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EXAMINING TRANSPORT DOCUMENTS (BILL OF LADING) IN CARRIAGE OF GOODS BY SEA: DOMESTIC AND INTERNATIONAL LAW PRACTICES IN MAINLAND TANZANIA

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Abstract:
All over the world, the shipping practice has become an evolving landscape and common issues, particularly in carriage of goods by sea. Again, the diversity of transport documents, bill of lading for example, has become a source of confusion and dispute among the shipping companies, bankers, carriers and cargo receivers. In advent and the rise of containerization system as a means of transporting goods from one place to another, it is a common practice, in some occasion that goods are transported and shipped with multimodal transport documents involved. Stakeholders in shipping sectors have been asking themselves with a number of questions on the matter in question without proper answers. One of the interesting questions, which are normally asked, is, for instance, on whether consignee who is named in such a multimodal transport documents covering goods carried partly by sea, may make use of the statutory provisions on the receipt function of bills of lading if any difficulty arises, and possibilities of such documents to be treated as a bill of lading in the eyes of the existing laws. The next alarming and puzzling question among shipping companies is on different parcels of cargo, which is intended to be loaded at different destination, what particulars in relation to such cargo should be shown in such consolidated bill of lading and what will be its evidential effects as per laws. Another puzzling issue which has raised eye brows among shipping stakeholders is on the problem of presence of defects in goods under consolidated bill of lading practice in as far as laws are concerned. Here, such confusion is possible since the determination of the dispute may seem to be difficulty under prevailing circumstances. This research article therefore, intends to unearth the issue of diversity of the of transportation documents including bill lading in carriage of goods by sea with a special focus on domestic and international law practice in Mainland Tanzania. To make all what have been stated above possible, there is a need of having a strong legal framework built by coherence of both domestic and international law rules.

Keywords:
Examination, Bill of lading, Carriage, Goods, Sea, Domestic, International, and Mainland Tanzania.

1. Introduction
It is indisputable fact that trades in goods represent an essential share in the gross domestic product (GDP) of most states or regions in the world. Similarly, international trade transactions continue to support significantly on the economic growth and development of various nations the world over. It should be noted, however, that such trades largely depend on the transportation of commodities and goods from one place to another by way of sea. This is indeed an exception, of course, where the transportation relates to electronic items such as software and electronic books.

Obviously, it is contended that transportation is integral to international trade and depending on the sale contract (e.g. cost, insurance, freight – CIF or free on board - FOB) between the seller and the buyer. In this case, the seller or consignor is usually responsible for arranging for the transportation of the cargo from his country to the buyer's (consignee) country. The transportation of goods may be by air, road, rail, or sea. The rules of transportation require that transportation of goods, by whatever means of transportation, must carried out in a safe and credible manner. This basically makes the parties to the transaction to be encouraged instead of being discouraged and this eventually causes trade relations very sustainable. It is, therefore, paramount to have in place binding contractual liabilities between parties to any contract for the transportation of goods. If this is well arranged by contractual parties through existing laws, eventually create unity, and where necessary, also help regulating the transactions by setting minimum or further obligations, liabilities and rights for the parties in such contractual relationship.

This research article is mainly concerned and focused on contracts of carriage of goods by sea. This consequently excludes discussions on contract of carriage of goods by other existing modes of transportation. The transportation of goods by sea is perhaps, the most means of transportation which is used in approximately 80% of internationally traded goods that are carried by sea today in the world. Normally, a contract of carriage of goods by sea is made for transportation of a bulk or general cargo between a shipper (a seller or buyer) and a carrier (a ship-owner or charterer) of the cargo. It is further stated that the contract of carriage of goods by sea is usually embodied in a charter-party. This takes place where the shipper of goods charters a ship from the ship-owner from one destination to another. This is also evidenced by a bill of lading, where in this case, the shipper procures shipping space from the ship-owner or a charterer).

