AN EXAMINATION OF THE LEGAL FRAMEWORK FOR THE ARREST AND RELEASE OF SHIPS IN NIGERIA*

Abstract

The laws relating to the arrest of vessels in Nigeria originates from Statute and Case Law which were derived from and follow closely from the Admiralty Law and Practice in England. The enforcement of maritime claims, which includes the arrest of vessels, is governed by the Admiralty Jurisdiction Act, 1991 (the Act). The Admiralty Jurisdiction Procedure Rules (the Rules), 2023, are Rules made pursuant to the Act to guide procedural matters relating to maritime actions. It provides for the practice and procedure for the arrest of ships in Nigeria. On 18/05/2023 the Chief Judge of the Federal High Court enacted the Rules which effectively repealed the 2011 rules. The new Rules introduced significant innovations to ship arrest practice in Nigeria, one of which is the power of the Federal High Court to arrest a ship to aid a foreign court, or an arbitration commenced within or outside Nigeria. Decisions of Nigerian Courts of Record constitute case law and are often reported in Law Reports for reference purposes. Nigeria, being a common law country, recognises the principles of stare decisis and judicial precedent. As such, decisions of Superior Courts are binding on Lower Courts where the issues are essentially the same or similar.

Keywords: Arrest, Ship, Vessel, Arbitration, Legal Framework, Nigeria

1. Introduction

Shipping truly has been an important catalyst in boosting the Nigerian economy because when mineral oil was first discovered in Nigeria, it had to be exported to other countries of the world and ships were used to make this transportation across the sea to other countries and continents bordered by the sea. This article will explain the history of shipping in Nigeria and how it has affected the present shipping industries and trade in Nigeria, the article will also examine the legal framework for the arrest of a sip in Nigeria. Nigeria's shipping history evolved from the colonial-era trade and surf ports of the 19th century into a modern maritime network. It is characterized by the establishment of the national fleet (NNSL), landmark 2006 port concessions, and the rise of mega-facilities like the Lekki Deep Sea Port in the Gulf of Guinea. It is true, the world has gone through a great deal of modernization, creating more efficient ways of doing things through invented technologies and even ships have evolved over the centuries to be more efficient and are constructed with greater capacities than many centuries ago.[1]

2. Historic Background of Shipping in Nigeria

Maritime trade grew out of European explorations and the need to transport agricultural raw materials, largely driven by foreign companies like Elder Dempster and Woermann-Linie. Cargo was initially loaded at surf ports by hand. Colonial authorities soon constructed railways and basic wharves. The Calabar Port stands as the oldest, while Lagos and Port Harcourt emerged as the primary commercial hubs by 1960. The Nigerian Ports Authority (NPA) was established in 1954 to formally manage and operate the country's port infrastructure. The Nigerian National Shipping Line (NNSL) was founded in 1959 with two second-hand vessels. By 1979, it had grown to a peak of 24 ocean-going vessels. Please note that in this article the word ‘ship’ and ‘vessel’ will be used interchangeably but refers to same. Based on mismanagement and stiff global competition, the fleet dwindled. Following the failure of the Ship Acquisition and Ship Building Fund (SASBF) to revive its fortunes, the NNSL was officially liquidated in 1995.

The Nigerian Shippers' Council was created to protect local traders and importers from the exploitative rates of foreign shipowners; the Nigerian Shippers' Council was established in 1978. It later evolved into the designated Port Economic Regulator. There was also Ports concession by the Federal Government of Nigeria with the aim to improve efficiency and inject private capital, the Federal Government implemented major port reforms in 2006, concessioning port terminals to private operators (e.g., APM Terminals and Ports & Terminal Multiservice Limited).

Modern Maritime Expansion (2010s - Present)

Nigeria is upgrading its maritime capabilities by developing mega-ports designed to make the country the transshipment hub for West and Central Africa. The Lekki Deep Sea Port can receive super-post-Panamax vessels, fundamentally changing domestic cargo handling. Modern regulatory and security efforts are spearheaded by agencies like the Nigerian Maritime Administration and Safety Agency (NIMASA), overseeing safety, environmental protection, and the promotion of indigenous shipping. Nigerian is a country located in the western part of Africa on the Gulf of Guinea, and shares has boundaries with the Atlantic Ocean in the southern part. This gives her a good opportunity to benefit from international trade as she is positioned in the coastal area and open to receiving cargo from other parts of the world via shipping and to be in position to transport cargo to other parts of world. The country’s capital is Abuja with English as its official language due to the influence of the British colony on the country from 1900-1960, when she finally gained her independence.

