Understanding shipping penalty claims in Kenya

Owing to the recent issues regarding shipping and Container penalty (demurrage) claims in Kenya, it important to explain the economics of container shipping, specifically focusing on what demurrage charges are and why they exist in the container shipping industry.

Ms Katy Aldrick, Chairman of Kenya Ships Agency Association explains that container Shipping refers to a regular and scheduled service between fixed ports and although there are Roll On Roll Off (RORO), steel and other liner services, container shipping is generally considered the king of liner shipping.

"Unfortunately," she says "inefficient supply chain systems, which significantly increase the cost of doing business, give importers a negative experience of the shipping process."

Aldrick, who was among participants during a recent institute of Chartered Shipbrokers examiners meeting in London, where it was revealed that around 50% of all students taking the 'Liner Trades' exam were based in Kenya says there was room for improvement in the exam pass rates.

She points out a gap in the understanding of the Shipping industry, in particular the container shipping industry.

The concept of demurrage, she further explains, first came about when ship owners and charterers (owners of the cargo) signed agreements to transport cargo between two ports. These agreements, known as Charter Parties, existed long before container shipping arrived on the scene during the late 1950s. Both parties had to agree to terms and if they failed to adhere to these terms, compensation for breaking these terms was required.

Demurrage is the charge payable to the owner of the chartered ship on failure to load or discharge the ship within the time agreed as per the contract. The time allowed for the charterer to discharge their cargo is known as 'laytime' and if the charterer exceeds the time allowed, they are required to pay demurrage charges, being liquidated damages for breach of contractual terms. Since the proliferation of container shipping, the concept of demurrage has been extended to compensate shipping companies when containers are not returned within the contractually agreed 'laytime' or 'free time'.

Today shippers who want to transport goods will enter into a contract with the Shipping Lines. This is known as a contract of carriage and covers goods from the place of loading to its final destination as agreed between the shipping line and the customer.

This contract stipulates the terms of the transportation including the description or particulars of the goods to be transported, the mode of transport (which include sea freight, inland haulage and/or any other agreed mode of delivery of the relevant cargo to the agreed destination), the packaging of the consignment for transportation purposes and the handling of the goods from the time they are received by the shipping line to when delivered to its prescribed destination.

All these terms, including the type of packaging, which for this purpose is the use of containers to transport the relevant cargo) constitute a carriage contract which is the service being rendered by the Shipping Lines.

As a fundamental term of the carriage contract, a key clause is the specification of the amount of time allowed for loading, unloading of cargo and return of the empty container to the nominated empty depot.

The grace period allowed is referred to as lay time or free time, the Shipping Line does not raise any charges to customers for containers held for this time period. Nor does it charge for the use of the containers while on voyage at sea.

> **"Demurrage is the charge payable to the owner of the chartered ship on failure to load or discharge the ship within the time agreed as per the contract."**

However, if the lay time is exceeded, the importer compensates the Shipping Lines in form of demurrage payment which is liquidated damages for the Shipping Lines not being able to use the containers whilst they are in the possession of the customers. It should be noted that demurrage does not constitute rent for use of property as there is no leasing contract between the Shipping Lines and its customers. As demonstrated above, the contract is one of transportation of goods whose elements comprise packaging, loading, carriage, unloading, handling, return of storage material and, to the extent applicable, liquidated damages payable by an importer to the Shipping lines for any delay in returning the containers used in transporting the goods.

In a perfect container supply chain the 'free days' are never exceeded and the carrier does not need to be compensated by the shipper (consignee). When shippers agree to freight rates and 'free days' they need to understand the impact of these contractual terms.

Where infrastructure or country administration systems cause delays in container pick up (Return) it may be worth for shippers to look for less risky options like using through Bill of Ladings, rather than 'Merchant Haulage'. Although the initial freight costs may be higher, demurrage rates are likely to be reduced as most of risks associated with infrastructure delays are transferred to the Shipping Lines.

Aldrick urges the government to create a clear procedures and systems covering all departments (Customs, KEBS, KPA, SGR) that encourage trade. By reducing barriers to trade, the cost and risk of bringing ships or containers to Kenya will also be lower and Kenyan consumers will significantly benefit from reduced demurrage charges.

Kenya Navy to establish ship building facility

Kenya is set to tap into the lucrative ship building and repair industry following plans to start the construction work of a modern shipyard facility at the Kenya Navy Mtongwe base, Mombasa County.

The shipyard or a dockyard is a place where ships are built and repaired.

According to Defence Cabinet Secretary, Raychelle Omamo , a Dutch firm , Damen Group, a defence, shipbuilding, and engineering conglomerate based in Gorinchem, South Holland, the Netherlands are the main project contractor.

The CS said she was confident of professional work on the project, which Damen will undertake in two years' time." I have confidence in what Damen will undertake and hope they will keep to the timelines to have the project ready by 2021," Omamo said.

