submitted that the features of the bills of Lading referred
 G to above show they are bearer bills of Lading endorsed in blank. Reference was made to Brawal Shipping Ltd v. FI. Onwadike Co. Ltd 2000 11 NWLR pt.678 p.387. He observed that although the appellant is Notify Addressee under the three bills of Lading it also possesses the status of endorsee in respect of the subject bills of Lading.
 H Concluding he submitted that the plaintiff was endorsee of the bills of Lading within the meaning of Section 375 (1) of the Nigerian Merchant Shipping Act, and the bills were delivered to the plaintiff and the plaintiff took delivery of the subject consignment by producing the aforesaid bills at the port of discharge, submitting that the plaintiff

possessed the requisite locus standi to maintain the action.

Learned Counsel for the 2nd respondent observed that the appellant failed to show miscarriage of justice or any violation of some principle of law or procedure and so this court should not disturb concurrent findings of fact by the two lower courts. Reliance was placed on Enang v. Adu 1981 1 -12 SC p.25. He argued that the appellant's position has always been that it is the consignee and owner of 13,600 Metric Tonnes of Brazilian white refined Sugar, contending that nowhere is the issue of endorsement in blank pleaded and so any argument in that direction is an after thought and must be rejected. Referring to the Bills of Lading on pages 83, 84 and 85 learned counsel observed that there is no endorsement in blank on the said Bills of Lading or any writing at the back of any of them. Contending that there was no endorsement in blank which it can take advantage of in this case.

A person has locus standi to sue in an action if he is able to show to the satisfaction of the court that his Civil rights and obligations have been or are in danger of being infringed. There are two tests for determining if a person has locus standi. They are:

- 1. The action must be justifiable; and***
- 2. There must be a dispute between the parties.***

In applying the test a liberal attitude must be adopted. Senator Adesanya v. The President of Nigeria 1981 5 SC p.112 lays down the rule for locus standi in Civil Cases, while Fawehinmi v. Akilu 1987 vol.18 NSCC pt. 2 p. 1269 lays down the for more liberal rule for locus standi in criminal cases. See also on this: Ogbuehi v. Gov. of Imo State 1995 9 NWLR Pt. 417 P.53. To have locus standi the plaintiff's statement of claim must disclose sufficient legal interest, and show how such interest arose in the subject matter of the action.

Section 325 (1) of the Merchant Shipping Act Cap 224, Laws of the Federation of Nigeria 1990 is titled:

"Rights of consignee of goods and Endorsee of bills of Lading." H 375 (1) reads:

"Every consignee of goods named in a bill of Lading, and every endorsee for a bill to whom property shall pass upon or by reason of such consignment or endorsement shall have transferred to and vested

in him all right of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bills of Lading had been made with himself."

The above recognizes only two classes of people who can sue on a bill of Lading, and they are:

- B (a) the consignee, or
- (b) the endorsee

In *Adesanya v. Leigh Hoegh* 1968 1 ANLR p.330, this court said: *"Be that as it may, the important thing is that the name of the plaintiff never appeared in the bills of Lading (save in regard to notification which in this respect is irrelevant) and we cannot agree with MR. Adefala's contention that it is possible for someone here to be an endorsee whose name never appeared on the bill of Lading (Exhibit 4) as such. Endorsement of itself naturally purports writing, here upon the bill of Lading. The question therefore of who had the property is not relevant to the plaintiff's suit based upon the bills of Lading (Exhibit 4). The plaintiff was in no way a party to the contract of carriage of goods, but he was a party, if at all to separate contract with the sellers and the argument of his counsel has confused the two. In so far as the bill of Lading was concerned, therefore, the plaintiff had no locus standi to sue upon it. This being so, we think that the learned trial judge was quite right to find that the plaintiff had no claim accruing to him by virtue of the bill of Lading."*

The above explains Section 375 (1) supra and the dilemma of the appellant in this appeal. To have locus standi the appellant must disclose sufficient legal interest and show how that interest arose in the subject matter of the action. In carriage of goods by sea, suits are contested on bills of Lading. The appellant claims to be the consignee and owner of the goods shipped from Brazil on board the Dancing Sister (1st respondent). The appellant appears on the three bills of Lading as the Notify Party and not the consignee. The right of action on the bills of Lading is restricted to parties to the bills of Lading. Ownership of the goods is irrelevant in a suit on the contract in the bills of Lading. Since the appellant is a Notify party on the three bills of Lading, he is not a party to the contract in the bills of irrelevant in a suit on the contract in the bills of Lading and so he had no locus standi to sue upon it.