Before Nigerians ventured into shipping business, there were international shipping companies which operated in Nigeria. This international shipping line was operating in West Africa and in Nigeria, however, in 1957, the Nigerian national shipping line (NNSL) was formed by the Nigerian government.

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[1]Stephanie Odubo Ebiere: Nigerian Shipping Industry and Trade**,** 2023

In the year 1961, the NNSL began operations with just three vessels and during this new development, the Nigerian seafarers who were working for the British shipping companies during the colonial era resigned to work for the Nigerian line. Furthermore, the Nigerian troops had free use of the NNSL during the Nigerian civil war which lasted between the year 1967 until 1970. More so, in 1977 the government of Nigeria gave a command for the construction of new ships which would replace the old ones. Following this command, 19 new ships were constructed and by the year 1979, the NNSL owned 24 ocean going vessels.

The national maritime authority (NMA) which is presently know today as the Nigerian maritime administration and safety agency (NIMASA) was established by the national Shipping Policy Decree of 1987, and this gave approval for a 50-50 share between domestic and foreign lines for non-conference cargos. Also, in 1988 six shipping lines including the NNSL were declared as 'national carriers' by the national maritime authority. Notwithstanding, in the year 1988 the 24 ships of the Nigerian national carriers which also includes the NNSL carried only about 11% of the cargoes from the Nigerian ports, whereas the other remaining 89% of cargoes were carried by foreign shipping lines. The NNSL and other indigenous private shipping lines experienced further challenges because they lacked facilities that were required to attract cargoes and as a result, the Nigerian shipping lines suffered great financial losses. Consequently, because of these financial losses, in the 1990s many of the vessels were seized in various places in the world for alleged breach of contract and for bills that were not paid. For it is certain that it was not the absence of cargoes that was the challenge as, there were cargoes constantly being transported from the country to other parts of the world but the lack of efficiency and proper management. Nigeria suffered great losses in her shipping industry due to the previously mentioned challenges.

The NMA had the obligation of supervising the marine pollutions and oil spillages in the Nigerian waters. Nonetheless, before the national shipping decree of 1987 was made, there was a great lack of organization in the Nigerian maritime industry, there were neither structures nor policies enforced for quality development, security and for the training of manpower in the maritime industry. Despite the efforts made by the NMA to promote the industry's interest there were still great inefficiencies in the Nigerian maritime industry which led to the loss of the Nigerian fleet.

Presently there are over twenty indigenous shipping companies operating with about 49 vessels which are either chartered or jointly owned. Some of these companies are Morlap, Cardion, Sifax, Daddo Maritime, Clover Leaf, amongst others. Nigeria is world's eighth-largest exporter of oil. Presently, Nigeria as a country owns no fleet, however, there are individuals, and companies who own vessels in Nigeria and only a few are registered under the Nigerian flag.

The Nigerian Shippers' Council was appointed the Port Economic Regulator in February 2014, to create an effective regulatory regime at the Nigerian ports for the control of tariffs, rates, charges as well as economic services to address the negative impact of port concession activities on the economy. The appointment was affirmed by a Presidential Order and a Ministerial Regulation as follows: i) Nigerian Shippers' Council (Port Economic Regulator) Order, 2015; ii) Nigerian Shippers' Council (Port Economic) Regulations 2015. The functions of the Nigerian Shippers' Council as Port Economic Regulator are as follows:

- Provide guidelines on tariff setting to guide against arbitrariness;
- Monitor and enforce standards of service delivery to ensure availability, accessibility, affordability, stability, predictability and adequacy of services;
- Encourage competition and guard against the abuse of monopoly and dominant market positions;
- Perform mediatory role among stakeholders;
- Establish accessible and modern dispute resolution mechanism
- Regulate market entry and exit;
- Promote efficiency in the provision of port services;
- Minimize high cost of doing business and prevent its inflationary effect on the Nigerian economy;
- Encourage private sector investment in the ports;
- Monitor and ensure compliance by all parties with the provisions of the Port Concession Agreements.