She termed the project as a complete game -changer for Kenya's maritime industry saying that it was timely as its implementation comes at a time when the government is keen on harnessing the potential that exists in the blue economy.

Omamo added that '' we shall be able to have our own Naval vessels repaired or even build our own indigenous ships as well as be able to carry out repair works for other vessels in and around the East African region.

She added that the shipyard project is a potential transformative project as Kenya aims to reposition its military as a catalyst for industrialization.

''Though this project was conceptualized several years ago, we thought keenly about the way we could push it through. This is the season for industrialization and for the blue economy and let us all seize this opportunity and do great things for Kenya,'' she said.

The Kenya Navy Commander, Major General, Levy Mghalu termed the project a historical milestone. Since first Kenya Navy dockyard was built in 1988 and was meant to repair and maintain smaller vessels.

''The Kenya Navy shall be able to build and maintain its fleet of ships and vessels. It shall also be able to perform timely and detailed repairs for vessels and ensure that they get back to work in pretty good time,'' Mghalu said.

He added that "it was designed to handle a maximum capacity of 950 tons and vessels of 60 metres long. Overtime our Navy has acquired bigger vessels that cannot be handled by the existing synchrolift.''

The proposed shipyard will consist of a slipway with a capacity of 4000 tones and 1250 metres long.

It also has two ship building hangars, one of 150 metres and 30 metres high and a smaller one of 120 metres long, 20 metres high and 123 metres wide with additional workshops, offices, parking areas and jetties.

According to Damen Director for Africa, Ronald Maat,the project being undertaken has the potential to being the biggest shipyard and be able to offer timely employment to many people.

''Once complete, apart from carrying out repairs for Kenyan vessels, this facility can also be used to repair vessels and build new ones on order from neighboring states,'' Maat said.

Damen Shipyards Group is a global operator with more than 50 shipyards, repair yards, and related companies – as well as numerous partner yards that can build vessels locally.

Since 1969 it has designed and built more than 5,000 vessels and delivers up to 150 vessels annually.

Defence Cabinet Secretary,Raychelle Omamo during the launch of Ship dockyard at Mkunguni in Likoni,Mombasa County. The project is being implemented by a Dutch company, DAMEN and is set to be completed by 2021. [Gideon Maundu, Standard]

New Bandari Academy seeks to streamline maritime training in Kenya

By Patrick Beja

American naval officer and strategist Alfred Thayer Mahan once argued that national prosperity and power depended on control of the world's sea lanes.

The historian and author of The Influence of Sea Power upon History, wrote thus, "Whoever rules the waves rules the world."

This appears to be the latest realization of Government as it pieces together a curriculum at the newly established Bandari Maritime Academy in Mombasa County to start training of seafarers, fishermen and other sea workers in its "go to sea" campaign kicked off by President Uhuru Kenyatta last year.

President Kenyatta converted the Kenya Ports Authority (KPA)-owned Bandari College through a Kenya Gazette dated November 28, 2018.This gave the birth of an independent maritime academy that will run as a state corporation to advance the training of maritime labour.

"The academy shall be an institution of excellence in teaching, training, scholarship, innovation and research in maritime skills; provide and advance education and training to appropriately qualified candidates, leading to the award of diplomas and certificates and such other qualification" reads the gazette notice.

Bandari College was established in 1980 to equip KPA employees with education and skills to work at the Kenyan ports. It also catered for the training needs of the maritime industry in the country.

Kenya is chattering the path of the Philippines which is a traditional supplier of maritime labour in the world. It is estimated that seafarers from the Philippines earned $6 billion (about Sh600 billion) making up about half of Kenya's annual budget.

According to Maritime and Shipping Affairs principal secretary Nancy Karigithu, the government is currently putting in place structures including setting up the board to run the academy indicating it may start its operations by June this year.

"We are currently putting up the necessary structures including recruitment of the team that will run the academy," she explained. She was speaking after addressing local youth who had held a session of the Mombasa Youth Assembly (MYA) that supported the blue economy programme launched by the president last year.

The government has hired an Australian expert associated with the World Maritime University (WMU) in Malmö, Sweden, to help prepare a curriculum that meets international training standards.

WMU is a postgraduate maritime university founded by the International Maritime Organization (IMO). The Government sources intimated that the new maritime curriculum was being aligned to ministry of tourism and Technical and Vocational Education and Training (TVET) requirements.

IMO ensures that seafarers attain basic training skills such as survival at sea and firefighting. The United Nations body enforces the Standard of Training Certification and Watch keeping (STCW) of 1995 and Life at Sea (Solas) among other requirements.

