

SHIP ARREST IN NIGERIA

1. What are the laws governing ship arrest in Nigeria?

- (a) Ship arrest in Nigeria is governed by, in no particular order, the Constitution of the Federal Republic of Nigeria, 1999 (the “**Constitution**”), the Federal High Court Act 1973, the Federal High Court (Civil Procedure) Rules 2009; the Admiralty Jurisdiction Act 1991; the Admiralty Jurisdiction and Procedure Rules 2011 and the Merchant Shipping Act 2007.
- (b) Case law derived from decisions of Nigerian courts are often reported in law reports for future reference. Being a common law country, Nigeria recognises the principles of *stare decisis* and judicial precedent. Decisions of superior courts are binding on lower courts where the same or similar issues come up for determination.

2. Which international convention on the arrest of ships is in force in Nigeria?

There is no international convention on the arrest of ships in force in Nigeria.

3. What is a “ship” under Nigerian law?

The Admiralty Jurisdiction Act defines a ship to mean a vessel of any kind used or constructed for use in navigation by water however it is propelled or moved and includes:

- a barge, lighter or other floating vessel including a drilling rig;
- a hovercraft;
- an off-shore industry mobile unit; and
- a vessel that has sunk or is stranded and the remains of such a vessel.

The definition however excludes a vessel under construction that has not been launched.

4. Which court has jurisdiction to order the arrest of a ship?

- (a) The court that has jurisdiction to order the arrest of a ship is the Federal High Court which is Nigeria's admiralty court. In addition to its general jurisdiction, the Constitution and the



Federal High Court Act confer exclusive admiralty jurisdiction on the Federal High Court, the extent of which is defined by the Admiralty Jurisdiction Act.¹

- (b) Thus, a person seeking to arrest a ship in Nigeria must initiate proceedings at any judicial division of the Federal High Court. The jurisdiction of the Federal High Court spans the whole of Nigeria, but judicial divisions exist in most states for administrative convenience. The Admiralty Jurisdiction Procedure Rules provides that an action *in rem* may be commenced in any judicial division where the vessel is located or is expected to arrive,² ostensibly for ease of enforcement of arrest orders. In practice, plaintiffs usually initiate actions *in rem* at the Federal High Courts located in port areas (Lagos, Port Harcourt, Warri, Calabar etc.).
- (c) Appeals from decisions of the Federal High Court in Admiralty and other matters lie to the Court of Appeal and from the Court of Appeal to the Supreme Court, which is the apex Court.

5. What is the scope and extent of the admiralty jurisdiction of the Federal High Court?

- (a) The admiralty jurisdiction of the Federal High Court applies to all ships, irrespective of the places of residence or domicile of their owners, and all maritime claims, wherever arising.³
- (b) The admiralty jurisdiction of the Federal High Court in respect of carriage and delivery of goods extends from the time the goods are placed on board a ship to be shipped to the time the goods are delivered to the consignee or whoever is to receive them, whether the goods were transported on land during the process or not.⁴ Also, any agreement or purported agreement, monetary or otherwise connected with or relating to the carriage of goods by sea, whether the contract of carriage is executed or not, is within the admiralty jurisdiction of the Court.⁵
- (c) The admiralty jurisdiction of the Federal High Court can only be invoked where the claim involved is a maritime claim as defined under the Admiralty Jurisdiction Act. Therefore, a dispute

¹ Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 7 of the Federal High Court Act; sections 1, 2, 3 of the Admiralty Jurisdiction Act (AJA)

² Order 2 Rule 1 of the Admiralty Jurisdiction Procedure Rules (AJPR)

³ Section 3 of the AJA

⁴ Section 1(2) of the AJA

⁵ Section 1(3) of the AJA

will not fall within the admiralty jurisdiction of the Federal High Court merely because it relates to a ship.⁶

6. In respect of what claims can a vessel be arrested?

- (a) A vessel can be arrested in respect of claims classified as maritime claims and set out in section 2 of the Admiralty Jurisdiction Act. The claims are further classified into proprietary maritime claims or general maritime claims.⁷
- (b) Proprietary maritime claims include claims relating to possession of a ship or title to or ownership of a ship or a share in a ship, mortgage of a ship or a share in a ship or its freight, a claim between co-owners of a ship relating to its possession, ownership, operation or earnings and so on.
- (c) General maritime claims include claims arising from salvage, damage done by or to a ship, master and crew wages, master's disbursements, carriage of goods or passengers by ship, use or hire of a ship, supply of goods, materials, or services to a ship for its operation and maintenance, ship construction, pilotage, general average, port dues and so on.