Other functions of the Nigerian Shippers' Council are contained in the subsidiary legislations as follows: –

- The Nigerian Shippers' Council (Local Shipping Charges) Regulations 1997.
- The Nigerian Shippers' Council (Inland Container Depot) Regulation 2007.
- The Nigerian Shippers' Council (Container Freight Station) Regulation 2007.

3. Conceptual Framework for Arrest of Ship

Ship

This is a type of vessel used or intended to be used in navigation.[2] A vessel is a ship, brig, sloop, or other craft used or capable of being used to navigate on waters. To qualify as a vessel under the jones Act, the structure's purpose must to some reasonable degree be to transport passengers, cargo, or equipment from place to place across navigable waters.[3] Section 26[4], which is the Interpretation Section, defines a ship to mean a vessel of any kind used or constructed for use in

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[2] Bryan A. Garner (ed), *Black's Law Dictionary*, 10th ed. (USA: Thomas Reuters, 2014) p. 1588

[3] Ibid, p. 1793

[4] Admiralty Jurisdiction Act (AJA), 1991, Cap. A5 Laws of the Federation of Nigeria (LFN), 2004

navigation by water, however it is propelled or moved and includes: (a) a barge, lighter or other floating vessel including a drilling rig; (b) a hover craft; (c) an offshore industry mobile unit; and (d) a vessel that has sunk or is stranded and the remains of such a vessel. However, the definition excludes a vessel under construction that has not been launched.

Arrest

This is a seizure or forcible restraint, especially be legal authority, it is the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge.[5] In the context of this work, arrest is not on a natural person, but on a ship. An application for the arrest of a ship must be predicated or based on a duly filed action in rem relating to one of the several proprietary or general maritime claims. Evidence required in support of an arrest application should therefore consist of contractual documents, e.g., Charterparty, Invoices, Bill of Lading, correspondence relating to any of such claims or transactions and establishing some amount due and owing, or breach of some contractual obligation, negligence or damage to vessel or other property. In other words, there must be evidence to establish a right of arrest in the following terms:

(i) that a maritime claim has arisen as between the parties;
(ii) that the vessel sought to be arrested in respect of the claim is the vessel involved in the cause of action or is connected therewith as a 'sister ship';
(iii) that the vessel is, at the time the action in rem is commenced, within the jurisdiction, i.e., Nigerian territorial waters;
(iv) indicating the relief sought and amount claimed in the action.

These facts are usually set out in the Particulars of Claim to be attached to the writ of summons taken out in commencing the action in rem and in the supporting affidavit for the arrest application. The plaintiff or claimant is only required to establish a strong prima facie case against the vessel and/or its owners under the Rules relying on the facts stated and documents exhibited or attached to the particulars of claim and the supporting affidavit to justify the order of arrest. It is fundamental that the action in rem should be commenced against a named vessel and, where possible, a named owner or demise charterer. Where the owner of the vessel is not known or easily identified, it is sufficient.

Other Specific Preconditions to an Arrest: Apart from the preconditions specified above, an arrest order would be made where it is indicated that the vessel is within Nigerian territorial waters. It should be stated that there are several divisions of the Federal High Court in different states of the Federal Republic of Nigeria. Section 22[6] stipulates that proceedings, presumably in respect of an action in rem, may be brought in any judicial division of the court where the ship or other property may be found or located. As this is not mandatory, it is not unusual to apply for and obtain an arrest order in the Lagos Division of the Federal High Court for the arrest of a vessel in Port Harcourt or Warri Ports.

