

DOES NIGERIAN LAW ALLOW MULTIPLE SHIP ARRESTS FOR A SINGLE CLAIM? – THOUGHTS ON SECTION 5(8) OF THE ADMIRALTY JURISDICTION ACT 1991

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1.0 Introduction

- 1.1 The question has arisen as to whether the Admiralty Jurisdiction Act permits the arrest of more than one ship for a single *in rem* claim. This Issue of Maritime Questions, in analysing a decision of the Nigerian Admiralty Court (Federal High Court), addresses that question.

2.0 The Decision

- 2.1 Fairly recently¹, the Federal High Court sitting in Port Harcourt (**the Court**) ruled², interpreting section 5(8) of the Admiralty Jurisdiction Act that a plaintiff in an action *in rem* could validly arrest more than one of the defendant's ships for the same claim. The plaintiff therein had arrested two ships pursuant to a claim in respect of services allegedly supplied to the ships for their operation or maintenance. In determining a preliminary objection in which it was contended that the plaintiff was barred under section 5(8) of the Admiralty Jurisdiction Act from arresting more than one ship for a single claim, the Court held that:

“Section 5(8) of the Admiralty Jurisdiction Act is not sacrosanct as it admits of exception, which is to a circumstance where more than one ship is named in a writ of summons, though for a uniform claim, the ships so named can be jointly and simultaneously arrested in the same suit. This I hold perfectly fits into the suit of the Plaintiff at hand.”

- 2.2 It is noteworthy that the Court's decision is in direct conflict with an earlier decision of the same court. In **Gemarfin S.A. v. Panagis Zissamotors & 2 Ors. (2002) 2 F.H.C.L.R**, a case in which the plaintiff

¹ The ruling was delivered on 8th November 2018

² Unreported ruling in Suit No. FHC/PH/69/2018 – Mr Chibudom Nwuche v. Topaz Faye & 2 Others *coram* H.I Oshomah J. The suit was settled out of court. It would have been nice to see the Court of Appeal's view on this matter.

arrested four of the defendant's ships for the same claim, Auta J pointed out that the only limitations to the operation of section 5(8) of the Admiralty Jurisdiction Act are contained in section 5(9) thereof, and held that in the absence of the said limitations, there cannot be a valid arrest of two or more ships pursuant to a single claim in Nigeria.

3.0 The Law

3.1 Section 5(8) of the Admiralty Jurisdiction Act provides as follows:

Where a ship has been served with a writ or arrested in an action *in rem* brought to enforce a claim, **no other ship shall (subject to subsection (9) of this section) be served with a writ or arrested in that or any other action in rem brought to enforce that claim; but this subsection shall not prevent the issue, in respect of any one such claim, of a writ naming more than one ship** (for example where the claim relates to repairs to two or more ships in the same ownership) or of two or more writs each naming a different ship. (Emphasis supplied).

3.2 The said section 5(9) of the Admiralty Jurisdiction Act (to which section 5[8] is subject) allows the arrest of another ship belonging to the defendant only when the first-mentioned ship (a) having been invalidly arrested, has been released from arrest; or (b) had been unlawfully removed from the custody of the Admiralty Marshal and the Admiralty Marshal has not regained custody of the ship.

3.3 It would appear that the Court interpreted the words “*arrested*” (as appears in section 5[8]) and “*naming*” (as appears in its proviso) as having the same meaning and effect. Juxtaposed with the established presumptions that every word in a statute has a meaning and a specific role to play in advancing the legislative purpose, and that the legislature does not use words in vain³, this position may be incorrect. It is submitted that if the legislators intended to permit the arrest of more than one of a defendant's ships for the same claim, such an intention would not have been difficult to make clear.

3.4 A ship stands arrested only when the warrant of arrest has been validly executed on it. Under the Admiralty Jurisdiction Procedure Rules, a warrant of arrest can only be executed by the Admiralty Marshall (or his substitute) in any of the following ways:

- (a) By securely affixing a sealed copy of the same to a mast or some other conspicuous part of the ship, or delivering the same to the master of the ship⁴;
- (b) If access to the ship or property is not feasible, by handing a sealed copy of the process to or leaving it with a person in charge of the ship⁵;
- (c) Where the person referred to in (b) above refuses to accept service, by placing a sealed copy of the process down in their presence and identifying the process to their hearing⁶.