7. Does Nigerian law recognise the concept of maritime liens and, if so, what claims give rise to maritime liens?

- (a) Yes, Nigerian law recognises the concept of maritime liens. The claims that give rise to maritime liens in Nigeria are as follows:
 - wages and other sums due to the master, officers, and other members of the ship's complement in respect of their employment on the ship;
 - disbursements of the master on account of the ship;
 - claims in respect of loss of life or personal injury occurring, whether on land or water, in direct connection with the operation of the ship;
 - claims for damage done by a ship;
 - claims for salvage, wreck removal and contribution in general average; and
 - claims for ports, canals, and other waterways, dues, and pilotage dues.⁸
- (b) The Admiralty Jurisdiction Act also provides for statutory rights of action *in rem* in respect of a maritime claim against a vessel, where the party who would be personally liable on the claim is, both at the time the cause of action arose and at the time action is brought, the owner or demise charterer in possession and control of the vessel.

8. Can a bareboat (demise) chartered vessel be arrested for a claim against its bareboat charterer?

Yes, a bareboat (demise) chartered vessel can be arrested for a claim against its bareboat charterer. See also the answer to Question 11 below.

⁶ See *B.B Apugo & Sons Limited v. O.H.M.B* (2016) 13 NWLR (Pt. 1529) 206; see also *Chevron v. Lonestar Drilling (Nig.) Limited* (2007) 16 NWLR (Pt. 1059) 168; *Ports and Cargo Handling Services Limited v. Migfo Nigeria Limited* (2013) 3 NWLR (Pt. 1333) 555

⁷ Section 2(1) of the AJA

9. Can a time-chartered vessel be arrested for a claim against its time-charterer?

No, a time-chartered vessel cannot be arrested for a claim against its time-charterer.

10. Can a sister ship or associated ship be arrested in Nigeria?

Yes, a sister ship can be arrested in Nigeria, see also the answer to Question 9 below. The right of arrest does not extend to ships regarded as “associated ships”.

11. In what specific circumstances can a ship be arrested?

(a) Generally, a ship can be arrested if all the following circumstances exist:

- The claim is a maritime claim, whether general or proprietary;
- The claim arose in connection with that ship, or a sister ship;
- The claim gives rise to a maritime lien, or the person who would be liable for that claim in an action *in personam* (the relevant person) is either the owner of that ship (or a sister ship) or its charterer by demise.⁹

(b) A sister ship may be arrested if all the following circumstances exist:

- the claim arose in connection with a ship;
- the person who would be liable for the claim in an action *in personam* (the relevant person) was the owner or charterer or in possession or control of the ship at the time the cause of action arose; and
- at the time the claim is brought the relevant person is the beneficial owner of all the shares in the (sister) ship sought to be arrested.¹⁰

(c) A bareboat (demise) chartered vessel can be arrested for a maritime claim against the bareboat charterer if all the following circumstances exist:

- the claim arose in connection with that vessel;
- the bareboat charterer is the person who would be liable for the claim in an action *in personam*;
- the vessel was on charter to the bareboat charterer at the time the cause of action arose; and
- the bareboat charter is still subsisting at the date the action is commenced.¹¹

12. Who is responsible for the maintenance of a ship while under arrest?

(a) The Admiralty Marshal, who is the Chief Registrar of the Federal High Court, is responsible

⁸ Section 5(3) of the AJA and section 66 of the Merchant Shipping Act 2007

⁹ See generally, section 5 of the AJA

¹⁰ Section 5(4)(b) of the AJA

¹¹ Section 5(4)(a) of the AJA

for the maintenance of a vessel under arrest, but all the documented expenses of the Admiralty Marshal including bank charges in relation to the arrest are to be paid by the arrestor.¹²

- (b) An application for a warrant of arrest in itself constitutes an undertaking by the arrestor to the court to pay to the Admiralty Marshal, on demand, the expenses of the Admiralty Marshal regarding the arrest.¹³
- (c) The court, upon the grant of an arrest order, would generally order the arrestor to pay an amount not less than N100,000 (one hundred thousand naira) and no more than N500,000 (five hundred thousand naira) towards the Admiralty Marshal's expenses. The Admiralty Marshal may make further demands fortnightly for payment on account of those expenses while the ship remains under arrest.¹⁴
- (d) Where another party arrests the arrested vessel or files a caveat against its release, he shall be jointly and severally liable with the first arrestor to pay the Admiralty Marshal's expenses.¹⁵

