



**FORCE MAJEURE CLAUSES:  
INSIGHTS FROM THE RTI LTD V MUR SHIPPING BV CASE  
AND IMPLICATIONS FOR WEST AFRICAN COUNTRIES  
UNDER MILITARY SANCTIONS**

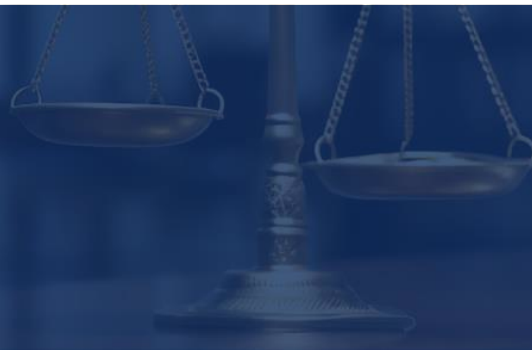


# INTRODUCTION

Commercial shipping contracts are specialized agreements that play a crucial role in the global transportation of goods by sea. These contracts, typically between a shipowner (carrier) and a charterer (cargo owner), outline the terms and conditions governing the shipment of goods, aiming to establish clear rights and obligations to minimize disputes. In the landmark case of *RTI Shipping Ltd v MUR Shipping BV*<sup>1</sup>, the United Kingdom Supreme Court provided crucial guidance on the interpretation of "reasonable endeavours" in force majeure clauses within commercial contracts. The ruling highlights the importance of clear contractual terms and underscores that parties are not obliged to accept non-contractual performance unless explicitly stated in their agreements. This decision reflects a growing need for precision in force majeure clauses, especially in light of global instability and commercial unpredictability. This article will delve into the significance of the Supreme Court's ruling, emphasizing the necessity of clear and comprehensive force majeure clauses in commercial contracts. It will also explore the implications of this decision for West African countries, where frequent government sanctions and military interventions have created a volatile business environment. By examining the *RTI Shipping Ltd*'s case, the article will offer insights into how West African businesses can better protect themselves through proactive contract drafting.

<sup>1</sup> [2024] UKSC 18

<sup>2</sup> These are clauses that identifies identify the rights of the parties in the event of non-performance of obligations under the contract due to a force of nature, such as a natural disaster.



## THE CASE OF RTI SHIPPING LTD V MUR SHIPPING BV

The case revolves around the interpretation of a force majeure clause in a contract of affreightment (the "Contract"), specifically focusing on what qualifies as reasonable endeavours in this context.

### Brief facts

MUR Shipping BV ("MUR or Appellant") as shipowner entered into the contract with RTI Shipping Ltd ("RTI or Respondent"), under which MUR agreed to make monthly shipments of bauxite for the Respondent from Conakry, Guinea to Ukraine from 1<sup>st</sup> July, 2016 to 30<sup>th</sup> June, 2018, in exchange for monthly payments made in US Dollars by RTI. The contract contained a force majeure clause which had a reasonable endeavours proviso requiring the affected party to exercise reasonable endeavours to overcome a force majeure event. On 6<sup>th</sup> April 2018, the United States (US) imposed sanctions on RTI's parent company, which seriously impaired RTI's ability to make payments in US Dollars. Following this, MUR invoked the force majeure clause and served a force majeure notice on 10<sup>th</sup> April 2018 stating that RTI's inability to make timely payment in US Dollars to MUR amounted to a force majeure event. RTI

rejected the notice and offered to pay MUR in Euros instead, also proposing to cover the cost of converting the payment from Euros to US Dollars. MUR rejected this offer and suspended operations under the Contract, thus forcing RTI to incur the additional costs for chartering substitute vessels to ship the bauxite.

### Arbitration proceedings

RTI commenced arbitration under the contract in June 2018 seeking damages for the additional charter costs, arguing that MUR's suspension of performance amounted to a breach of contract. A key issue for determination was whether the force majeure clause's requirement for reasonable endeavours could compel the affected party to accept non-contractual performance. The Arbitral Tribunal found that US dollar payments by RTI would have been delayed due to the US banks' reaction to sanctions, but that accepting payments in Euros was a realistic alternative for MUR. Consequently, the Tribunal concluded that MUR's force majeure claim failed as it could have been overcome by reasonable endeavours and ordered MUR to pay damages.

## Appeal at the High Court

MUR dissatisfied by the decision of the Tribunal appealed to the High Court pursuant to section 69 of the Arbitration Act 1996.<sup>3</sup> This appeal was based on the fact that the Tribunal erred on a point of law on its interpretation of the reasonable endeavour term of the Contract. The High Court allowed the appeal against the Arbitral Tribunal's decision and held that reasonable endeavours under the Contract did not extend to accepting payment in Euro rather than USD.