Thus, where a ship-owner makes available his entire vessel for a particular voyage, a specific period of time or by demise the contract of carriage is termed a 'charter-party. This is generally governed by common law principles that normally afford the parties the freedom to negotiate terms without statutory interference. On the other hand, where spaces on the vessel are made available to anyone intending to ship general cargo, the contract is evidenced by and may be termed a 'bill of lading'. In such a situation, certain regulatory restrictions are statutorily imposed on parties' freedom of contract. In this research article, the scope is, however, limited to contracts of carriage of goods by sea which is normally evidenced or covered by a bill of lading with a special focus on domestic and international law practices in Mainland Tanzania. As earlier noted this impliedly and automatically excludes discussions on contracts for which the basic contractual document is a charter-party. In other language, this research article discusses the contracts of carriage of goods by sea that are essentially covered by a bill of lading with special reference to governing international instruments such as the Hague-Visby Rules, and other international rules relating to contract of carriages of goods by sea, ratified and are applicable in Mainland Tanzania.

2. Methods of the Study Employed

This study was mainly guided by doctrinal legal research and supported by empirical research method. The researcher used a doctrinal research approach to collect information from a number documents that includes statutes, legal books, court decisions, policies and government reports. Literal and purposive interpretation of legal documents were used in relation to study objectives. The main objective of conducting this study was to examine coherence of domestic and international law practice in respect of transport documents, with special focus on bill of lading in carriage of goods by sea. The researcher mainly used data documentary information. Thus, the researcher collected data using documentary review and case laws. The rationale for using documentary review and cases was based on the fact that much information was obtained from documentaries, cases and statutes. This has extended more knowledge in the area of study. Data collected from documentary review, cases and statutes were narratively presented using heading and sub heading showing transport documents, especially bill of lading are used in respect of existing legal framework in Mainland Tanzania. Thus, content analysis used to present data both from documentary review of cases and statutes.

3. The Concept, Functions and Relevancy of Bill of Lading

In simple terms, a bill of lading is a document accompanying freight that states the agreement between the shipper and the carrier and governs their relationship when goods are transported. It provides the details regarding the cargo in the shipment and gives title or ownership of that shipment to the receiving party specified on the document. The bill of lading (BL or BoL) is a legal document issued by a carrier (Transportation Company) to a shipper that details the type, quantity, and destination of the goods being carried. The term "Bill of lading" has also been conceptualized under the United Nations Conventions on Carriage of Goods by Sea, 1978, to mean a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer, constitutes such an undertaking. Since the issue of bill lading is associated to a contract of carriage, this is also covered under the same UN Convention, to mean any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; however, a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Convention only in so far as it relates to the carriage by sea.

The prevailing theory states that bills of lading first appeared during the middle Ages. The issue of bill of lading is considered as interwoven with the Lex Mercatoria. Historically, no doubt, the bill of lading was born in Italy, the cradle of commercial and maritime law, but when exactly it started to be used in practice remains unknown Bensa, an Italian scholar, gives an example of a document entitled 'polizza di ferocarico' from 1397.The bill of lading usually states the quantity, weight, measurements, and other pertinent information concerning the goods shipped. It frequently contains the statement that the goods have been shipped in apparent good order and condition. In this case, the carrier is not allowed to contradict the statement as to defects that were reasonably ascertainable at the time of delivery against an endorsee of the bill that relied on the statement. The bill of lading may be signed by the master or by a broker as agent of the carrier. As a receipt, the bill of lading is prima facie evidence that the goods have been delivered to the carrier; the burden of proof of non-delivery, and thus, rests on the carrier.

In some jurisdictions, however, the bill of lading is regarded as the contract of carriage itself. In other jurisdictions it is regarded merely as evidence of the contract of carriage. This is to say that even oral testimony may be admissible to vary the terms of the contract evidenced by the bill of lading. It is also stated that when goods are shipped under a charter party or other document and a bill of lading is issued to cover the same goods, the bill of lading may ordinarily be regarded as a mere receipt. The terms of the contract are, therefore, embodied in the charter party or other document, unless the parties intended to vary the terms of the agreement by the issuance of a bill of lading. The bill of lading that has been endorsed is ordinarily considered to contain the terms of the contract between the carrier and the endorsee in a carriage of good by sea agreements as guided by laws.