13. Can multiple ships be arrested for the same claim?

- (e) According to section 5(8) of the Admiralty Jurisdiction Act, where a ship has been arrested in an action *in rem* brought to enforce a claim, no other ship can be arrested in that or any other action *in rem* brought to enforce *that* claim. This raises a serious question: would a mortgagee who financed five ships be entitled upon default of the mortgagor to arrest only one of the mortgaged ships? That is unlikely to have been the intendment of the legislature. It therefore appears that section 5(8) of the Act contains a drafting error.
- (f) It is however not uncommon in practice to see plaintiffs arresting more than one ship for the same claim.
- (g) A writ may be issued naming more than one ship, or two or more writs each naming a different ship.¹⁶
- (h) Where an arrested ship, having been invalidly arrested, has been released from arrest, or has been unlawfully removed from the custody of the Admiralty Marshal, the plaintiff may re-arrest that ship or a sister ship.

14. Is it possible to arrest cargo while on board a ship? What happens to cargo on board an arrested ship? How does the court resolve the divergence of interests?

Yes, it is possible to arrest cargo that is on board a ship. Where a ship is arrested but the cargo is not, or the cargo is under arrest but the ship is not, a party entitled to immediate possession of the ship or the cargo may apply for the court to order the discharge of the cargo from the ship.

¹² Order 9 Rule 3 of the AJPR

¹³ Order 9 Rule 1 of the AJPR

¹⁴ Order 9 Rule 2(1) and (2) of the AJPR

¹⁵ Order 9 Rule 2(2)(c) of the AJPR

¹⁶ Section 5(80) of the AJA

15. What are the formal requirements for a valid application for a warrant of arrest?

- (a) To be entitled to an order of arrest of a vessel, a substantive action *in rem* must be commenced in the admiralty court against the vessel. This means that the plaintiff must file a writ of summons in an action *in rem*. The writ of summons must be accompanied by a statement of claim and copies of documents to be relied on at the trial as well as a witness statement on oath.¹⁷ The writ of summons commencing the action *in rem* shall also be headed “ADMIRALTY ACTION IN REM” and shall where applicable specify a relevant person as a defendant by reference to ownership or other relationship to the ship.¹⁸ It must also specifically identify the ship.¹⁹ The contents of the writ of summons are required to be verified by an affidavit, failing which it will not be sealed by the registrar.
- (b) The writ of summons is also required to be accompanied by an application *ex parte* (without notice to the other party) for the warrant of arrest provided that the ship is within the jurisdiction of the Federal High Court or is expected to arrive within three days.²⁰
- (c) A warrant of arrest will not be issued unless the arrestor, his agent, or solicitor deposes to an affidavit containing the following particulars among other things:²¹

In every case:

- The nature of the claim or counter-claim (including the amount claimed);
- The fact that the claim or counter-claim has not been satisfied;
- If the claim arises in connection with a ship, the name of the ship, her name and port of registry if known, and other particulars.

In a case against a ship under section 5(4) of the AJA (statutory right of action *in rem*);

- The name of the person who would be liable on the claim in an action *in personam* (the relevant person);
 - The fact that the relevant person was when the cause of action arose the owner or charterer of, or in possession or control of the ship in respect of which the cause of action arose;
 - The fact that at the time of the issuance of the writ the relevant person was either the beneficial owner of all the shares in the ship or its charterer under a charter by demise.
- (d) Where the warrant is sought against a sister ship, the affidavit must demonstrate the proprietary link, that is, that the relevant person is the beneficial owner of all the shares in the sister ship.
 - (e) The affidavit must provide further particulars such as the location of the ship within Nigerian territorial waters or its imminent arrival. The applicant must also expressly undertake to

¹⁷ Order 3 Rule 3(1) of the AJPR

¹⁸ See, Order 5 Rules 1 and 2 of the AJPR

¹⁹ Order 5 Rule 3 of the AJPR

²⁰ See section 7(2) of the AJA and Order 7 Rule 1 (1) of the AJPR

²¹ Order 7 Rule 1(3) of the AJPR

indemnify the Admiralty Marshal on demand in respect of the fees and expenses to be incurred by the Admiralty Marshal in relation to the arrest, and to pay damages to the shipowner if it is later adjudged that the arrest order should not have been made.

- (f) The affidavit must also show that the applicant has searched in the register of caveats against arrest to ascertain whether there is a caveat against arrest in force regarding that ship.²²

16. How quickly can a warrant of arrest be issued?

In ideal circumstances, an application for the issuance of a warrant of arrest can be heard and granted on the same day it is filed, unless there is a delay in the assignment of the case to a judge or other administrative hitch. Admiralty matters in Nigerian courts are, in keeping with the universal practice, supposed to be treated with urgency. It is advisable to file an affidavit of urgency together with the application for the warrant of arrest to underscore the need for speed and to move the court to hear and grant the application as quickly as possible. Barring any delays, the whole arrest process, from the preparation and filing of the originating processes and application for the warrant of arrest to obtaining and executing the warrant of arrest usually takes between 2 to 5 working days (a safe estimate).

