

SHIP ARREST IN GHANA

By Mr. Lawrence Fubara Anga
ÁELEX*

lfanga@aelex.com
www.aelex.com

Vanguard House 2nd Floor, No. 21 Independence Avenue
Ridge-Accra PMB CT 72, Accra
Tel: 233 (302) 224828
Fax: 233 (302) 2248



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

Jurisdiction in respect of admiralty matters is vested in the High Court in the first instance. Appeals in respect thereof lie to the Court of Appeal and the Supreme Court. Order 2 of the High Court (Civil Procedure) Rules 2004 (C.I. 47) provides that all civil proceedings must be commenced by Writ of Summons and must be filed along with a Statement of Claim. Every Writ of Summons must contain concise statement of the nature of the claim or relief, remedy sought in the action. Order 62 of C.I. 47 generally makes provision for maritime actions. At the time of issuing a Writ of Summons, the Plaintiff files an Ex parte application for an order for a warrant of the arrest of the ship. No warrant of arrest shall be issued until an affidavit by the party or his agent has been filed and the following provisions complied with:

- (a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim and the name and nature of the property to be arrested;
- (b) In an action for wages or possession, the affidavit shall state the national character of the ship proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the Consul of the State to which the vessel belongs, if there be one resident in Ghana, and a copy of the notice shall be annexed to the affidavit;
- (c) In an action for bottomry, the bottomry bond, and if in a foreign language also a certified translation thereof, shall be produced for the inspection and perusal of the registrar, and a copy of the bond, or of the transaction thereof, certified to be correct, shall be annexed to the affidavit;
- (d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address and description of the party holding the same;
- (e) The lodging of an undertaking in writing by the solicitor who applies for the issuance of the warrant to pay the fees and expenses of the Marshal.

The application for an order for warrant of arrest not being on notice can be filed, heard and granted within 24 hours. After the grant of the order a bailiff of the High Court is assigned to serve the Order on the Captain of the vessel. A copy of the Order is also served on the Harbour Master, the Port Authorities and Customs Excise and Prevention Service at the port where the vessel is berthed.

A defendant who is served with an Order of arrest may apply to the High Court of Justice which granted the Order to have the order set aside or provide adequate security for the satisfaction of the Plaintiff's claim. If the defendant is able to provide adequate security to the satisfaction of the Court, the Court may vacate the order on terms and conditions as in the opinion of the Court is just and appropriate. Upon service of the order vacating the warrant of arrest, the Harbour Master and the Port Authorities will grant the Captain of the vessel unconditional leave to sail from the port of call.

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

Ghana has not acceded to the Arrest Conventions.

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

There is no other way to arrest a ship, other than as stated in (1) above.

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 a ship or a sister ship.

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

There is no law or rule of procedure that specifically defines what maritime claims are. The position is that where the C.I. 47 does not make specific provision for the rule of procedure in a matter, resort can be had to the practice and procedure applicable in any common law jurisdiction. Without prejudice to the above, Section 446 of the Ghana Shipping Act, 2003 (Act 645) provides a definition of maritime actions in rem. It states that in any case in which an action may be brought against a ship other than actions arising from claims to the possession or ownership of a share in it, or a claim in respect of a mortgage or charge on a ship or a share, where the person who would be liable on the claim in an action in personam, when the cause of action arose, was the owner or charterer of, or in possession or in control of the ship, the admiralty jurisdiction of the High Court may, whether the claim gives rise to a maritime lien on the ship or not, be invoked by an action in rem against:

- (a) that ship, if at the time when the action is brought, the ship is beneficially owned in respect of the shares by that person; or
- (b) any other ship which, at the time when the action is brought, is beneficially owned as under paragraph (a); but in determining whether a person would be liable on a claim in an action in personam, it shall be assumed that the habitual residence or a place of business of that person is within Ghana.

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

Yes, a vessel can be arrested within Ghana irrespectively of the flag she is sailing under.

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

No. The claim must be enforceable in personam against the owner of the ship or the demise charterer.

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

It is possible to arrest sister ships, but not associated ships.

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

An action in rem can be brought against a bareboat vessel, but not against a time-chartered vessel.

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

Counter-security is not required for an arrest. All that is required is an undertaking by the applicant or its Solicitor to pay the Admiralty Marshal's costs in serving the arrest warrant. However, if the applicant is a foreign entity without assets in the jurisdiction, security for costs of the litigation is often ordered, upon the application of the Defendant.

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

No, the procedure is the same.

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

Ghana recognises maritime liens under Section 66 of Act 645, but she is not a party to any Convention with respect to them. According to Section 66 of Act 645, any of the following claims against an owner, demise charterer, manager or operator of a vessel shall be secured by a maritime lien on the vessel:

- (a) claims for wages and any other sums due to the master, officers and the other members of the vessel's complement in respect of their employment on the vessel including costs of repatriation and social insurance contributions payable on their behalf;
- (b) claims in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the vessel;
- (c) claims for reward for salvage of the vessel;
- (d) claims for ports, canal and other waterway dues and pilotage dues;
- (e) claims based on tort arising out of physical loss or damage caused by the operations of the vessels other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

13. What lapse of time is required in order to arrest a ship from 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 requirement of a POA, however copies of all relevant documents supporting the claim will have to be provided to the Court.

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

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

Yes. Ghanaian courts will accept jurisdiction over the substantive claim once a ship has been arrested within Ghanaian 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?

The Plaintiff (arresting party) must file a statement of claim at the time of filing the ex parte motion for a warrant of arrest. As a result, the claim documents are usually served along with the arrest warrant. There is accordingly no period of delay between the arrest taking place and the action on the merits being commenced.

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

Yes. Costs, damages, demurrage and expenses will be recoverable if the defendant can show that the arrest was made unreasonably and in bad faith.

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

Ghanaian courts may be prepared to pierce and lift the corporate veil under certain limited circumstances, for example in the instances of fraud.

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

Order 62 rule 16 of C.I. 47 makes it possible for a ship to be sold pendent lite. The process of sale can take about two months, after the applicant has obtained the sale order and the appraisalment of the ship by the Admiralty Marshal.

**ÁELEX is a leading Ghanaian 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.

ÁELEX 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.