There can only be a justifiable action in contract if there is a dispute between the parties to the contract. Since the appellant is not a party to the bills of Lading there can be no dispute to resolve. The Court of Appeal was correct to confirm the finding of the learned trial judge that the appellant had no claim on the three bills of Lading. B

In the claim, the appellant says it is the consignee and owner of the goods. The appellant now says that it is an endorsee - in-blank. A party should be consistent in stating its case and also consistent in proving it. He will not be allowed to take one stance in the trial court and another stance on appeal. Such a shifty attitude must be condemned in strong terms. For the streams of justice to remain pure counsel must at all times be consistent in the presentation of his case. An endorsement in blank is where the shipper or consignee writes his name on the back of the bills of Lading. The primary meaning of to endorse is to write on the back. An endorsee's name must appear on the bills of Lading. A close examination of the three bills of Lading reveals that there is no endorsement. The appellant's name never appeared on any of them as consignee, endorsee or endorsee in blank. It appears only as Notify party. Both courts below found that the appellant is a Notify party, and not a consignee or endorsee to the bills of Lading and so cannot sue on them. Where findings of the trial court have been confirmed by the Court of Appeal this court would rarely interfere, but this court would be compelled to interfere where it is satisfied that the findings are perverse, or cannot be supported by the evidence before the court, or there is/was a miscarriage of justice or violation of some principle of law or procedure. See Cameroon Airlines v. Otutuizu 2011 1-2 SC pt.111 p.200, Onwubuariri & 3 Ors v. Igboasoiiyi & 4 Ors 2011 1-2 Pt.111 p. 109. Concurrent findings of fact by the two courts below that the appellant is a Notify party, and so not a party to the bills of Lading is correct. The finding would not be disturbed by this court. C D E F G H

ISSUE 3

Learned Counsel for the appellant submitted that the law imposes a duty of care on the carrier of goods towards persons who

may not be parties to the bill of Lading, and where there is breach of duty it is actionable in negligence of the instance of such non parties of Notify party to the bill of Lading. He further submitted that on owner of goods carried on board a ship who cannot sue in contract upon a bill of Lading because same was not endorsed to him can
B maintain an action in tort against the ship-owner, provided he can show, either:

- (i) That he was the owner of the goods or
- (ii) That he had an immediate right to possession of them.

C Reliance was placed on Cashmore - Parties to a Contract of Carriage page 214. John F. Wilson Carriage of Goods by Sea 3rd Edition page 146 - 147. He observed that since part of the damage/ loss to the appellants consignment of Sugar occurred during discharge operations as a result of the activities of stevedores he had a right to
D sue in tort. Reference was made to Mitsui & Co Ltd v. Fiota Mercante GranColumbiana S.A 1988 2 Lloyds Law Report p. 208. Learned Counsel for the 2nd respondent submitted that under a bill of Lading a Notify party is precluded in law from maintaining on action in the tort of negligence for loss of damage to goods carried by sea unless
E he can show that he is additionally a consignee or endorsee in the said bill of Lading. He observed that the only legal duty owed by the carrier to a Notify party is to notify him of the vessels arrival and no more. He further observed that Broadline Enterprises Ltd. V. Monterey Maritime Corporation (Supra) cannot avail the appellant
F because in that case the appellant had a cause of action in contract as a consignee under the relevant bill of Lading and so was perfectly entitled to abandon same and to prosecute its claim in tort. He submitted that the appellant has no such right in both contract and in
G tort. Finally he submitted that by virtue of the Charter Party the 2nd respondent is not liable for negligence. On this issue the Court of Appeal had this to say: *"....a notify party or addressee has no standing or right of audience before the court. He has no right of audience or standing in contract. It follows therefore that he has none in tort either.*
H *I do not think the issue of whether an action can be maintained in tort within the Admiralty jurisdiction should arise since the appellant is only a notify party.... I do not see how the appellant can maintain an action in tort of negligence against the respondents as it has not been shown that there is contractual relationship between it and any*

of the respondents.”

