

SHIP ARREST IN NIGERIA

By Mr. Lawrence Fubara Anga

ÆLEX*

lfanga@aelex.com

www.aelex.com

7th Floor, Marble House

1 Kingsway Road, Falomo-Ikoyi, Lagos

Tel: +234 1 4614057

Fax: +234 1 2692072



1. Please give an overview of ship arrest practice in your country.

Nigerian law provides a simple uncomplicated procedure for the arrest of ships thereby making the country a suitable and favourable jurisdiction for such proceedings. Jurisdiction in respect of admiralty matters is vested exclusively in the Federal High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. The court can order the arrest of a vessel in order to confer jurisdiction upon itself or to provide pre-judgment security for the applicant. The jurisdiction of the court applies to all maritime claims however arising and to all ships irrespective of their places of residence or domicile of their owners.

2. Which International Convention applies to arrest of ships in your country?

Nigeria has acceded to the International Convention for the Unification of Certain Rules Relating to the Arrest of Ocean Going Vessels, 1952 simply referred to as "The Arrest Convention" but has not promulgated it as municipal law so arrest is under extant municipal law.

3. Is there any other way to arrest a ship in your jurisdiction?

The Admiralty Jurisdiction Act, 1991 and the Admiralty Jurisdiction Procedure Rules, 2011, govern admiralty matters. The Act provides for two general classes of maritime claims namely: proprietary maritime claims and general maritime claims. A ship may be arrested pursuant to an action in rem brought against such ship in respect of a proprietary or general maritime claim.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

No. Arrests can only be effected pursuant to an action in rem brought against the ship or a sister ship.

5. For which types of claims can you arrest a ship?

A person seeking to arrest a ship in Nigeria's territorial waters must satisfy the court that his claim qualifies as a 'Maritime Claim' as defined in §2 of the Admiralty Jurisdiction Act, 1991. This generally means that it must be a proprietary maritime claim or a general maritime claim.

1. Proprietary maritime claims relating to the possession of a ship, title to or ownership of a ship or a share in a ship, mortgage of a ship or of a share in a ship, mortgage of a ship's freight or claims between co-owners of a ship relating to the possession, ownership, operation or earning of a ship. Also claims for the satisfaction or enforcement of a judgment given by the Court or a court (including a court of a foreign country) against a ship or other property in an admiralty proceeding in rem are maritime claims.

2. General maritime claims includes claims for damage done or received by a ship (whether by collision or otherwise), claims for loss of life, or for personal injury, sustained in consequence of a defect in a ship or in the apparel or equipment of a ship as well as arising out of an act or omission of the owners or characters of a ship. Prior to applying to the court for an order to arrest a ship, the applicant must conduct a search of the caveat book to ascertain whether there is a caveat against arrest in force with respect to that ship. Where such a caveat exists, the applicant must inform the court of same. Once an applicant has ascertained that his claim falls within the meaning of a maritime claim as defined by the Act and that there are no caveats registered against the ship, he may commence proceedings by filing an action in rem at the Federal High Court in the judicial division covering the port or area where the ship is located. He may at the same time file an ex-parte application disclosing a strong prima facie case for the arrest of the ship. This application must be supported by an affidavit deposed to by the applicant, his counsel, or his agent stating the following:

i. The nature of the claim.

ii. That the ship is within the jurisdiction of the court or is expected to arrive within the jurisdiction within three days.

iii. That the ship may leave the jurisdiction of the court at anytime thereby depriving the applicant of his pre-judgment security.

The applicant is also required to provide with the application the following:

- i. A statement of claim
- ii. Exhibits supporting the claim
- iii. An undertaking to indemnify the ship against wrongful arrest.
- iv. An undertaking to indemnify the Admiralty Marshal in respect of any expenses incurred in affecting the arrest.
- v. An affidavit of urgency stating facts why the application must be heard expeditiously.

Although, at this stage of the proceedings, the court may admit photocopies of exhibits and undertakings, the applicant would subsequently be required to provide the originals or certified true copies. It is important to note that Nigerian courts will entertain an application for an arrest only when the ship has entered its jurisdiction. So where a prospective applicant is aware that a ship sought to be arrested is bound for a Nigerian port, it is advisable for him to instruct his counsel in Nigeria as soon as possible so that the requisite processes can be prepared and filed immediately the ship is within three days of entering Nigerian territorial water.

An arrest order is usually served along side an arrest warrant and the writ of summons and statement of claim by affixing sealed copies of the processes to a mast or some other conspicuous part of the ship. Copies of the said processes must also be delivered to the appropriate officers of the Nigerian Port Plc, for example the Chief Harbour Master, Traffic Manager and Port Manager.

6. Can you arrest a ship irrespective of her flag?

Yes. A ship can be arrested irrespective of its flag, as long as it is within Nigerian territorial waters.

7. Can you arrest a ship irrespective of the debtor?

No. In order to sustain an arrest, the claimant has to show that at the time his application is brought before the court the person liable to him otherwise known as the 'relevant person' is the beneficial owner or the demise charterer of the ship.

8. What is the position as regards sister ships and ships in associated ownership?

A sister ship may be arrested in place of the offending ship if it is found within Nigerian territorial waters and if the 'relevant person' is also the beneficial owner in respect of all the shares in the sister ship.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The Admiralty Jurisdiction Act is silent on Time-Charters. However under §4(a) of the Act an action in rem may be brought against a ship where the 'relevant person' is the demise (bareboat) charterer of the vessel.