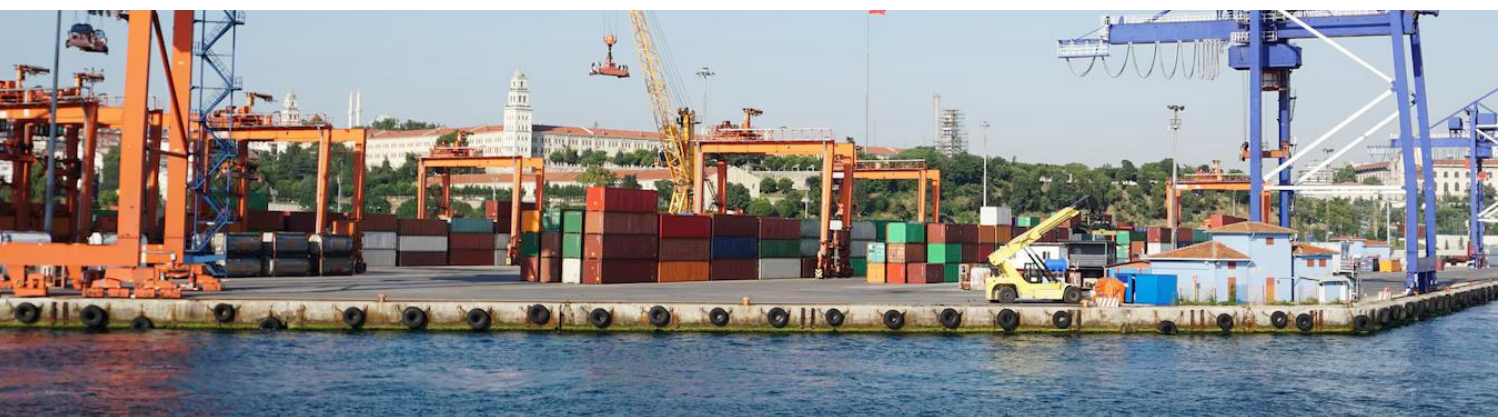
## Appeal at the Court of Appeal

The Court of Appeal (by a majority) allowed RTI's appeal and reversed the High Court's decision. The Court of Appeal reinterpreted reasonable endeavours to mean overcoming a problem by entirely avoiding its adverse consequences, concluding that RTI's offer to pay MUR in Euros and indemnify MUR would have effectively resolved the sanctions issue.

## Appeal at the Supreme Court

On further appeal to the Supreme Court, the Supreme Court had to decide whether a

shipowner was required to accept payment in a currency other than US dollars when it became practically impossible for the charterer to pay in dollars (because of sanctions). The Supreme Court's decision favoured MUR's appeal unanimously. The Supreme Court reversed the Court of Appeal's decision and held that, as a matter of general principle and as strongly supported by authority (including *Bulman v Fenwick*<sup>4</sup> and the *Vancouver Strikes* case<sup>5</sup>), the requirement to exercise reasonable endeavours did not extend to accepting an offer of non-contractual performance unless the contract explicitly requires it. Four key reasons supported the decision of the Apex Court, they are that: Reasonable endeavours aim to continue contractual performance according to its terms not to accept non-contractual terms; Freedom of contract allows parties to refuse performance not in accordance with the contractual agreement; Clear contract language is vital to relinquish rights; Certainty in commercial contracts is crucial,<sup>6</sup> and uncertainty surrounds RTI's stance on accepting non-contractual performance.



<sup>3</sup> This section gives a Party to an arbitration the right to appeal to a Court of law upon points of law arising out of an Award, subject to the conditions contained in the section.

<sup>4</sup> [1894] 1 QB 179.

<sup>5</sup> [1963] AC 691.

<sup>6</sup> See *JTI Polska sp z oo v Jakubowski* [2023] UKSC 19).

# IMPORT OF DECISION ON INTERNATIONAL SHIPPING

The UK Supreme Court's decision in RTI Ltd v. MUR Shipping BV has wide-reaching implications for international shipping, particularly in areas affected by global trends and sanctions. Here are some key imports of the Court's decision:

1. The decision emphasizes that parties are not obligated to accept non-contractual performance unless explicitly stated in the contract. This upholds the principle of freedom of contract and ensures that parties adhere strictly and fully to their agreed terms.
2. The decision establishes a legal precedent for future disputes concerning force majeure provisions and reasonable endeavors. It enhances legal clarity and predictability, which are critical for international shipping

contracts which are typically cross-border in nature.