In *Broad line Enterprises Ltd v. Monterey Maritime Corporation* (Supra) the plaintiff had a cause of action in contract because it was a consignee under the relevant Bills of Lading. The Consignee endorsed on the Bills of Lading is Broadline Enterprises Ltd. That is not the case here. In this matter the Bills of Lading are not endorsed to the appellant. In fact, they are not endorsed to anyone. The Broadline Enterprises Ltd case does not avail the appellant. **A plaintiff who is a consignee or endorsee to a Bill of Lading is in Law a party to the Bill of Lading. Where he has a cause of action in contract, or/and in the tort of negligence, he has a right to sue in both contract and in tort.**

On the other hand, the appellant is a Notify party or addressee as can clearly be seen in the bills of Lading. He is not an endorsee in blank or a consignee. He is not a party to the bills of Lading and so has no right of action in contract. But that is not the end of the matter. Does the appellant have a right to sue in tort? It is not in dispute that the appellant is the Notify Party and owner of the goods shipped from Brazil on the Dancing Sister, the 1st respondent.

An examination of the appellants claim and affidavit evidence reveals that damage occurred to the goods:

1. During the voyage, i.e. on the high seas, and
2. During discharge of Apapa Port in Nigeria.

In (1) the party vested with the right to sue for damage to goods during the voyage (i.e. damage at sea) is the de jure consignee. The reasoning being that while the vessel is still on sea the de jure consignee has property in the goods.

As regards (2) there are different considerations. **In Mitsui & Co. Ltd v. Fiota Mercante Grancolombiana S.A 1988 2 Lloyds Law Reports p. 208. The Court of Appeal in England observed that there are four means by which a claim can be made for damage to goods on board a ship.**

(a) the shipper may sue in contract, assuming that he has not divested himself of his rights by endorsement of the bill of Lading.

(b) a consignee named in the bill of Lading or an endorsee of the bill of Lading can sue in contract under of the bill of Lading can sue in contract under Section 1 of the bills

of Lading Act, 1855

(c) an implied contract can arise out of the circumstances in any particular case in which delivery is taken at the port of discharge.

(d) the person who was the owner of the goods at the time when damage occurred can sue in tort.

In the Aliakmon 1986 2 Lloyds Law Reports p. 1, the House of Lords reasoned in the same way when it said that the owner of goods carried on board a vessel can claim in negligence for loss caused to him by reason of loss or damage to the property, if he had either the legal ownership of or a possessory title to the property at the time the loss or damage occurred. What both cases are saying is not new. All they are saying is that the owner of the goods at the time of damage to them can sue. When goods are damaged during the voyage of sea, it is the de jure consignee who can sue. At that time the de jure consignee has property in the goods. **When the ship berths and shipping documents are handed over to the owner, the contract in the bill of Lading comes to an end. The shipper has divested himself of his rights and legal ownership to the goods now resides with the owner of the goods.**

My Lords, affidavit evidence, viz pages 17 and 62 of the Record of Appeal reveals that the goods were also damaged during discharge operations. At that time the appellant was the owner of the goods. He has a cause of action for negligence against the stevedores and their principals. Damage to goods on the high seas and damages to goods occurring during discharge operations are thus completely different as regard the right to sue and liabilities.

ISSUE 4

Learned Counsel for the appellant observed that the appellants' claim was for breach of the contract contained in the Bills of Lading and breach of duty and negligence, and argued that after the Federal High Court found on the 25th of April, 1995 that the appellant cannot sue on the Bills of Lading, outstanding claims of breach of duty and negligence were still pending and so the Court of Appeal was wrong to strike out the action when it held that the suit ought to have been struck out on the 25th of April, 1995. Learned Counsel for the 2nd

respondent conceded that the Court of Appeal was wrong to have held that a striking out order flowed as a natural consequence. He observed that the Court of Appeal had no jurisdiction to grant an order/relief which has not been prayed for particularly in the circumstances of the case. Reference was made to *Ekpenyong v. Nyong* 1975 2 SC p.71, *Aghodiuno v. Onubogu* 1998 5 NWLR pt.548 p.16. The appellant's Motion *ex parte* dated the 6th of April, 1995 and filed on the 7th of April, 1995 was for:

"an order stopping the clearance and or the arrest and detention of MV "DANCING SISTER" now berthed at shed No 12 of Apapa Quays, Apapa, Lagos since the 20th day of March, 1995 and intending to leave the jurisdiction of this Honourable Court anytime from now, pending the determination of this action or until this Honourable Court otherwise orders, and for such order or further orders as this Honourable Court may seem just to make in the circumstances."

The learned Chief Judge ordered as follows after hearing the appellant's learned counsel:

"I do order the arrest and detention of the vessel M/V Dancing Sister" until the determination of this case or until the court otherwise orders. The 1st respondent, by an application on notice sought an order to vacate the *ex parte* order. The prayers in the Motion filed on the 18th of April, 1995 reads:

1. Set aside/and or discharge unconditionally the interim order made on the 7th of April, 1995 for the arrest and detention of the 1st defendant/applicant, that is M.V. Dancing Sister berthed at shed number 12 Apapa Quays, Apapa, Lagos.