4. The Legal Framework for the Arrest of Ship in Nigeria

Arrest is the seizure of a vessel, or aircraft, as security for the liquidated claims of the claimant in an action before the Federal High Court of Nigeria. Arrest means the detention of a ship by judicial process secure a maritime claim but does not include the seizure of a ship in execution or satisfaction of a judgment.[7] The mode of an application for the arrest of a vessel is usually by a writ and statement of claim. Claim must include liquidated demand i.e. debt, or special damages. The vessel should be a principal defendant to the action, the owner of the vessel should be named as a party too, the action should be captioned as Admiralty action in Rem, in the matter of the 'name of the vessel'. Old rules limit action to being brought in the Judicial Division where the vessel is berthed or expected to berth within 3 days of filing. Now can be brought where the Defendant is resident or operational, and the vessel to be arrested is within or expected to soon be within Nigeria.[8]

Arrest of Vessel

An order of court for the arrest of a vessel shall be served concurrently with the writ & claim by the bailiff on:

i. the Master of the Vessel personally;
ii. affixing it on the vessel;
iii. Nigerian Ports Authority Harbormaster;
iv. The owner of the vessel where the identity of the owner of vessel is known
v. Such other defendants as may be concerned.

Application for Arrest of Vessel

An application for the arrest of a vessel is by way of Motion Ex Parte praying the court for an order of court for the arrest of the vessel pending provision of security for plaintiffs' claims. Plaintiff can specify what security acceptable. Motion Ex parte must be accompanied by affidavit of urgency pointing to the need for the application to be treated expeditiously to avoid the vessel's departure from the port and/or jurisdiction before the application is heard and granted. the affidavit in support must state the claim, reasons for arrest and that the vessel is within Nigeria jurisdiction or will be within 3 days, name of the ship, port of registry, and (if known) the party in control of the ship. The motion must exhibit result of the search conducted on the CAVEAT register, undertaking as to damages by Plaintiff, indemnity for admiralty Marshall fees and a Written Address.

[5] Bryan A. Garner (ed), *Black's Law Dictionary*, p. 130
[6] Admiralty Jurisdiction Act (AJA) 1991, Cap. A5 Laws of the Federation of Nigeria (LFN), 2004
[7] Order 22 Rule 2 AJPR 2023*; NPA v Panalpina* (1973) 5 SC 77
[8] Order 7 Rule 1, 2 Rule 7

The applicant is obliged to put forward a strong prima facie case on issues which qualify under one of the proprietary or general Maritime claims. Where the claim is against a sister ship, its relationship with the concerned defaulting ship should be established. The application is usually given priority and assigned to be heard by a Judge in chambers, and not in the open court, to retain the confidentiality of the application. The application is taken in the absence of the Defendants, who only become aware of the action when served with the warrant of arrest.

There is no requirement under the Act or the Rules for a party seeking to arrest a vessel to provide countersecurity. The arresting party is only required in filing the application to give an undertaking to meet the admiralty Marshall's costs, expenses or damages caused by the application. He may also be required to meet any other conditions imposed by the court. However, the court may subsequently on the application of the defendants for good cause, e.g., where the plaintiffs have no assets within the jurisdiction or the defendants have a counterclaim, order the plaintiff to put up security for costs or to meet the Defendants' counterclaim. The security is usually in the form of a Bank Guarantee, Insurance Bond or Protection and Indemnity (P&I) Club letter of undertaking.

Immunity of State-Owned Vessels

Section 24(1) of the Act[9] stipulates that the Act binds the State in all matters except in two (2) distinct respects, namely: (a) an action in rem shall not be commenced against a Government ship or property; (b) consequently, no arrest, detention or sale of a government ship or property is allowed under the Act. The Act goes on to stipulate that where an action in rem has been commenced against any Government vessel or property mistakenly, under the reasonable belief that the ship did not belong to the Government, the Court may order that same be treated as an action in personam. The section further defines a 'Government ship' to mean a ship belonging or for the time being demised or sub-demised to the Federal or a State Government and includes a ship being used or connected with the Nigerian Navy. It does not, however, cover or include any ship belonging to, demised or sub-demised to a corporation or agency of the Federal or State Government. Government property mentioned in the provision is similarly defined and restricted. It should be noted that Federal or State Government-owned ships are equally exempted from registration under the Nigerian Register of Ships.[10] Nigeria has not ratified the 1926 Brussels Convention on the immunity of state-owned vessels.

