

COMMON MARITIME TRANSPORT DISPUTES IN FRANCOPHONE AFRICA

Madagascar is an island dependent on supply from overseas, mostly by boat. Shipments of cargo, either containerized or conventional, arrive at one of the six ports used for international shipping on the island.

Recently, we have seen a spike in claims against owners as well as charterers for problems that are traditionally the concern of the shipper and the receiver. Most of these claims are concentrated in the Southwest Madagascar port of Tuléar.

Several claims have been made by receivers or cargo owners for short shipments against the owners/charterers of the vessel concerned.

Specifically, there are some cases following which the receivers filed a claim directly against the owners of the vessel before the local court and relevant authority in Madagascar. This should be invalid under Malagasy law because there is no direct agreement entered into between the receivers or cargo owners and the owners/charterers of the vessel. In general, the receivers or cargo owners should file a claim or take legal action against the shipper instead of the owners/charterers of the vessel.

However, despite no standing in law, this is being used as a tactic by receivers/purchasers because of three reasons:

1. Port of Tulear isolation

The Port of Tuléar is an isolated port far from the main shipping routes. It has one quay and limited resources. Any claim that risks delaying the vessel's progress on its route put pressure on parties outside the contractual nexus to settle the claim and claim back once the vessel is sailing.

2. Courts unfamiliar with maritime law

The competent court for first-instance disputes is the First Instance Court or Tribunal de Première Instance of Tulear. The judges in this court have a general mix of civil and commercial cases and do not have any specific maritime/shipping expertise. As a result, they are unfamiliar with the detail of the Malagasy Maritime Law and will frequently make judgement incorrectly based on

the common law, or simply side with local parties. These decisions take time to overturn and put further pressure on owners/charterers to settle and resolve at a later date.

3. Receivers unfamiliar with standard shipping clauses

The third reason for disputes is that cargo receivers/purchasers believe that their contract is governed by general Malagasy law not the terms of the Bill of Lading. The Malagasy Maritime Code is clear that the terms of the Bill of Lading prevail, but this is poorly understood and further leads to disputes.

Conclusion

Owners and charterers need to be well prepared when arriving in minor ports in Madagascar as a small discrepancy in shipped vs received goods can result in a long delay. It is important that anyone shipping to Tulear has a clear idea of the risks on the ground and contract either relevant insurance or have the name of a good local lawyer on the ground to help quickly when problems arise.



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John is a qualified Solicitor of the Supreme Court of England and Wales. He has over 25 years of experience acting for listed companies in Australia, London, New York, and Toronto with assets across Africa. John is also quite familiar with the maritime and port law of OHADA member states as well as French-speaking African countries. He is fluent in English and French.



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Antsa has extensive experience in maritime and port law, having advised several local and international companies in this sector. Antsa also advises on a wide range of commercial and corporate transactions, with a focus on acquisition and joint venture projects in Madagascar and French-speaking Africa. He is fluent in French and English.



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Pape has years of experience advising on a broad range of general corporate & commercial, maritime, and port law. He is our first point of contact for legal advice on maritime and port law in Senegal. His command of OHADA law also makes him a key player in any cross-border transaction in this region. He speaks French and English.