2. And for such further order or other orders as this Honourable Court may deem fit to make in the circumstances.

Vacating the *ex parte* order on the 25th of April, 1995 the learned Chief Judge said in the penultimate paragraph:

"I am of the firm opinion that any party not being a party to a bill of Lading either as a consignee or as endorsee (neither of capacity, I found the defendant to be) cannot sue on the Bill."

And in the concluding paragraph went on to say:

"The arrest of the vessel Dancing Sister was ordered on a wrong set of facts presented to the court. The arrest is therefore wrong ab initio and I order that the vessel be released henceforth without any condition attached."

The Ruling above was delivered by the learned Chief Judge on the 25th of April, 1995. The Court of Appeal was of the view that the learned Chief Judge ought to have struck out the suit on the 25th of April, 1995. Learned counsel for the appellant was of the view that after the order of 25th of April, 1995 it still had a claim of breach of duty and negligence still pending and so the Court of Appeal was wrong to say that the learned Chief Judge ought to have struck out the suit. The appellant's claim reads:

"The Plaintiff as the consignee and owner of 13,500 Metric Tonnes of Brazilian white Refined sugar covered by the "Congenbill" Edition 1978 Bills of Lading Nos. 1, 2 and 3 shipped on board the Defendants vessel "DANCING SISTER" for carriage of the said 13,600 Metric Tonnes of Brazilian white Refined Sugar from RECIFE in BRAZIL to Apapa, Lagos, claims against the Defendant's jointly and severally for the value of 58.9 Metric tonnes short landed cargo (refined sugar) and damages for breach of contract and/or breach of duty and/or negligence of the Defendants, their servants or Agents in respect of DAMAGE done to 2,000 Metric Tonnes of the said goods during the said voyage in the sum of \$1,007,213.00 (One Million and seven thousand, two hundred and thirteen U.S. Dollars) only."

The above reveals the appellant's claim to be for:

"..... Damage done to 2,000 Metric Tonnes of the said goods during the said voyage....."

By the appellant's claim it seeks to sue on the three bills of Lading. My lords, only consignee, endorsee can sue on a bill of Lading. The de jure consignee has property in the goods when the vessel is on sea. He has the right of action in negligence. ***The appellant being a Notify party is not a party to the contract in the bills of Lading and so cannot sue on it in contract, negligence. The appellant has no cause of action on the bills of Lading and being the owner of the goods makes no difference. The appellant cannot sue on the bills of Lading because he is a Notify Party. Where as in this case the appellant has no locus standi to institute the action the proper order to make is to strike out the suit. The Court of Appeal was correct to hold that the Federal High Court should have struck out the action on the 25th of April, 1995.***

I now turn to examine whether the 2nd respondent is

answerable in negligence. There is a charter party.

Relevant Extracts reads:

“Clause 11. Charterer’s liability to cease when cargo is shipped and bill of Lading signed, except as regards payment of freight, dead freight and demurrage (if any).

Clause 14. Stevedores for loading, stowing trimming and discharging to be employed by charterers or shippers/ Receivers of their expense and under Masters control. Stevedores shall be considered as owner’s servants and the charterers/shippers/ Receivers are not to be responsible for any negligence of whatever nature, default or error in judgment of the stevedores employed.”

By the terms of the charter party, the parties have expressed clearly their intention and it is not the practice for the court to make a new contract for them. The court is to give effect to the terms of the contract. Clause 11 and 14 are exemption clauses. They exempt the 2nd respondent from liability. Exemption clause 14 is a complete answer to any claim the appellant might file for damages. Furthermore the charter party is binding on the parties to the contract in the bills of Lading. The 2nd respondent is not liable in view of the exemption clause and the fact that it is not a party to the contract for the discharge of the goods at Apapa Port.

In conclusion the appellant’s suit is for claims for goods destroyed at sea, i.e. during the voyage. He has no right to sue in view of all that I have been saying. On the other hand the appellant is at liberty to sue on a separate contract for his goods damaged during discharge operation. That suit can only be against the stevedores and their principals.