International Framework for the Arrest of Ships

Nigeria acceded to the 1952 International Convention for the Unification of Certain Rules relating to the arrest of sea-going ships (otherwise known as 'the Arrest Convention') in November 1963. However, the convention is yet to be given force of law directly by enabling legislation in Nigeria. In practical terms, the Act and the Rules governing the procedure for arrest in Nigeria are very much in line with the convention

Courts with Jurisdiction on the Arrest of Ships

The Admiralty Jurisdiction of the Nigerian Courts is determined by provisions of the Act. Section 1 of the Act[11] specifically stipulates that Admiralty Jurisdiction in Nigeria is vested exclusively in the Nigerian Federal High Court. The regular State High Courts do not therefore have jurisdiction to handle cases relating to the arrest of ships. The Federal High Court was established in 1973 as a High Court distinct from the usual State High Courts with power to adjudicate issues which are considered to be 'Federal' in character and involving Federal legislation, such as Revenue of the Federal Government, Company Law and Taxation, Banking, Customs, Ports Authority and Admiralty and involving Federal legislation, such as Revenue of the Federal Government, Company Law and Taxation, Banking, Customs, Ports Authority and Admiralty matters. 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 of the land. There are now Federal High Courts in almost every State of the Federal Republic. However, it is only such High Courts in States where Ports exist that usually have cases relating to the arrest of ships coming before them. Administratively, it is easier for such Courts to grant and enforce the order of arrest, especially as the vessel concerned may be within the port area discharging cargo or awaiting berthing facilities.

Section 3 of the Act[12] stipulates that the admiralty jurisdiction of the Federal High Court shall apply to: i) all ships, irrespective of the places of residence or domicile of their owners; and ii) all maritime claims, wherever arise. It must be pointed out, however, that for an action to be maintainable against a vessel (the res) in an action in rem (which usually is accompanied by an application for arrest of the vessel), such a vessel must be within the jurisdiction, that is within Nigerian territorial waters. In 1998 the extent of Nigerian territorial waters was reduced from 30 nautical miles to 12 nautical miles. Maritime claims in Nigeria have been classified into two (2) broad groups under Section 2 of the Act[13], namely: i) proprietary maritime claim or ii) general maritime claim. A maritime claim is said to be 'proprietary' when it relates to Possession of a ship; title to or ownership of a ship or a share in a ship.

[9] AJA 1991, Cap A5 LFN 2004
[10] S. 404 of the Merchant Shipping Act, 2000
[11] AJA 1991, Cap. A5 LFN 2004
[12] AJA 1991 Cap. A5 LFN 2004
[13] ibid

Orders the Court may make in Alternative to the Arrest of a Ship: Mareva Injunction

The *locus classicus* in England for the grant of a Mareva injunction is the case of *Nippon Yusen Kaisha v. Karageorgis*[14] and *Mareva Compania Naviera S.A. v. Int'l Bulkcarriers S.A*[15] The Nigeria Locus Classicus for the grant of a Mareva injunction is the popular case of *Sotuminu v Ocean Steamship (Nigeria) Ltd*[16] See also *Efe Finance Holdings Ltd v Osagie Okeke, Otegbola & Co*[17] and *Durojaiye v Continental Feeders (Nig) Ltd.*[18] The general rule as established in *Sotuminu's* case is that an application for mareva injunction is made ex parte. However, in certain cases, the court may direct that such application be made on notice having regard to the facts and circumstances of each case. Order is injunctive restraining defendant from dealing in asset prejudgment. The existence of a strong case against the defendant; The existence of a justiciable cause of action against the defendant; The existence of a real and imminent risk of the defendant removing his assets from jurisdiction and thereby rendering nugatory any judgment which the plaintiff may obtain against him; The making of full disclosure of all material facts relevant to the application; Giving full particulars of the assets within the jurisdiction of the court and against which the order is sought; The balance of convenience must be on the side of the applicant; and Preparedness of the applicant to give an undertaking as to damages in the event that the order ought not have been made in the first place.