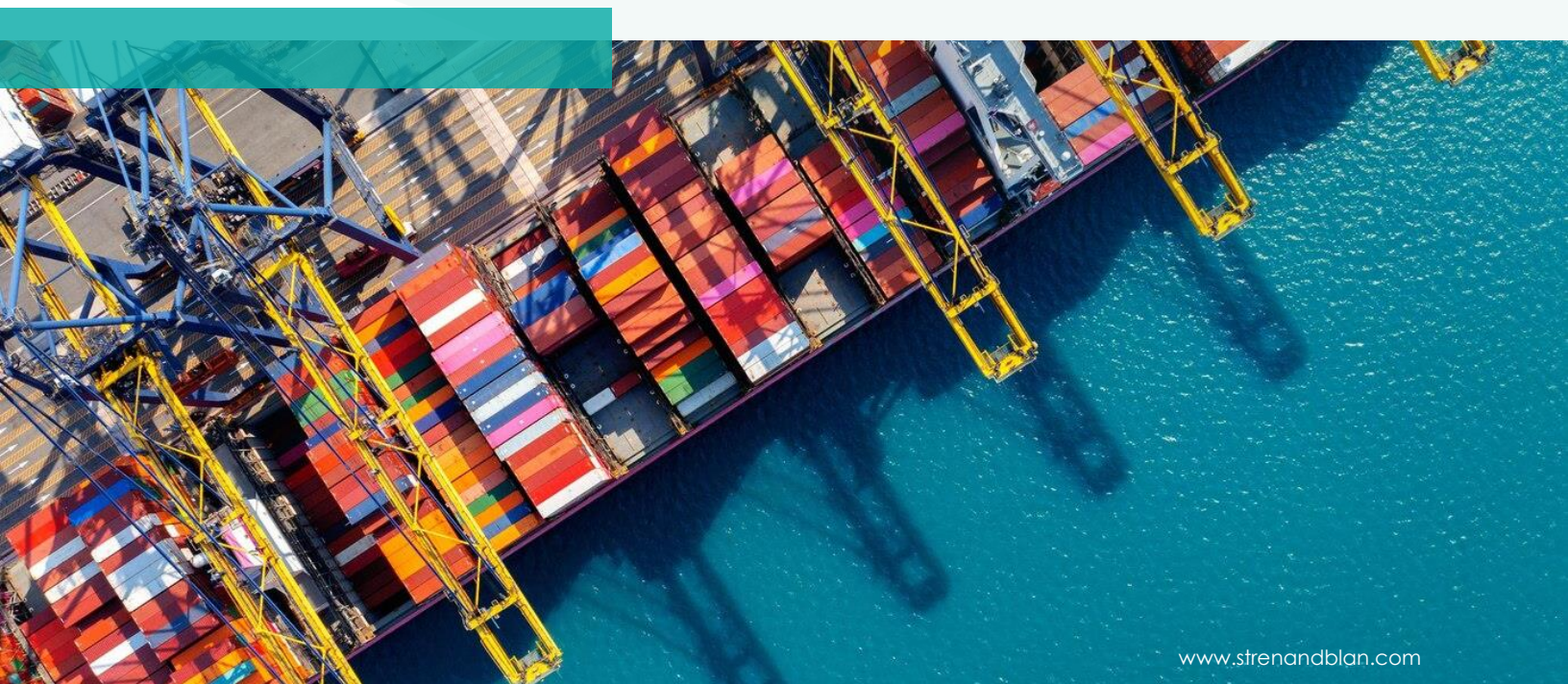
3. The decision's emphasis on clear contractual obligations assists shipping companies in navigating global instability, including geopolitical tensions, economic sanctions, and environmental challenges. A shipping company operating routes through the South China Sea, a region prone to geopolitical tensions, should include detailed force majeure clauses that address potential disruptions such as naval blockades or sanctions. These clauses should specify actions such as rerouting and temporary service suspension. This proactive approach can help to mitigate risks and ensure operational continuity in the face of global instability.

<sup>10</sup> [Analyzing The Impact Of The Innovative Provisions Of Cma 2020 On The Growth And Development Of Business In Nigeria](#) By Onyeka Christiana Aduma, PhD

<sup>11</sup> Mondaq Musa Kalejaiye & Fauziyah Oladosu Corporate Governance & Ease Of Doing Business In Nigeria: Innovations From The Business Facilitation (Miscellaneous Provision) Act, 2022 accessed July 23<sup>rd</sup>, 2024.