In any carriage of goods by sea, owners' responsibilities regarding the receipt, carriage and delivery of the cargo are more closely related with the functions of the bills of lading as per prevailing laws. The general overview of the functions of bills of lading from an English law perspective and other countries do not differ in the large extent. The practices seem to be almost similar in one jurisdiction and another. Many shipments are made under bills of lading. This is normally issued by the carrier to the shipper upon delivery of the goods for shipment. The shipper is entitled to demand issuance of a bill of lading, unless his right is excluded by the contract of carriage. The bill of lading is, in the first place, used as an acknowledgment by a carrier that he has received the goods for shipment.

The bill of lading also serves as a shipment receipt when the carrier delivers the goods at a predetermined destination. In most cases, the bill of lading records the date on which the full quantity of goods was received by the carrier. This is also taken and considered as evidence of the apparent condition and quantity of the goods on receipt which include marks, number, quantity or weight, place of issue and the load and discharge port(s) in carriage of goods by sea. The English law, for instance, incorporates the Hague Visby Rules by the Carriage of Goods by Sea Act 1992. It is, therefore, imperative for the owner or charterer member that the bills of lading are issued to describe accurately the goods received on board before shipment is done. Some authors and practitioners in carriage of goods by sea such as Anderson are of the view that it is also important that a record is made of the cargo condition at the time of receipt by the carrier. The author further insists that the parties should ensure, for instance, if the goods were loaded in good condition or damaged shortly afterwards by rain, the bill of lading should be issued clean.

Secondly, the bill of lading is either considered as a contract of carriage or evidence of a contract of carriage. As above stated by Anderson, the bill of lading is also taken as evidence of the contract of carriage. This should not be taken to mean that the bill of lading is not the contract of carriage itself. Such agreed contract between the carrier and the shipper is only and conditionally created when the goods are loaded on board the ship. Considering its nature, the contract, therefore already exists before the bill of lading is issued and carriage of good by sea is implemented. In circumstance where damage is evidenced before issuing the bill of lading is issued, the shipper is entitled to make claims under the contract of carriage as if the bill had been issued. As a matter of fact, and considering the agreement between a consignor and a consignee, the bill of lading is regard in law as actual contract of carriage in carriage of goods by sea as per laws.

Anderson further describes the bill of lading as a document of title. When the bill of lading is negotiable, as usually happens in carriage by sea, it also helps controlling possession of the goods. This is because, the bill of lading is considered as one of the indispensable documents in financing the movement of commodities and merchandise across the world. Anderson further states that the rightful holder of a bill of lading has the right to take possession and delivery of the goods upon surrender of an original bill of lading. This means that a bill of lading is different to other transport documents, such as straight bill, which is not transferable as per laws, where only proof of identification is required to take delivery. The author contends that HVR does not apply to sea waybills in carriage of goods by sea. It should be further noted that the right to take delivery of the goods under a bill of lading is not the

same as taking ownership of the goods. This is because as per laws of various countries the ownership is determined by the sale contracts. This was also discussed and evidenced and illustrated in a case of Lickbarrow v. Mason. In this case it was found that transferring bill of lading; the right of possession of goods represented by what it is transferred.

4. Bill of Lading in Mainland Tanzania

The United Republic of Tanzania (URT), like many other nations relying on transportation of goods by sea, has enacted various laws regulating this sector. Equally, the maritime system has a number of international rules relating to maritime laws, which include, but not limited to the Hague Rules and Hague-Visby Rules as amended. As such, for shipment to and out of Tanzania the bill of lading is issued under The Carriage of Goods by Sea Act 10(herein referred as COGSA), which (is pari material with) is an adoption of The Hague-Visby Rules.