Accordingly this appeal is dismissed with costs of N50,000 to the second respondent.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Rhodes-Vivour JSC. A very careful perusal of the claim of the appellant and its particulars, (which is the foundation of

the suit) discloses that the damages complained of occurred on the High seas. The appellant as has been held by the lower courts is a notify party, and therefore had no right of action before the court of trial, on admiralty matter. The courts are bound by the claims before them, and in this case, the claims on page (1) of the printed record of appeal. The appeal definitely has no merit, whatsoever and must be dismissed in totality. I hereby dismiss the appeal and strike out the claim in the Federal High Court.

C **TABAI JSC**

I had the benefit of reading, in advance, the lead judgment of my learned brother Rhodes-Vivour JSC and I agree with his reasoning and conclusion that the appeal lacks merit. This appeal turns on the interpretation of Section 375 (1) of the Merchant Shipping Act. Cap 224 Laws of the Federation of Nigeria 1990 which provides:

“Every consignee of goods named in a bill of lading, and every endorsee of a bill to whom the property in goods therein mentioned shall pass upon or by reason of such consign endorsement shall have transferred to and vested in him all right of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.”

Learned counsel for the 2nd Respondent construed this provision to submit that only two categories of persons namely, a consignee or an endorsee of a bill of lading that can sue on the bill of lading. And for this submission, reliance was placed on *ADESANYA v. LEIGH HOEGH* (1968) 1 ANLR 330 at 333; *NNSC v. OWNERS OF M v. ALBION 1* (1987-1990) 3 NSC 200 at 206 and *SEATRADE Vs FIOGXET* (1987-1990) 3 NSC 453 at 467. It was his submission therefore that the Plaintiff/Appellant not being either a consignee or an endorsee on any of the three bills of lading cannot sue and that the fact that it was only a “Notify Party” or that it has collected the goods as owner does not entitle him to sue. Learned counsel for the Appellant contended, on the other hand, that the Plaintiff/Appellant being only a “Notify Party” in the three bills of lading does not preclude it from being regarded also as a consignee or an endorsee entitling it to sue. In support of this submission, learned counsel relied on *BROADLINE ENTERPRISES LTD Vs MONTEREY MARITIME*

CORPORATION (1995) 9 NWLR (Part 417) 1 at 28. I have had a careful look at the above authorities cited by counsel for the parties, and I am, with respect, firmly of the view that BROADLINE ENTERPRISES LTD Vs MONTEREY MARITIME CORPORATION & ANOR (supra) has been cited by learned counsel for the Appellant for a proposition it does not support. Rather, the case supports the position of the 2nd Respondent on the correct construction of Section 375 (1) of the Merchant Shipping Act Cap 224 Laws of the Federation of Nigeria 1990. B

On the true purport of Section 375 (1) of the Merchant Shipping Act (supra) this Court (per Iguh JSC) at page 28 of the report said:- C

“It is perhaps, more convenient at this stage to dispose of the respondents’ contention to the effect that the appellant not being the endorsee or consignee in the bills of lading Exhibits B1 - B10, had no locus standi to prosecute this action. The law is well settled that where it is sought to prosecute an action on a bill of lading itself by a plaintiff whose name does not appear (other than the reference to his being notified) on the bill and he is therefore neither the endorsee nor the consignee therein indicated, such a plaintiff in law has no locus standi to sue upon the bill. See FASASI ADESANYA Vs LEIGH HOEGH and CO. (1968) 1 ALL NLR 333. See too, Section 375 of the Merchant Shipping Act Cap 224 Laws of the Federation of Nigeria 1990. A close scrutiny of the bills of lading Exhibits B1 - B10 however discloses in no uncertain terms that the consignee therein endorsed is Broadline Enterprises Ltd, the Appellant in the present case. This is clearly indicated in the stamp affixed against the consignee’s column in the said bills of lading. F

It is also clear that apart from the appellant being the consignee in the relevant bills of lading, it is additionally shown in the appropriate column of the bill as the notified party thereof. I think, with respect that learned counsel for the respondent was in definite error when he submitted that the appellant had no locus standi to bring this action since he was not the consignee or endorsee shown in the bills of lading. The appellant being the consignee duly endorsed on the said bills of lading, as I have stated, was entitled and had locus standi to prosecute the suit. H