17. How is a warrant of arrest executed?

A warrant of arrest can be executed on any day of the week by securely affixing a sealed copy to a mast or some other conspicuous part of the ship, or delivering it to the master of the ship. It is served simultaneously with the originating processes for an action *in rem*.²⁴ Usually, copies of the warrant of arrest are served on the appropriate officers of the Nigerian Ports Authority (NPA), such as the Harbour Master and Port Manager to put them on notice.

18. Are there any territorial limits to the jurisdiction of the Admiralty Court?

The Federal High Court can only exercise its admiralty jurisdiction within the limit of the territorial waters of Nigeria which is 12 nautical miles from the baseline.²⁵ A ship can only be arrested at any place within Nigeria's territorial waters, which is why the Admiralty Jurisdiction Procedure Rules provides that a warrant of arrest may only be applied for (and issued) against a ship if at the time of the application the ship is within Nigerian territorial waters, or is expected to arrive there within three days.²⁶

19. Is there any statute of limitation that may affect the right to arrest a ship?

The Admiralty Jurisdiction Act places a three-year limitation on admiralty matters. Admiralty matters are therefore required to be instituted within 3 (three) years from the date the cause of action arose. The limitation period in the Admiralty Jurisdiction Act will however not apply to a claim if there exists a limitation period fixed specifically in relation to that claim by any other enactment or law.²⁷ The Nigerian enactments of the Hamburg and Hague Rules for example stipulate two-year and one-year limits

²² Order 7 Rule 1(2), AJPR

²³ See *Tiwani Limited v. Citi Trust Merchant Bank Limited* (1997) 8 NWLR (Pt. 515) 140 at 155, paras. B - C (CA).

²⁴ Order 7 Rule 4(1) and (2) of the AJPR. The warrant of arrest is in Form 7 in the schedule to the AJPR

²⁵ Section 7 (2) of the AJA

²⁶ Order 7 Rule 1(1) of the AJPR.

²⁷ Section 18 of the AJA

respectively for claims under bills of lading.²⁸

20. After the arrest of a ship, what is a shipowner required to do?

- (a) After the arrest of the ship, its owner may:
- enter appearance and provide alternative security for the plaintiff's claim to secure the release of the vessel. In most cases, the arrestor would demand as security a bank guarantee from a Nigerian bank; or
 - enter appearance without providing security and apply for the unconditional release of the vessel and/or challenge the competence of the suit which formed the basis for the arrest application, or the court's jurisdiction to entertain the suit and/or the arrest application. Where such an application succeeds, the vessel will be released without provision of security.

A successful challenge to the competence of the suit will also result in the suit against the ship being struck out as incompetent.²⁹

21. How does the court calculate the amount of security which it will order the defendant to provide?

The Admiralty Jurisdiction Procedure Rules provides that the security to be provided by the party seeking to secure the release of the vessel should be equal to the amount claimed or the value of the ship under arrest, whichever is less. In practice however, because applications for warrants of arrest are heard and granted *ex parte* (without notice to the other party), the security ordered by the court is often based on the claim stated in the writ and the application for arrest. A shipowner may however apply for the variation of the order of arrest if the security ordered exceeds the value of the vessel. Such an application will require a valuation of the vessel by a court-appointed ship valuer, or one jointly appointed by the parties.

22. What is the cost implication of a ship arrest

- (a) The cost of filing an action *in rem* will depend on the amount of the claim, however the maximum amount payable as filing fees under the rules of the Federal High Court is approximately US\$150 (one hundred and fifty United States Dollars). After the arrest order is made by the court, there will be further costs associated with processing the order, warrant and notice of arrest in preparation for execution.
- (b) Other expenses include the deposit for the Admiralty Marshal's expenses in relation to the arrest which is between N100,000 (one hundred thousand naira, approximately US\$250) to N500,000 (five hundred thousand naira, approximately US\$1250). Depending on the duration

²⁸ Section 20 of the United Nations Convention on the Carriage of Goods by Sea (Ratification and Enforcement) Act 2005 and Article III (6) of the Carriage of Goods by Sea Act

²⁹ Generally, section 13 of the AJA and Order 11 of the AJPR

of the arrest, a further allowance may be required to take care of fortnightly demands from the Admiralty Marshall.