³ *Tukur v. Govt of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 579 per Nnaemeka-Agu JSC.

⁴ Order 6 Rule 1 of the Admiralty Jurisdiction Procedure Rules

⁵ Order 6 Rule 3(a) of the Admiralty Jurisdiction Procedure Rules

⁶ Order 6 Rule 3(b) of the Admiralty Jurisdiction Procedure Rules

- 3.5 Unless and until a warrant of arrest has been executed on a ship by the Admiralty Marshal or his substitute in any of the three ways listed above, the ship cannot be said to be under arrest. Issuing a writ *naming* a ship, on the other hand, simply means mentioning the ship as a defendant.
- 3.6 It is clear that naming a ship on a writ and arresting it do not mean the same thing. Although proceedings are commenced by the issue of a writ in an admiralty action *in rem*, the *in rem* jurisdiction of the court is triggered, not when the writ is issued, but when it is served on the ship and the warrant of arrest is executed. This is because an action *in rem* is against the ship itself and does not take full effect until the ship is arrested. Indeed, a ship can be named as a defendant on a writ without it being arrested, but a warrant of arrest cannot be issued against or executed on a ship that is not named on the writ.
- 3.7 Where the words of a statute are clear and unambiguous, they should be given their ordinary meaning⁷. The primary duty of a court is to bring to the fore the intention of the legislature as expressed in a statute and not to read into it words or meanings which are absent⁸. It is submitted with respect that the Court went beyond the clear words of section 5(8) of the Admiralty Jurisdiction Act which clearly does not state that more than one ship can be arrested in respect of a single claim.
- 3.8 Whenever a proviso is present, the natural presumption is that, but for it, the principal provision would have included the subject matter of the proviso⁹. A proviso has been described as “a qualification of the preceding enactment which is expressed in terms too general to be accurate¹⁰”. Therefore, if on a fair construction, the principal provision is clear, a proviso cannot operate to contradict it and can only perform exclusionary, qualifying and/or clarificatory functions. Not being an independent provision, a proviso must be read and considered in keeping with the principal matter to which it relates.
- 3.9 The Court's interpretation of the proviso to section 5(8) however implies that the proviso, in permitting the same act which the principal provision prohibits, contradicts the principal provision, or that section 5(8) permits and prohibits multiple ship arrests for one claim at the same time. This certainly could not have been the intention of the legislature. Further, one would question the usefulness of section 5(8) of the Admiralty Jurisdiction Act if the law makers intended to permit the arrest of more than one ship for one claim. Why would they expressly state the diametrical opposite of what they intended to legislate?
- 3.10 Section 5 of the Admiralty Jurisdiction Act, which outlines the mode of exercise of admiralty jurisdiction among other things, provides as follows:

*5(2) - In the case of a claim as is mentioned in section 2(2)(a) or section 2(3)(u), or a question as is mentioned in section 2(2)(b) of this Act, an action in rem may be brought in the Court against **the ship** or property in connection with which the claim or question arises;*

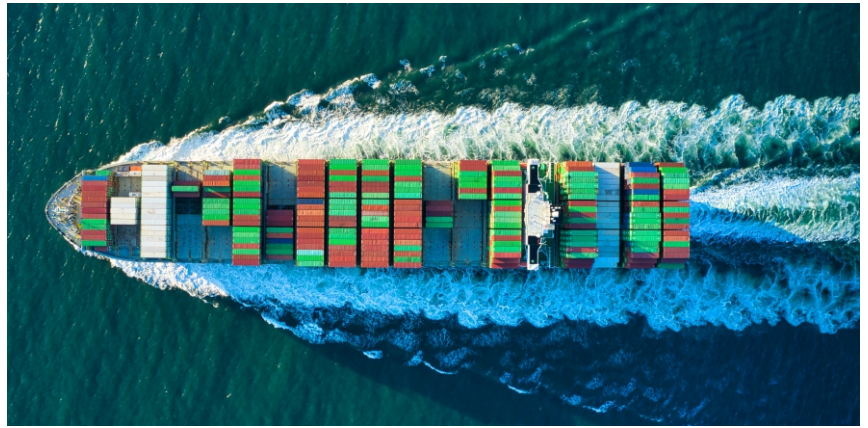
⁷ Grosvenor Casinos Limited v. Ghassan Halaoui (2009) 10 NWLR (Pt. 1149) 309 at 349 paragraph F – G; Lawal v. G.B. Ollivant (1972) 3 SC 124; Toriola v. Williams (1982) 7 SC 27

