

Jurisdictional Boundaries in Admiralty: Lessons from Recent Litigation

Situated along one of the world's busiest maritime trade routes, South Africa has long appreciated the necessity of a coherent and effective legal framework for the regulation of maritime affairs. Central to this framework is the doctrine of admiralty jurisdiction, which determines the court's competence to adjudicate disputes arising from maritime matters. In South African law, this area is primarily governed by the Admiralty Jurisdiction Regulation Act 105 of 1983 ("the AJRA"), which codifies and extends the scope of jurisdiction in maritime claims.

A prerequisite to any admiralty action is the existence of a maritime claim. The cornerstone provision establishing admiralty jurisdiction in South Africa is stipulated in section 2(1) of AJRA. This section provides that various divisions of the High Court may exercise admiralty jurisdiction if the claimant has a maritime claim, as defined in the list set out in section 1(1) of AJRA. Thus, the high courts in South Africa can hear any maritime claim regardless of the place where the claim arose, the place of registration of the ship and the residence, nationality or *domicilium* of the vessel's owner.

AJRA identifies three procedures available to a claimant that constitute "admiralty actions" expressly:

1. Arrest property in rem in order to establish South African jurisdiction;
2. Attach property in order to found and confirm South African jurisdiction; and
3. Arrest property in order to obtain security for foreign proceedings.

Parties to a contract of carriage by sea may choose a specific jurisdiction for resolving disputes and may also agree to apply a legal system foreign to South Africa. In such cases, where AJRA does not apply directly, the court will consider the choice of law agreed upon by the parties.

Another critical statute addressing admiralty jurisdiction is the Carriage of Goods by Sea Act 1 of 1986, ("COGSA"). Section 3(1) of COGSA stipulates that a claimant that carries on business in South Africa and is a consignee or holder of any bill of lading, waybill or like document for

the carriage of goods to a destination in South Africa or to any port in South Africa, whether for final discharge or for discharge for further carriage, the claimant may then bring any action relating to the carriage of the said goods or any such bill of lading, waybill or document in a competent court in the Republic. Thus, a claimant may approach a competent court in South Africa irrespective of an exclusive jurisdiction clause in the contract of carriage which may reject South African high court jurisdiction for a foreign jurisdiction.

This provision was in contention in *Ti Ya Toivo Ltd and Others v MV Grey Fox and Others* (AC20/2024) [2025] ZAWCHC 144 (27 March 2025) where the applicants sought a declaratory order that the Western Cape High Court (exercising its admiralty jurisdiction) had jurisdiction to hear Ti Ya Toivo (TYT)'s claim against the third respondent (Helvetia) in terms of section 3(1) of COGSA.

TYT's claim arose from an incident that occurred in the Port of Cape Town on the 5th of April 2024, where a generator was dropped into the hold of the first respondent (the vessel) while it was being discharged by the second respondent. Helvetia had issued a bill of lading, which the generator was carried under, with TYT being the consignee.

An admiralty action was instituted where TYT sought payment of US\$ 28,172,105.18 for damages incurred. Helvetia was the contractual carrier of the damaged generator and thus obliged to deliver the generator in good order and condition. The contract in which the parties entered requires for all disputes to be resolved exclusively by the Hamburg Court applying German law. Helvetia did not have property within the jurisdiction of the Western Cape High Court thus it was not feasible for TYT to arrest or attach assets belonging to Helvetia hence TYT proceeding in terms of section 3(1) of COGSA. Helvetia contended that the jurisdiction of the court should be disregarded as the Hamburg Court has exclusive jurisdiction to adjudicate on this claim.

TYT accepted that German law is the chosen jurisdiction by both parties. Nevertheless, emphasis was placed by TYT that it is granted, by the express statutory provision, with locus standi to bring the action before this court. This became the legal question to be determined by the court.

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he court found that the conditions set out in the bill of lading do not oust the provisions of COGSA and the jurisdiction of the court. Furthermore, it was stated that section 3(1) provides the local cargo interests an additional statutory jurisdiction, in addition to the jurisdiction mutually agreed by the parties for purposes of dispute resolution in their bill of lading. It was important to note that local cargo interests do not have a realistic opportunity, or bargaining power, to negotiate the terms of a carriage contract and cannot further be expected to shoulder the great costs of litigating in a foreign jurisdiction when they have suffered immense damages.

As the generator was allegedly damaged in Western Cape High Court's jurisdiction, the loss suffered by TYT originated from that area of jurisdiction. Furthermore, no action had been filed in the Hamburg Court therefore it was not appropriate for TYT to institute action in the Hamburg Court for the same cause of action. It was the court's view that in the interests of justice and practicality, the claim should be adjudicated in that court.

This case underscores the importance of section 3(1) of COGSA as a powerful statutory mechanism enabling local cargo interests to institute admiralty proceedings in South Africa, notwithstanding exclusive jurisdiction clauses in contracts of carriage. Contracting parties should give due consideration to this provision when drafting or enforcing maritime agreements.



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