It is clear from the underlined in the above statement of this

Court that a person's reference in a Bill of lading as "Notified Party" notwithstanding, he has no locus standi to sue on the said bill of lading unless he is either a consignee or an endorsee in the bill. In other words, a person's only qualification which entitles him to sue upon a Bill of lading is his being either a consignee or an endorsee in the bill and that if the only reference to him in the bill of lading is "Notified Party", he has no locus standi to sue on the bill. It is also necessary to emphasize that BROADLINE ENTERPRISES LTD Vs MONTEREY MARITIME CORPORATION (supra) is not a departure from ADESANYA Vs LEIGH HOEGH & CO. (supra). Rather the principle in ADESANYA Vs LEIGH HOEGH & CO. was adopted and applied in its entirety in the later case of BROADLINE ENTERPRISES LTD Vs MONTEREY MARITIME CORPORATION. A bill of lading, as it relates to shipping, is the written evidence of contract between a person engaged in the business of transporting or forwarding goods by sea and a carrier (shipper) or its agent embodying an undertaking by the shipper for the carriage and delivery of the freight or cargo to the order or assigns of specified person at a specified place. It is clear therefore that the person to whom the goods are delivered or who has title to the goods is not a party to the contract in the bill of lading and cannot therefore upon it. This point was emphasized in ADESANYA Vs LEIGH HOEGH & CO (1968) ALL NLR 324 at 331 where this Court said:-

"The question therefore of who had the property is not relevant to the Plaintiff's suit based upon the Bill of lading (exhibit 4). The plaintiff was no way a party to the contract of carriage of goods, but he was a party, if at all, to a separate contract with the sellers and the argument of his counsel has confused the two. In so far as the bill of lading was concerned therefore, the plaintiff had no locus standi to sue upon it."

In my view, the above settles the issue in this case. The Plaintiff/Appellant not being a party to any of the three bills of lading has no locus standi to sue, it's being referred to in the bills as "Notify party" notwithstanding.

For the foregoing reasons and fuller reasons contained in the lead judgment, I also dismiss the appeal. I also abide by the order on costs in the lead judgment.

MUHAMMAD JSC

My learned brother, Rhodes-Vivour, JSC, afforded me an opportunity of reading in advance the judgment just delivered. I am in agreement with his reasoning and conclusion which I adopt as mine. The appeal is incompetent. I, too, dismiss the appeal I abide by all the consequential orders made in the lead judgment of my learned brother, Rhodes-Vivour, JSC, including order as to costs. B

NGWUTA JSC

On the 7th day of April, 1995 the appellant, then plaintiff C invoked the Admiralty Jurisdiction of the Federal High Court, Lagos Division. His claim in the Admiralty Action in Rem reads thus:

"The plaintiff as the assignee Metric and owner of 13,600 Metric Tonnes of Brazilian white refined sugar covered by the 'Congenbill' D Edition 1978 Bills of Lading Nos. 1, 2, and 3 shipped on board the Defendant's vessel 'DANCING SISTER' for carriage of the said 13,600 Metric Tonnes of Brazilian White Refined sugar from RECIFE in Brazil, to APAPA, Lagos, claims against the Defendant's jointly and severally E for the value of 58.9 metric tonnes short landed cargo (refined sugar) and damages for breach of contract and/or breach of duty and/or negligence of the Defendants, their servants or Agents in respect of damage done to 2,000 Metric Tonnes of the said good during the said voyage in the sum of \$1,007,213.00 (One Million and seven F thousand, two hundred and thirteen US Dollars) only ... AND the plaintiff claiming the sum of N247,213.00 with interest at the rate of 212 per annum from the 7th day of April, 1995 and costs."

(See page 1 of the record.) On the same date 7/4/95, the appellant applied for, and obtained an order ex parte arresting and detaining G the 1st Respondent's The M.V. "Dancing sister". At the instance of the 1st Respondent, the Federal High Court, on 25th day of April, 1995, granted unconditional discharge of its earlier order arresting and detaining the 1st Respondent. The trial Federal High Court held that the order arresting and detaining the 1st Respondent was H predicated on a wrong set of facts in that the appellant, not being a consignee as claimed or endorsed, is not a party to the Bills of Lading and so cannot sue on them. The trial Court ordered the release of the 1st Respondent's M.V. "Dancing Sister".

In a motion on notice brought pursuant to Ord. 33 of the Federal High court (Civil Procedure) Rules, the 2nd Respondent prayed the trial Court for an order dismissing or striking out the action. The prayer was predicated on the following two grounds:

- “1. That the appellant has no locus standi to institute and/or maintain the action, not having been named either as consignee or endorsee of the relevant Bills of Lading; and or
2. That the 2nd respondent has been improperly joined in the action.”