<sup>12</sup> Section 142(2) CAMA 2020

<sup>13</sup> Merton Lawyers (2024) [What are pre-emptive rights in shareholders agreements?](#) Accessed 23rd of July 2024.



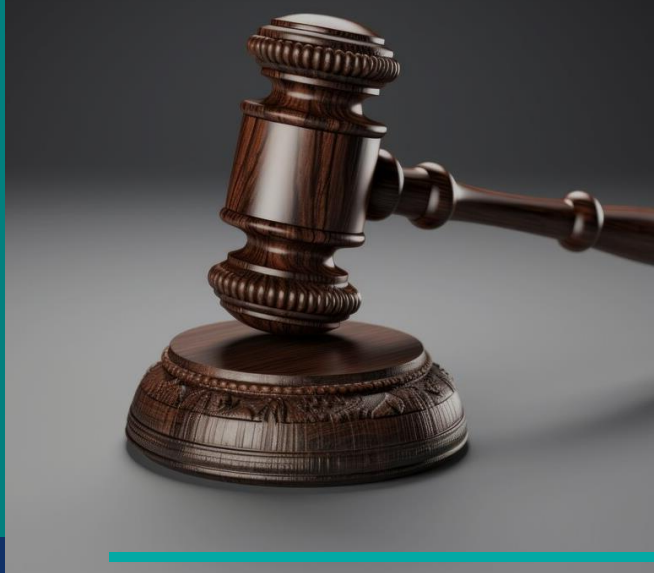
# IMPLICATIONS OF THE MUR SHIPPING DECISION FOR WEST AFRICA AMIDST INCESSANT MILITARY INTERVENTION AND GOVERNMENT SANCTIONS

Over the last three years, the Economic Community for West African States (ECOWAS) has imposed sanctions on several West African nations, including Burkina Faso, Mali, Guinea, and Niger, due to military interventions. Niger, for instance, faced severe sanctions in 2023 following a military overthrow of its government. These sanctions included closed borders with neighbouring countries and the freezing of national assets in foreign banks. Although ECOWAS has since lifted these sanctions, their impact on cross-border trade, bilateral cooperation, and food security has been significant, often affecting civilians more than the intended goal of restoring democracy.

In light of these sanctions, the decision in the RTI's case underscores the necessity of precise drafting of force majeure clauses. Commercial contracts must explicitly include events such as sanctions and political disruptions to provide legal clarity and protection and avoid ambiguity. For example, businesses or companies within West African countries that face ECOWAS sanctions following military coups can include a clause in their contracts stating, "This agreement considers sanctions imposed by any government or international body, including ECOWAS, as force majeure events."

Also, the decision highlights the need for pre-agreed alternatives in commercial shipping contracts. Parties to a contract must negotiate and include alternative means of performance to be prepared for potential sanctions or political disruptions. This includes specifying alternative currencies or routes. In West Africa, where military interventions can lead to sudden sanctions that disrupt regional trade flows, having pre-agreed alternatives and negotiated terms for payment is vital.

Furthermore, the RTI's case provides essential guidance on the interpretation and application of force majeure clauses in commercial contracts. By emphasizing clarity, adherence to contractual terms, and the flexibility to negotiate tailored provisions, the ruling offers valuable insights for parties navigating the complexities of force majeure events, especially in light of the current global economic and geopolitical environment. For West African countries, this decision is particularly pertinent, given the region's recent experiences with sanctions and political instability. Contracting parties in these countries should take heed of this ruling to ensure their contracts are robust and adaptable to potential disruptions. This proactive approach can help businesses maintain stability and resilience amidst regional challenges.





## CONCLUSION

The RTI Ltd v MUR Shipping BV case underscores the importance of precise and clear force majeure clauses in commercial contracts. The UK Supreme Court's decision highlights that parties are not required to accept non-contractual performance unless explicitly stated. This decision is particularly significant for West African countries, where frequent sanctions and military interventions create a volatile business environment. By drafting detailed force majeure clauses and negotiating pre-agreed alternatives, businesses can better protect themselves against disruptions. The decision provides essential guidance for maintaining contractual integrity and stability amidst global and regional uncertainties, ensuring businesses remain resilient and adaptable.

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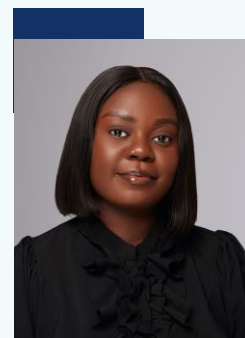
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