10. Do your Courts require counter-security in order to arrest a ship?

An applicant for an arrest order may be required to give security for costs. The court will order security for costs where the claim is in excess of Five Million Naira or its foreign currency equivalent or where the plaintiff has no assets in Nigeria. The form of security required is usually a deposit of the sum specified by the court; or a guarantee supplied by a Protection and Indemnity Club (P & I Club), an insurance company or a bank. In determining the quantum or nature of security to be provided, the court shall have regard to all the circumstances of the case and shall not restrict itself to the costs of the legal proceedings.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

Where the claim is one in respect of a maritime lien (a lien for salvage, damage done by a ship, wages of the master of a ship or other crew member and master's disbursements), or a claim in respect of a proprietary maritime claim (relating to the possession of a ship, title to or ownership of the ship or a share in the ship, a mortgage of a ship or a share in a ship, or a mortgage of a ship's freight), or a claim as between the co-owners of a ship as regards the possession, ownership, operation or earning of the ship, an admiralty action in rem may be brought against the ship or property in connection with which the claim arises. In this instance, the ownership of the vessel is not material.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes. Nigeria recognises maritime liens by virtue of §5(3) of the Admiralty Jurisdiction Act which provides for a closed list of maritime liens such as liens for salvage; or damage done by a ship; or wages of the master or of a member of the crew of a ship; or master's disbursements. Furthermore, Nigeria is a

signatory to the International Convention on Maritime Liens and Mortgages 1993 but has not promulgated the Convention as municipal law.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

An arrest order can be obtained within 24 hours of filing the requisite processes.

14. Do you need to provide a POA or any other documents of the claim to the Court?

There is no need to provide a POA, however copies of the documents listed in answer 5 above have to be presented to the court in support of the claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Original, hard copies of all the documents are required, but do not have to be notarised. Documents cannot be filed electronically.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Nigerian courts will accept jurisdiction over the substantive claim once a vessel has been arrested within Nigerian territorial waters.

17. What is the procedure to release a ship from arrest?

Where owners have placed acceptable security for the release of a ship, the court may order release of the ship upon request made by the owners for release of the ship. In some cases, the arrestor could request for release of the ship, where owners have placed acceptable security for the release. In some cases, the court may order release of a ship under arrest, if owners successfully challenge an order of arrest.

18. What type of security needs to be placed for the release?

Security such as bank guarantees, P and I Club LOUs and insurance bonds are acceptable to be placed for the release of ships.

19. Does security need to cover interest and costs?

Yes, security must cover the claim, interest and costs.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, P&I LOUs are accepted as sufficient to lift the arrest.

21. How long does it take to release the ship?

A ship can be released within 24 hours of filing an acceptable security.

22. Is there a procedure to contest the arrest?

Yes, there is a procedure to contest the arrest.

23. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

An order for an arrest will not be granted unless the ex parte motion for a warrant of arrest is accompanied by the statement of claim and supporting documents. There is accordingly no waiting period between the arrest taking place and the commencement of the substantive action.

24. Do the Courts of your country acknowledge wrongful arrest?

An applicant for an arrest order is liable to the ship owner for damages arising from a wrongful arrest. A ship owner has three options to with:

- i. He may apply to court within three months from the termination of the suit for general damage of

such amount as the courts may deem a reasonable compensation; or

ii. He may make an oral application for damages immediately after judgment. The court in this instance is entitled to summarily assess the damages due to the ship owner; or

iii. He may also bring an action for wrongful arrest claiming all the damages arising from the arrest, which he can establish.

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

The Nigerian courts recognize and exercise the powers to pierce or lift the corporate veil, in this regard an action may be commenced against a sister ship in respect of general maritime claims. However, the ship in relation to which it is a sister ship must be identified in the writ of summons. The writ of summons may identify more than one ship as a sister ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

The court may, on application by a party before final judgement in a proceeding, order that a ship that is under arrest in the proceeding be sold. Where the ship is deteriorating in value, the court may at any stage of the proceeding, either with or without application, order it to be sold (order 16 rules 1 & 3 Admiralty Jurisdiction Procedure Rules). The sale of a ship ordered to be sold shall be by auction 21 days after the advertisement shall have been placed in two national daily papers by the Admiralty Marshal.

*AELEX is the leading Nigerian firm with expertise and institutional depth in Transportation. Our Maritime practice has evolved with developments in the sector, gaining us invaluable experience and capabilities. We offer various shipping services from ship finance to corporate, regulatory compliance and litigation.

Members of our Maritime team are located in Lagos and Port Harcourt in Nigeria and Accra, Ghana with an aggregate of over 30 years experience in maritime law. We act as counsel to ship-owners, P&I clubs, charterers, operators of ships and other offshore assets, insurance companies, financial institutions, oil and gas companies, port owners and operators.

AELEX advises on ship and mortgage registration, asset financing for off shore oil and gas operations, ship registration, ship finance and lease transactions. Our expertise also extends to claims arising from charter parties, collision, cargo and demurrage, both at arbitration and in the courts of law in Nigeria and Ghana. We are regularly instructed to undertake subrogated claims on behalf of insurers, arrest and release of vessels as well as negotiating the settlement of claims.