Further, the URT being a maritime state, and signatory to the International Maritime Organization (IMO) Convention, relies on both international standards and domestic laws to governs and regulates marine and maritime issues. Domestic laws relied upon include, but not limited to: a newly enacted principal legislation the Tanzania Shipping Agency Corporation Act, and the Merchant Shipping Act,. which was enacted in 2003. The recently enacted law (Tanzania Shipping Agency Corporation) established Tanzania Shipping Agency Corporation (TASAC), which is an oversight body, which commenced its operation vide a GN. No. 53 of 2018. TASAC was established to perform functions which were previously by the Surface and Marine Transport Regulatory Authority (SUMATRA). It is worth noting that, TASAC currently acts as an oversight body and the agent of the government in all marine and maritime issues in Mainland Tanzania.

The general public and maritime stakeholders including but not limited to all ship owners, Agents, Masters, Seafarers, Maritime Training Institutions, Seafarers Engagement and Placement Companies, Maritime Administrations, Tanzania Seafarer Union, Tanzania Seafarers Community, Tanzania Marine Naval Officers, Tanzania Ports Authority. Shipping Agencies, Clearing, Forwarding Agencies, Approved Medical Practitioners, were informed about the existence and formation of the TASAC through merchant shipping notice, dated Friday, January 25th, 2019. Following its establishment, TASAC has managed to maintain the integrity, transparency, accountability, and image of the Corporation at all times. TASAC under its leadership ensures effective engagement with stakeholders in ensuring that the Corporation discharges its duties and functions in accordance with the existing laws.

The main goal of establishing TASAC was to ensure accountability to the nation and the stakeholders in carriage of goods by sea that are under the powers of TASAC. Contrary to the Surface and Marine Transport Regulatory Authority, which was responsible for all matters relating to transportation of both sea and land, TASAC was also established to mainly deal with transportation of goods by sea. In other words, the law (hereinafter to as the Act) repealed the Surface and Marine Transport Regulatory Authority Act, and thereby abolishing SUMATRA, formerly the regulator of both land and marine transport sectors. It is our argument that establishment of TASAC has added more value to the transportation of goods by sea compared to existed SUMATRA. This is because TASAC has strengthened its responsibilities as a result of dealing with only carriage of goods by sea and other related issues. The establishment of TASAC was not politically motivated, rather it was intended to broaden and improve transportation of goods by sea in Mainland Tanzania.

5. International Standards Governing Bill of Lading

With reference to the international standards, Tanzania is also bound by international maritime laws in honouring its international obligations. These international instruments include: The International Convention for the Safety of Life at Sea (SOLAS), 1974, COGSA & Hague Rules, Hague-Visby Rules, 1968, and Hamburg Rules, 1978, which Tanzania signed it on 24th July 1979, and it was eventually ratified on 1st November, 1992. The Rotterdam Rules, 2009, as one of the international rules is not yet operational in Mainland Tanzania. The COGSA also applies in matters relating to carriage of goods by sea. Tanzania legal framework regulating carriage of goods by sea clearly indicate that subject to the provisions of the above cited international conventions, the rules set out in the Schedule hereto will have effect in relation to and in connection with, the carriage of goods by sea in ships carrying goods from any port in the United Republic to any other port whether in or outside the United Republic of Tanzania. In Tanzania, the issues of carriage of goods by sea is regulated by the Carriage of Goods by Sea Act. This legislation was enacted in 1927.

5.1 The Hague Rules

The Carriage of Goods by Sea, which is the governing law in Tanzania, has adopted the Hague Rules, and has incorporated it in its schedule. The Hague Rules have been further developed by The Hague-Visby Rules and Hamburg Rules. Neither The Hague-Visby Rules nor the Hamburg Rules have, however, been domesticated in Tanzania. The Carriage of Goods by Sea Act, 1927 was specifically enacted to regulate the contract of carriage of goods by sea between shipper and carrier for the shipment of goods. In such context, Tanzania has, therefore, only one legal regime which governs the contract of carriage of goods by sea. Despite the fact that the he governing law in respect of the carriage of goods by sea in Tanzania is the Carriage of Goods by Sea Act, and Tanzania has ratified the Hamburg Rules 1st November 1992, the date of the commencement of the Treaty. To date the SOGA has the Schedule which contain the Hague Rules. The same practice is also found in South Africa, Nigeria, Kenya. The Hague Rules, and The Hague-Visby and Hamburg Rules has some strength and weaknesses.