⁸ Aromolaran v. Agoro (2014) 18 NWLR (Pt. 1438) 153 at 174, paras. E-F; Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227 (SC); Tukur v. Govt. of Gongola State (1989) 4 NWLR (Pt. 117) 517 at page 561

⁹ See the dictum of Justice Lush in Mullins v. Treasurer of Survey (1880) 5 Q.B.D. 170 at 173

¹⁰ By Lord MacNaghten in Local Government Board v. South Stoneham Union (1909) A.C. 57 at 62. Black's Law Dictionary

5(3) - In any case in which there is a maritime lien or other charge on any ship, aircraft or other property for the amount claimed, an action in rem may be brought in the Court against **that ship**...;



5(4) - In any other claim under section 2 of this Act, where the claim arises in connection with a ship and the person who would be liable on the claim in an action in personam (in this Act referred to as "the relevant person") was, when the cause of action arose, the owner or charterer of or in possession or in control of the ship, an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought against-

- (a) **that ship**, if at the time the action is brought the relevant person is either the beneficial owner of that ship in respect of all the shares in it or the charterer of **the ship** under a charter by demise; or
- (b) **any other ship** of which, at the time when the action is brought, the relevant person is the beneficial owner in respect of all the shares in **the ship**. (Emphasis supplied).

3.11 Obviously, the phrases "the ship" and "that ship" as used in the above provisions are suggestive of singularity, and the construction of the phrase "any other ship" must be circumscribed to the numerical scope of the preceding "that ship", which is one. In **the Banco (1971) 1 Lloyd's Rep 49** the English Court of Appeal observed as follows per Lord Denning M.R:

"I would add that the word "ship" in the phrase "any other ship" means "ship" and not "ships". Although the interpretation Act, 1889, says that words in the singular include the plural, that does not apply when the contrary intention appears. The contrary intention does appear here..."

3.12 It must be mentioned that where a plaintiff has a number of separate or separable causes of action, for example in the case of supplies of goods, materials, or services to one or more sister ships for their operation or maintenance, it is permissible under section 5(8) of the Admiralty Jurisdiction Act to split up the claim and bring separate claims against the different ships in respect of each claim¹¹.

4.0 A comparative analysis

4.1 The position in the UK is that a plaintiff is not permitted to arrest more than one ship for a single claim, save for some exceptions which will be discussed presently. It is clear that section 5(8) of the Admiralty Jurisdiction Act was largely modelled after section 21(8) of the UK Senior Courts Act¹². To demonstrate the apparent similarity between the two sections, section 21(8) of the Senior Courts Act

¹¹ International paint v. The Ship "Damavand" LMLN 357 (Singapore CA) [1993] 2 LRSLR 717

¹² Previously known as the Supreme Court Act 1981, its name was changed following the commencement of the Constitutional Reform Act 2005 which among other things established a Supreme Court of the United Kingdom, and abolished the appellate jurisdiction of the House of Lords.

is set out below:

Where, as regards any such claim as is mentioned in section 20(2)(e) to (r), a ship has been served with a writ or arrested in an action *in rem* brought to enforce that claim, no other ship may be served with a writ or arrested in that or any other action *in rem* brought to enforce that claim; but this subsection does not prevent the issue, in respect of any one such claim, of a writ naming more than one ship or of two or more writs each naming a different ship. (Emphasis supplied).