- (c) Depending on the location of the vessel, logistics costs are also expected, such as for the hiring of a speed boat, and security personnel if need be.
- (d) Professional fees will depend on the lawyer instructed to secure the arrest.

23. Are there any formalities required for the appointment of a lawyer to make the arrest application, for example, a power of attorney or other documents to be provided to the court?

There are no special formalities required for the appointment of a lawyer to make an arrest application. A Nigerian lawyer would however require a written instruction, usually by email, to ensure that the terms of engagement are recorded. Nigerian courts do not require Counsel to provide written evidence of their authority to act for a party. Once a counsel appears for a party, it is presumed that he does so with authority from his client.³⁰

24. When can a ship arrest be said to be wrongful and what are the consequences for the arrestor?

An arrest is wrongful if it is obtained unreasonably and without good cause. If the suit in which the arrest was ordered is dismissed, or judgment is given against the plaintiff the arrest will be declared wrongful. The consequences for the arrestor may be a liability to pay damages for wrongful or needless arrest. The damages shall be equal to the amount of the losses and expenses incurred by the shipowner as a result of the arrest, including lost hire, demurrage, legal fees, the costs of obtaining and maintaining the alternative security, etc.³¹

25. Will the arrestor have to provide security and in what form and amount?

- (a) The arrestor does not have to provide security before the vessel can be arrested, although the court will require an undertaking from the arrestor to pay damages if the arrest is later adjudged wrongful.
- (b) In some circumstances the court may on the application of the defendant order the arrestor to provide security for costs, failing which the vessel will be released from arrest. The circumstances include where the arrestor's claim is more than N5,000,000 (five million naira), or its foreign currency equivalent, or where the court is satisfied that the arrestor has no assets in Nigeria.
- (c) The security for cost can be in the form of a deposit of the sum specified by the court, or a guarantee or undertaking provided by a protection and indemnity club, an insurance company or a bank.³²

³⁰ Adewunmi v. Plastex (Nig.) Ltd. (1986) 3 NWLR (Pt. 32) 767; (1986) 6 S.C. 214 at 223, Alhaji Tukur v. Governor of Gongola State (1988) 1 NWLR (Pt. 68) 39; (1988) 1 SCNJ 54; (1988) 1 S.C. 78; (1988) All NLR 42

³¹ Section 13 of the Admiralty Jurisdiction Act and Order 11 of the Admiralty Jurisdiction Procedure Rules; Unreported Suit No. FHC/L/CS/1800/2017 – Domsun Investment and Marine Services Limited v. MT Godshand & Anor.

³² Order 13 of the AJPR

26. Must the arresting party pursue the claim on the merits in Nigeria or could they arrest a ship solely to obtain prejudgment security and then pursue proceedings on the merits in another jurisdiction?

- (a) As stated above, the arresting party must first institute an action *in rem* for the claim in the Federal High Court before applying for a warrant of arrest in the suit. It is not possible to commence a suit and arrest a vessel simply to obtain security, and then pursue proceedings on the merits elsewhere.
- (b) Where however there is an agreement between the parties to refer their disputes to arbitration outside Nigeria, the court may order a stay of further proceedings in the Nigerian suit and order that the claims be referred to arbitration as per the arbitration agreement. In such a situation, the arrested vessel or the alternative security provided to secure its release from arrest will be retained by the court as security for the satisfaction of any award that may be made in the arbitration in the foreign country.

27. Apart from ship arrest, are there other forms of attachment order or injunctions available to obtain security?

Yes, the court may, on the application of the plaintiff order the interim attachment of property in the character of a *mareva* injunction. Where a defendant, with intent to obstruct or delay the execution of any judgment that may be made against him, is about to dispose of his property or remove it from the court's jurisdiction, the plaintiff is entitled to apply to the court (either at the time of the institution of the suit or at any time before final judgment) to call upon the defendant to provide alternative security to fulfill any judgment that may be entered against him in the suit. Where the defendant fails to provide the security or pending the provision of such security, the court can direct that any property belonging to the defendant (including a ship) be attached.

28. When can an arrested vessel be released?

A ship or property may be released from arrest where:

- The arresting party consents in writing to the release or applies for its release; or
- The court orders its release on just terms, or where the proceeding is discontinued or dismissed; or
- The court orders its release following the provision of security (or payment of cash into court) equal to the amount of the claim or the value of the vessel, whichever is less.

Note that even after the court orders the release of a vessel, the vessel may not be released until all the Admiralty Marshall's fees and expenses in relation to the arrest have been settled.



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

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