The Federal High Court struck out the action, holding that the appellant has no locus standi to institute the action under the Bills of Lading Exhibits FA1, FA2 and FA3. Being aggrieved by the ruling striking out its suit, the appellant appealed to the Lagos Division of the Court of Appeal. The lower court dismissed the appeal. Not satisfied with the judgment of the Court below, the appellant appealed with prior leave of the lower Court as some of the grounds in the notice of appeal were grounds of facts and of mixed law and facts, on six grounds, hereunder reproduced, shorn of particulars:

Ground Number One. The learned Justices of the Court of Appeal erred in law when they held, at page 16 of the judgment as follows: “It is very clear from the above analysis that a notify party or addressee cannot possibly be a party to the contract evidence in the Bills of Lading.

Ground Number Two: The learned Justices of the court of Appeal misdirected themselves on the facts when they found, at page 16 of the judgment, that the Appellant was neither the consignee nor endorsee on any of the three Bills of Lading, and further at page 17 of the judgment that the appellant had not convincingly shown that it was an endorsee in blank of the aforesaid Bills of Lading.

Ground Number Three: The learned Justices of the Court of Appeal misdirected themselves on the facts when they found that the Appellant was neither the consignee nor endorsee on any of the Bills of Lading.

Ground Number Four: The learned Justices of the Court of Appeal erred in law when they held that the appellant had no locus standi to sue on any of the three Bills of Lading.

Ground Number Five: The learned Justices of the Court of Appeal erred in law when they held at page 18 of the judgment, as

follows: ... a notify party or addressee has no standing or right of audience before the court. He has no right of audience or standing in contract either. It follows therefore (that) he has none in tort... I do not see how the appellant can maintain an action in tort of negligence against the Respondents as it has not been shown that there is contractual relationship between it and any of the Respondent. B

Ground Number Six: The learned Justices of the Court of Appeal erred in law when they held, at page 22 of the judgment as follows: “I hereby make a consequential order striking out the action which the lower court ought to have done.” C

Based on the above grounds the appellant sought “*An order reversing the judgment of the Court of Appeal and remitting the matter back to the Federal High Court Lagos for hearing on the merits.*” (See pages 326-330 of the record.) From the six grounds of appeal, the appellant distilled the following four issues for D determination:

“1. Whether the Court below was right when it held that ‘a notify party cannot possibly be a party to the contract evidence in a Bill of Lading.

2. Whether the Court below was right in holding, on the E evidence before the Federal High Court and the Court of Appeal, that the Appellant was ‘neither consignee nor endorsee’ on any of the three Bills of Lading and thus lacked the locus standi to sue on any of the subject Bills of Lading.

3. Whether a ‘notify’ under a Bill of Lading is necessarily F precluded in law from maintaining an action in the tort of negligence for loss or damage to goods carried by sea by the mere fact of absence of a contract between such party and the owners/charterers of the carrier-vessel. G

4. Whether the Court of Appeal was right in holding that the Federal High Court should have struck out the action on the 25th of April, 1995.

The 1st Respondent “M.V. Dancing Sister” did not file a brief even though the processes in the appeal were duly served on it nor was it represented at the hearing of the appeal. Learned Counsel for the 2nd Respondent framed for determination, four issues from the appellant’s six grounds of appeal. As found by my learned brother, Rhodes-Vivour, JSC in the lead judgment, the four issues raised by H

the Respondent are identical with the four issues framed by the appellant. I therefore do not have to reproduce them herein. The same applied to the main points in the arguments of learned Counsel for the parties.

B In issue One, the appellant queries the statement contained in the judgment of the Court below that: “A Notify party cannot possibly be a party to the contract evidence by a Bill of Lading.” A Bill of Lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the C consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. It is a receipt for goods, contract for their carriage and is documentary evidence of title to goods. See Schwalls v. Eric R. Co., 161 Misc. 743, 293 MYS 842, 846; The D Vessel “Leona II” v. First Fuds Ltd. (2002) 18 NWLR (pt.799) 439.

The dictum complained of herein may be questioned, in my humble view, for its broad generality. Confined to the facts of this case, it appears unassailable but in as much as it purports to lay down a general rule, it raises doubt as to its validity. It conflicts with the E authority of this Court in Broadline Enterprises Limited v. Montorey Maritime Corporation (1995) 9 NWLR (Pt. 417) 1, a case relied on by learned Counsel for the appellant. This Court was specific when it held, per Iguh, JSC that “... *It is also clear that apart from the appellant F being the consignee in the relevant bills of lading, it is additionally shown in the appropriate column of the said bills as the notified party thereof*”.