One of the weaknesses of The Hague Rules is existence of conflict of laws problems. The Hague Rules apply to carriage of goods by sea only if the shipment is outward. Indeed, the narrow scope of application of the Rules and the small number of States applying the Rules, this may also create conflict of laws problems. Another weakness of this Convention relates to the period when carrier is liable is too limited. In this case, the carrier's liability only covers the period from the time when the goods are loaded on to the time when they are discharged from the ship. This period, in carriage of goods by sea, is sometimes referred to as extending "tackle-to-tackle". Thus, while sitting at dock or in storage at dock, prior to or after shipping, the carrier may not be held be liable for damage to such cargo. Moreover, the meaning of the goods is also not complete under the statute. Indeed, the Convention does not create liability for 'delay' in delivery of the goods. The Hague Rules impose liability only for loss of or damage to the goods. There is no liability on the part of the carrier for 'delay'. In modern international trade, delay in delivery of the goods in many cases is fatal to business opportunity of the shipper or the consignee.

Interestingly, The Hague Rules does not contain 'Navigational fault exception' of the carrier: not realistic. The carrier may escape liability for loss of or damage to cargo resulting from "act, neglect, or default of the master, or servants of the carrier in the navigation or in the management of the ship". Many carriers oppose the continuance of this defence. It is argued that advances in communication technology, vessel navigation and safety provide the carrier with a higher degree of control of the vessel and cargo than was available in the previous century when this defence was adopted. The maximum limit of carrier's liability, too low (100 Pound Sterling per unit or package). Generally, The Hague Rules are not compatible with container transport. It is said that The Hague rules are not compatible with 'electronic commerce'.

Stating its scope, the COGSA as a maritime law in Tanzania, carries a total of 7 sections including the Rules in the schedule as they have been incorporated from The Hague Rules. The Hague Rules are, therefore, subjected to the provisions of the Carriage of Goods by Sea Act. These have the force of law and apply in respect of the carriage of goods by sea in ships carrying the goods from any port in the United Republic of Tanzania to any other ports, in or outside the United Republic. It is interesting to note that, the provision of section 4 of the Act, however, provides that any document of title or bill of lading which is issued in the United Republic of Tanzania will be subject to the Hague Rules.

5.2 The Hague-Visby Rules

After almost a half of a century of global change, there was a movement to modernize The Hague Rules. The diplomatic conference at Brussels adopted a Protocol to amend The Hague Rules on 23 February 1968. The 1968 Brussels Protocol brought The Hague Rules a little more in line with the needs of the changed world. The amended Hague Rules have become known as the 'Hague-Visby Rules'. The Visby amendments to The Hague Rules made several improvements, which include extending "territorial application". It also helped solving the conflict of laws problems of The Hague Rules. The Hague-Visby Amendments provide that the Rules apply in three types of voyages. These are: the bill of lading is issued in a Contracting State; or the carriage is from a port in a Contracting State; or the contract of carriage expressly provides that the Rules shall apply.

The Hague-Visby Rules also increased in maximum limitation of liability. The Hague-Visby Rules increase the maximum amount for limitation of liability of a carrier and introduce a new weight-based criterion, which is payment of 10,000 francs per package or unit or 30 francs per kilo of gross weight of the goods lost or damaged. By virtue of the SDR Protocol, 1979, the limitation of liability is again amended to 666.67 SDRs per package or unit, or 2 SDRs

per kilo. The Protocol also introduced and brought "inclusion of a container clause" for the first time in the history of carriage of goods by sea. They include a container clause, in recognition of the new cargo packaging techniques adopted throughout the shipping industry. Pejović, states that the Hague Rules were a great success, but they failed to satisfactorily resolve some critical problems, and new problems were also appearing as a result of changes in transport technology. The Hague Rules were revised by the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968. This was entered into force on 23 June 1977. This protocol was commonly known as The Hague-Visby Rules. He further states that The Hague-Visby Rules extended the scope of application of The Hague Rules.