4.2 In the **Stephan J (1985) 2 Lloyd's Rep. 344**, the Queen's Bench Division held per Sheen J as follows:

“The purpose of Sub-Section 8 of Section 21 is to make it quite clear that the plaintiff whose claim is within that part of the jurisdiction of the High Court which can be invoked by an action *in rem*, can arrest only one ship, either the offending ship or another ship in the same ownership, in accordance with the International Convention Relating to the Arrest of Sea-Going Ships which was signed in Brussels in 1952, while at the same time preserving the practice, which started in 1956, of naming more than one ship on the writ and then deleting all but one when the time came to serve the writ and arrest a ship. In my judgment, sub section 8 of section 21 cannot be interpreted in isolation. It must be interpreted in conjunction with sub-section 4 of the same section.”

4.3 In the **“Freccia Del Nord” (1989) 1 Lloyd's Rep 388 at 391**, the English Queen's Bench Division held per Mr Justice Sheen that:

“In respect of any claim within the admiralty jurisdiction of the High Court an action *in rem* may be brought against only one ship; it was permissible to issue a writ naming more than one ship but after service the writ should be amended by deleting all but one of the names upon it; the Court could not be seized of an action *in rem* until the plaintiffs had not only made up his mind as to which ship he would arrest but also had either served the writ on the ship or arrested the ship”.

5.0 Is section 5(8) of the Admiralty Jurisdiction Act an incomplete replication of section 21(8) of the Senior Courts Act?

5.1 As can be seen above, by expressly referring only to the claims set out in section 20(2)(e) - (r), section 21(8) of the Senior Courts Act excluded the claims in section 20(2)(a) - (d) from the application of the rule against multiple arrests. The claims in section 20(2)(a) - (d) are:

- (a) any claim to the possession or ownership of a ship or to the ownership of any share therein¹³;
- (b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship¹⁴;
- (c) any claim in respect of a mortgage of or charge on a ship or any share therein¹⁵;
- (d) any claim for damage received by a ship¹⁶.

¹³ Section 20(2)(a)

¹⁴ Section 20(2)(b)

¹⁵ Section 20(2)(c)

¹⁶ Section 20(2)(d); it is not clear why a claim for damage received by a ship (which appears to be the odd one out)

- 5.2 It is submitted that the above exceptions to the rule against multiple arrests accord with sound logic. Obviously, particularly in relation to proprietary maritime claims, there are situations where a dispute or cause of action will arise in connection with more than one ship and it will be neither sensible nor practical for a plaintiff to proceed against only one of the ships. Where there is a claim to the possession or ownership of more than one ship (or to a share therein) or where a question arises between co-owners as to the possession, employment or earnings of more than one ship, the plaintiff should not be restricted to arresting only one of the ships.
- 5.3 Also, where a bank finances the acquisition of more than one ship, with the ships constituting security for the loan, and the mortgagor defaults, the bank as mortgagee should be entitled to validly arrest all the subject ships in a single action *in rem* to enforce the mortgage. It is to be noted in such cases that a splitting up of the claims is likely to constitute an abuse of court process since the parties, the subject matter, the issues, and even the pleadings will be identical, as against a case where the dispute arises, for example, in connection with the delivery of supplies to one or more sister ships, in which case the claims may conveniently be split up and brought against the different ships with considerably lower risk of constituting abuse.
- 5.4 Is section 5(8) of the Admiralty Jurisdiction Act which contains no exceptions to the rule against multiple arrests an 'incomplete replica' of section 21(8) of the Senior Courts Act? It seems so. The lawmakers appear to have missed the importance of the exceptions contained in the UK Act, and by wording section 5(8) of the Admiralty Jurisdiction Act to simply read "*where a ship has been served with a writ or arrested in an action in rem brought to enforce a claim...*" they possibly unwittingly promulgated a blanket prohibition of multiple arrests for single claims, which may prove unrealistic and impracticable in certain circumstances as demonstrated above.

6.0 Conclusion

- 6.1 Commercial reality demands that the rule in the Admiralty Jurisdiction Act against multiple arrests for a single claim have exceptions, and it is hoped that an
- 6.2 opportunity will arise in the near future for the lawmakers to rectify this anomaly. To put the matter in perspective, consider how frustrated a mortgagee would be to find that, irrespective of the number of mortgaged ships, in Nigeria he is entitled to arrest only one ship to enforce the mortgage. The implications are as worrisome as the need for a review is urgent.



For further discussion on this subject, do feel free to get in touch with:

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