Bandari Maritime Academy will be dedicated in training skills in the blue economy and make Kenya a major supplier of maritime labour. Those with low standards of education may be encouraged to train in boat building, fishing, cage and seaweed farming. The training at Bandari Academy will include the use of simulators while sea-time for students is expected to be onboard MSC vessels.

Apart from training seafaring skills, the new academy, will also hone fishing and fish handling, boat and ship building skills among other competencies required to grow the blue economy.

The academy is set to partner with Seafaring College in Naples, Italy and Kenya's Utalii College for the cruise seafaring skills.

The sources said the crafting of the curriculum has been sponsored by the European Union and was being expedited even as the 'go to sea' push causes excitement to thousands of jobless youths.

The Government has partnered with a leading liner, Mediterranean Shipping Company (MSC), through Kenya National Shipping Line (KNSL) where both have shares to promote training and employment of Kenyan seafarers.

MSC last year took the first batch of 16 seafarers on board its ships last who earn an average of US$1000 per month (Sh100,000) for an ordinary seafarer (OS) raising the appetite for seafaring jobs among Kenyan youth especially in the Coast.

It is expected that MSC, with many merchant and cruise ships, will employ about 2,000 seafarers per year to a high of about 52,000 in 10 years.

With her strategic partner, KNSL is expected to have about 60 cruise ship calls per year bringing to Kenya about 200,000 tourists and create 50,000 jobs in all sectors of the economy.

"The Government has partnered with a leading liner, Mediterranean Shipping Company (MSC), through Kenya National Shipping Line (KNSL) where both have shares to promote training and employment of Kenyan seafarers."

State in talks to end impasse with foreign owned vessels

BBy Benard Sanga
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State agencies are in talks over the controversial law to bar foreign-owned shipping lines from engaging in land bases freight logistics services in the country.

According to Kenya Maritime Authority (KMA) the deliberation are aimed bring to an end a four-year legal tussle between fourteen foreign multinational and the government.

In 2015, the foreign-owned shipping lines moved to court to challenge the implementation of section 14 (1) of the Merchant Shipping Act 2009 saying it was discriminate against them. The provision gives the state agencies power to block shipping lines from engaging in land based freight services and confine them to cargo haulage at sea only.

According to KMA Director General, General (Rtd) George Nyamoko Okong'o the provision was to end the foreign firms' dominance in the local shipping logistics sector.

The provision reads in part: "No owner of a ship or person providing the service of a shipping line shall, either directly or indirectly, provide in the maritime industry the service of crewing agencies, pilotage, clearing and forwarding agent, port facility operator, shipping agent, terminal operator and container freight station." In January 2015, fourteen firms moved to challenge the provision and Justice George Odunga suspended the implementation of the provision. The case has been dragging in court since then. In an interview, Okong'o said KMA, the office of Attorney General and Ministry of Transport had started talks to unlock the four-year impasse. He said KMA was keen to explain to all affected parties and make sure their concerns were addressed to avoid unnecessary litigations which has slowed down its roll out.

It is estimated that foreign-owned shipping lines currently control 95 per cent of Kenya's international trade. Most local customs agents firms have closed shop largely because most foreign shipping lines operate one-stop-shops which all logistics "Deliberations are still ongoing once concluded we shall meet with the concerned parties and agree on a common approach," said Okong'o in an interview.

He said that Section 16 of the Merchant Shipping Act, 2009 provides the required legal framework for enhancement of domestic capacity in transport logistics. The KMA boss said that the provision will lead to the drop in the cost of shipping in Kenya as it will spur completion in the maritime service

provision in the country.

"The Section seeks to curtail abuse of that position," said the DG adding that an effective legal framework was required to protect local firms and by ensuring fair competition. In 2015 case, APM Terminal, which is linked to Maersk Line Shipping Line moved to court after KPA blocked it from the tender to operate the first phase of the second container terming. In the ruling Justice Odunga prohibited Kenya Port Authority (KPA) from locking APM Terminal out of tender no. KPA/007/2014-5 that was seeking a concessioner for the terminal. The verdict, ostensibly, suspected the implementation of the that provision of law and allowed the multinational shipping lines to business like clearing and forwarding, ship brokerage, cargo consolidation and

other services which they had been prohibited from.

KMA defended the law saying that it will provide reprieve to local firms that has over time been associated with unfair practices towards the Kenyan importers and exporters. "There is need to establish and nurture competition to encourage entry of firms into a sector which may be difficult resulting in serious impediments to development of innovation, competitiveness and efficiency in service delivery," said Okong'o. He however admitted that there were concerns that the said Section will, allegedly, have

Dock workers union led by their Secretary General, Simon Sang[centre] join hands in solidarity after press conference at Dock workers union office in Mombasa. They fully support the Government plan to lease a berth to the Kenya National shipping line in an effort to create employment opportunities to the Kenyan sea seafarers. [Omondi Onyango,Standard]