They apply to all bills of lading relating to the carriage of goods between ports in two different states when the bill of lading is issued in a contracting state. He states also that they apply also when the carriage is from a port in a contracting state or if the bill of lading contains a clause providing that the Hague-Visby Rules or the legislation of any states giving effect to them are to govern the contract. A number of states ratified the Hague-Visby Rules without renouncing the Hague Rules. A good example of countries with such a status is France, Poland and Croatia. In the case where one of the states ratified both The Hague Rules and The Hague-Visby Rules and the other state ratified only The Hague Rules, it is The Hague Rules that will apply between such states. A number of countries adopted national laws based on the Hague-Visby Rules without formal ratification. Tanzania is one among countries that have not so far domesticated the Hague-Visby Rule, though in terms of section 2 of the Carriage of Goods by Sea Act has incorporated provisions of above named the Hague-Visby Rules, which are part to the current Tanzania's practice.

Pejović while contributing on significance of the Hamburg 1978 Rule on bill of lading, states that as decolonization progressed around the world, the world map changed substantially, and new independent states, most of them developing countries, were not satisfied with the Hague-Visby Rules. This raised claims that they did nothing to improve the inferior position of cargo interests. In addition, there were a number of criticisms directed at the contents of The Hague-Visby Rules as well. In attempt to make more improvements, those countries launched an initiative in the UN to adopt a new convention. After several years of preparatory work, the United Nations Commission on International Trade Law (UNCITRAL) initiated a preparation of a draft of the convention. This was adopted at the Diplomatic Conference held in Hamburg in 1978. The official name given was 'The UN Convention on the Carriage of Goods by Sea'. In the Declaration, which is part of the convention, the name 'the Hamburg Rules' was recommended.

5.3 The Hamburg Rules

The Hamburg Rules have regulated the carrier's liability in a substantially different way, as compared with The Hague-Visby Rules regime, with the clear objective of increasing the carrier's responsibility. The Convention establishes the principle of presumed fault of the carrier under which the carrier will be held liable unless he can prove the absence of fault. The carrier can avoid liability if he proves that he has undertaken all reasonable measures to avoid the damage or that it was impossible to undertake such acts. He is deprived of the right to be exempt from liability for the nautical fault of his master, crew and servants. The carrier is liable without exception for loss or damage caused by his fault or the fault of his agents and servants. He must prove how damage actually occurred and that he was not liable for such event. For example, the carrier can prove that on a certain day sea water penetrated the hatch cover seals and that neither he nor his servants were negligent. The Hamburg Rules have also introduced the joint liability of the actual carrier and the contracting carrier in transactions relation to carriage of goods by sea. Despite expectations, the Hamburg Rules failed to achieve a radical shift in favor of developing countries, and like its predecessor, also failed to achieve wide acceptance. The Hamburg Rules entered into force in 1992 and have been ratified by 34 countries to date. Tanzania is also a signatory to the Hamburg Rules.

5.4 The Rotterdam Rules

Speaking of the development of the carriage of goods by sea, Pejović, states further that forty years after the Hague-Visby Rules and thirty years after the Hamburg Rules, a new and important piece of legislation was adopted under

the auspices of UNCITRAL. On 3 July 2008, the UNCITRAL approved the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (commonly the Rotterdam Rules) was promulgated. This was formally adopted by the UN General Assembly on 11th December 2008. This new UNCITRAL legislation has the ambitious goal of restoring the uniformity of the law governing the international carriage of goods by sea. As of now, there are three international regimes governing the carriage of goods by sea. These are The Hague Rules, The Hague-Visby Rules and the Hamburg Rules. Pejović is of the view that if widely adopted, the Rotterdam Rules may be able to replace these three conventions and restore uniformity to the law in matter relating to carriage of goods by sea in the current modern world.