Be that as it may, my opinion that learned Counsel’s point is well-taken cannot add to, or detract from, the position of the appellant G vis-a-vis the three bills of lading Exhibits FA1, FA2 and FA3. In Issue Two is on the status of appellant with respect to the three Bills of Lading Exhibits FA1, FA2 and FA3. What the learned Counsel for the appellant referred to in Issue Two as “The evidence before the Federal High Court and the Court of Appeal” is nothing more and H nothing less than the claim of the appellant and the particulars thereof before the Federal High Court, Lagos Division.

In its said claim, the appellant, perhaps with a view to establish a locus standi to institute the action, described itself as “the consignee and owner” of the goods “covered by the ‘Congenbill, Edition 1978

Bills of Lading Nos. 1, 2 and 3...” The trial Court found, and this was confirmed by the lower Court, that the appellant was neither consignee nor endorsee of any of the three bills of lading. This is a concurrent finding of facts of the two Courts below, a finding based on examination of Exhibits FA1, FA2 and FA3.

If there are three other versions of the bills of lading in the trial Court, rightly in my view, considered only the version marked Exhibits FA1, FA2 and FA3 before it. The finding of the trial Court gave a lie to the appellant’s claim that it is a consignee of the bills of lading. By its subsequent claim of being endorsee in blank, the appellant was presenting a case different from its claim. Because the matter had not proceeded to trial, learned Counsel for the appellant argued that the trial Court prejudged the substantive issues at an interlocutory stage, without a consideration of all other documents properly presented to the Court.

My short answer to this argument is that the issue before the trial Court - veracity of the claim that the appellant is a consignee is a matter that must be settled exclusively on the claim before the Court and examination of Exhibits FA, FA2 and FA3 (on pages 40 to 42; 72 to 74 of the record) on which the claim was made proved the contrary.

The argument that the appellant is an endorsee in blank is an attempt to present a case different from the claim upon which the Federal High Court based its decision. There is no claim based on alleged status of the appellant as endorsee simpliciter or in blank.

In Issue Three the question is whether a notify party under a Bill of Lading is necessarily precluded in law from maintaining an action in the tort of negligence for loss or damage to the goods carried by sea by the mere fact of the absence of a contract between such a party and the owners/charterers of the carrier-vessel. From S. 375(1) of the Merchant Shipping Act Cap. 224 Laws of the Federation 1990, it is made clear that only a consignee of goods named in the bill of lading or an endorsee to whom the property in the goods have passed and by virtue of those facts will be able to sue on a bill of lading contract. Appellant is neither a consignee nor endorsee. It is not privy to the contract evidence in the three bills of lading. The law is trite that only those who are parties to the bill of lading are bound by the terms of the bills and ipso facto can sue and be sued. See Adesanya

v. Leigh Hoegh (1968) 1 ANLR 330, 333; Mitsui v. Flota Mercante Grancolumbia S.A. (1988) 2 Lloyds L. Reports 208; NNSC v. Owners of MV Albion 1 (1987 - 1990) 3 NSC 200, 206; Seatrade Owners of MV Joint Frost v. Fiogret Ltd. (1987 - 1990) 3 NIGERIAN Shipping Case 453; Nigeria Airways Ltd. v. Lapite 1990 7 NWLR pt.163 329.

B Be that as it may, there is nothing in the record of the two lower Courts to indicate that the goods were still on board the ship at the time the action was initiated. The rule is that the admiralty jurisdiction of the Federal High Court cannot be invoked once the goods on board a ship have been discharged on the harbor or
C delivered to the point of destination of the cargo. For the admiralty jurisdiction to be properly invoked, the goods or cargo must remain in the vessel. See Brawah Shipping (Nig) Ltd. v. Aphrodite (Nig) Ltd (2004) 9 NWLR (Pt.879) 462; M.N.S. Ltd v. J.P. Ent. Ltd. (2006) 5
D NWLR (Pt.972) 127. These two cases are decisions of the penultimate Court in the hierarchy of Court and so are not binding on this Court but they are of persuasive authority. It is my humble view, based on the facts of this case, that the appellant cannot invoke the admiralty jurisdiction of the Federal High Court to seek damages for the loss or
E damage to the goods which have been discharged from the ship even if it is a consignee as it described itself rather than a notify party. To claim damages for the tort of negligence, it has to approach a High Court in its general, as distinct from its special admiralty jurisdiction.

F For the above and the fuller reasoning in the lead judgment of my learned brother, Rhodes-Vivour, JSC, I also dismiss the appeal for want of merit. I abide by the consequential order in the lead judgment.

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