This new convention also aims at modernizing the law governing carriage of goods by sea. This is included in the convention in order to cope with various modern developments. Such developments include the increased importance of container transport, logistics and electronic commerce. The growing use of non-negotiable documents and documents in electronic form has drawn the attention of the legislators to these areas. This was in fact previously ignored by all of the existing international conventions governing carriage of goods by sea. The Rotterdam Rules has also addressed various issues that were not regulated by previous international conventions. The Rotterdam Rules has specifically included new sections which cover the delivery of the goods by sea. The new Rules have also included the right of control, and finally, the right of transfer. Indeed, the Rotterdam Rules allows extension of rules beyond the sea leg, and also apply to a non-sea leg, only if the transport includes the carriage by sea. The Rotterdam Rules have extended the application of the rules to volume contracts where the contract "provides for the carriage of specified quantity of goods in a series of shipments during an agreed period of time". Under the Rotterdam Rules, the parties in a volume contract may, however, derogate from provisions of the Rotterdam Rules.

The Rotterdam Rules retained the core elements of the liability regime as defined under The Hague-Visby Rules, in order to preserve the rich jurisprudence developed around The Hague-Visby Rules. They provide for the carrier's duty to make the ship seaworthy, and a similar mechanism of transfer of burden of proof. The Rotterdam Rules follow the pattern of the Hague-Visby Rules by focusing on the burden of proof. The initial burden is on the claimant who has to establish prima facie case with evidence against the carrier by proving that the loss, damage or delay occurred during the period of the carrier's responsibility. The close examination of these various international instruments reveals that they are all based on fault as the basis of liability.

6. The Role of Oversight Bodies in Mainland Tanzania

Pursuant to Part III of the Tanzania Shipping Agencies Act, stipulates clearly that that the TASAC is mandated to regulate maritime transport services, marine environment, and safety and security matters. This legislation further provides that the TASAC underlying objective is to carry out its functions and exercising its powers provided for under the Act. The Act, stipulate further, TASAC functions will include enhancing the benefits of maritime transport by promoting and maintaining maritime safety, security and maritime environment in Mainland Tanzania. In terms of Section 7 of the TASAC is also responsible for clearing and forwarding functions relating to; import and export of minerals, mineral concentrates, machineries, equipment, products or extracts related to minerals and petroleum, arms and ammunition, live animals, Government trophies or any other goods as the Minister may by order published in the Gazette. The law categorically states that Any person who performs or facilitates performance of any function within exclusive mandate of the Corporation contrary to this section, commits an offence and shall upon conviction be liable to a fine of not less than twenty thousand United States dollar or its equivalence in Tanzania shillings or to imprisonment for a term of not less than two years or to both.

Following the amendment of the maritime laws through the Written Laws (Miscellaneous Amendments) (No.3) Act 2019, TASAC is also mandated with a number of duties. This include the exclusivity of TASAC's mandate to implement clearing and forwarding functions has been extended to cover the import and export of fertilizers, industrial sugar, domestic sugar, edible cooking oil, wheat, oil products, gas, liquidified gas and chemicals or any other liquid related products. TASAC is also mandated to encapsulate "any other liquid related products", the amendment has certainly broadened the functions of TASAC in this realm, handing it clearing and forwarding control over a number of key industrial goods.

TASAC also has exclusive powers to extend to cover an array of shipping agency functions in relation to a broad collective of goods, including tanker ships and pure car carrier's vessels; and minerals, mineral concentrates and any

equipment related to minerals and petroleum. Through the Act TASAC also reserves the right for the Minister of Maritime Transport to add further goods to this list. The application of the Act has been widened. It applies to all matters of maritime administration, maritime environment, safety and security and maritime transport services, not just those "at sea ports and inland waterways ports". Its command is now more far reaching, covering airports, ports and pipelines. Indeed, a number of additional definitions have been added to the Act, extending the mandate of the Tanzania Shipping Agencies Corporation (TASAC). Despite improvements, the objectives of TASAC have been however restricted. For example, TASAC will no longer aim to enter into contractual obligations for the provision of shipping agencies services in order to delegate its own functions. Furthermore, the objective of promoting competition within the shipping agency business has also been removed and substituted with the objective of promoting competition in the maritime transport services. In particular, TASAC is both regulator as well as the agent in all issues relating to transportation of goods in Mainland Tanzania.

7. The Way Forward

From revealed findings stated above, the following are the way forward that will help in ensuring that Tanzania has a concrete legal framework recognizing and Tanzania's transportation system becomes coherent with international standards relating to carriage of goods by sea in as far as Tanzania is concerned.

Firstly, the Carriage of Goods by Sea Act should be further amended to incorporate not only provisions of The Hague-Visby Rules but also provisions of other international law rules relating to carriage of goods by sea covering bill of lading. This will help coherence of the domestic rules relating carriage of goods by sea, with that of international law rules, for which this become inescapable Mainland Tanzania. Secondly, the Carriage of Goods by Sea Act should also be amended to incorporated a clear definition of the bill of lading in the Act. The current practice of carriage of goods by sea should not rely on definition of "contract of carriage" while such contract of carriage is carried out relying on a number of process, which include tendering of bill of lading as issued by the carriers to shipping companies.

Thirdly, incorporate Rotterdam Rules, 2009 into national legal framework. It is evident that this is an essential international law rules relating to carriage of goods by sea. This international law rule being not yet in force makes the current legal framework incomplete and as a result some issues relating to bill of lading and carriage of goods by sea, in particular, are not well handled for lack of enforcement of such rule.

8. Conclusion

There is no doubt that the existing domestic as well as international law rules governing carriage of goods by sea have played significant role in Tanzania. This has ensured carriage of goods by sea from Tanzania to the world and transportation of goods from abroad to Tanzania possible despite inevitable challenges. One of the reason of writing this research paper is to examine the use of necessary documents such as bill of lading, their significance in transportation of goods from one port destination to another, with special focus on domestic and international practices. From the research, it has been found in several occasions, and it is thereby concluded that the current existing legal framework covering carriage of good by sea is not complete. This is evidenced by the fact that neither The Hague-Visby Rules nor the Hamburg Rules have been domesticated in Tanzania, though no doubt all, the Carriage of Goods by Sea Act contains and has incorporated the provisions of The Hague-Visby Rules. From this, it is further concluded that, the current system and practice cannot fully cater the needs of transportation of goods as expected since there is a vacuum, particularly in the international law rule perspective relating to carriage of goods by sea. The handling of transportation of goods by relying on transportation of goods through bill of lading is expected to be well covered and Tanzania laws should adhere to the international practices. In this regard, having only one legal regime which governs the contract of carriage of goods by sea seems to be a major obstacle towards having a robust in transactions relating to carriage of goods by sea in Mainland Tanzania.

Under the laws, especially the Carriage of Goods by Sea Act, there is no specific provision which expressly defines the term bill of lading. The Act only defines on "the contract of carriage". The contract of carriage which is defined under the current transportation of goods law regime means the contract which is evidenced by the bill of lading or similar document of title or any document issued pursuant to charter-party. The International Convention for the Unification of Certain Rules of Law Relating to bill of Lading, 1924 (Hague Rules) has significantly helped in clearing

the existing doubt. The provisions of section 2 of the Carriage of Goods by Sea Act, applies to the documents, for instance, traditional bill of lading or any similar document issued by the carriers. It also applies to a charter-party and any documents of title capable of transfer either by endorsement or, as a bearer bill, by delivery without endorsement in carriage of goods by sea in Mainland Tanzania. This Act, therefore, applies to those documents with three essential features of traditional bill of lading only. In that regard, the Seaways bills are not essentially governed by The Hague Rules. The basic argument which underpin this position lies in the definition of "the contract of carriage". Finally, sea waybill is, in the opinion of most maritime jurists, not a "bill of lading" or a "similar document of title as used in carriage of goods by sea.

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