5. Institutions Responsible for the Arrest of Ship

Federal High Court, Through the Admiralty Marshal

An arrest application can only be entertained by the Federal High Court acting within its admiralty jurisdiction where an action in rem has been duly instituted or commenced before the court in respect of a maritime claim which forms the basis for the arrest application. Where the court is not satisfied that an action in rem is maintainable on the peculiar facts of the case as set forth in the particulars of claim and the verifying affidavit in support, it would decline to grant the application. Once the order of arrest of a vessel has been made, and whether its release has been effected, the plaintiff is expected to diligently prosecute the claim. Where he fails to do so, or abandons the claim, the defendant may apply to the court to strike out the case and discharge the security imposed and/ or release the vessel from arrest. Arrest of vessel order for arrest shall be served concurrently with the writ & claim by the bailiff on: The master of the vessel personally or by affixing it on the vessel; Nigerian Ports Authority Harbormaster; The owner of the vessel where the identity of the owner of vessel is known. Such other defendants as may be concerned security for plaintiffs' claims a defendant faced with an order of attachment or arrest, in order to secure the release, or bail of the asset, may: where there is no urgent need of the property attached, leave the property under attachment till judgment (at risk of an order for sale by the court). Where attachment was obtained in concealment of facts or bad faith, where there is urgent need of the asset, furnish security for the release or bail of the asset.

Nigerian Navy

The primary duty of the Nigerian Navy is to defend the Federal Republic of Nigeria by sea, which includes protecting the nation's territorial waters and its Exclusive Economic Zone (EEZ). It's core responsibilities, as outlined in the Armed Forces Act and the Constitution of the Federal Republic of Nigeria 1999 (as amended) span into:

Military duties which include: Territorial Defence-protecting Nigeria's coastlines, inland waterways and offshore territories against any seaborne aggression; Deterrence- Projecting maritime power to maintain regional stability and deter threats within the Gulf of Guinea.

*Policing and Law Enforcement***:** Anti-piracy and Security- patrolling to prevent and combat sea robbery, piracy and kidnappings; Protection of Economic Assets- securing oil and gas installations and clamping down on crude oil theft, illegal bunkering and pipeline vandalism.

The Nigerian Navy also arrest ships involved or suspected to have carried out economic sabotage against the Nigerian State. After such arrest by the Nigerian Navy, it is expected that the ship be handed over to investigating and prosecutorial agencies for further actions.

Nigerian Maritime and Safety Agency (NIMASA)

The agency has the powers to arrest any ship which committed or suspected to have committed a maritime offence, based on the functions and powers of the agency as provided by the establishing Act.[19]

6. Arrest of Ship and Arbitration

On 26 May 2017 Walter Onnoghen CJN issued a directive requesting all heads of court in Nigeria to invoke their powers under the respective rules of court, to issue Practice Directions in the following terms:

> 1. That no court shall entertain an action instituted to enforce a contract, claim, or damages arising from a breach thereof, in which the parties have, by consent, included an arbitration clause and without first ensuring that the clause is invoked and enforced.
> 2. The courts must insist on enforcement of the arbitration clause by declining jurisdiction and award substantial costs against parties engaged in the practice.

14 [1975] 2 Lloyds Rep. 187
15 Ibid. 509
16 (1992) 5NWLR (Pt.239).
17 (2000) 5 NWLR (pt.658)
18(2001) 10 NWLR Pt. 722
19 Ss. 22 & 23 (5) (b) & 40 NIMASA Act, 2007

> 3. A party who institutes an action in court to enforce breach of contract containing an arbitration clause without first invoking the clause is, himself, in breach of the said contract and ought not to be encouraged by the courts.

Observations on Arbitration Practice Directions

Practice Direction and Rules of Court cannot override statutory provisions contrary to the intention of section 5(1) of the Arbitration and Mediation Act, 2023. Losses sight of the fact that arbitrator has no power to order interim preservation of property or grant immediate practical injunctive relief and may need judicial assistance.

Arbitration and Mediation Act 2023

> Section 5 (1)[20] Notwithstanding the provisions of any other law, a court before which an action is brought in a matter, which is the subject of an arbitration agreement shall, if any party so request not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is void, inoperative of incapable of being performed.
> (2) Where an action referred to in subsection (1) of this section has been brought before a court, arbitral proceedings may be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.
> (3) Where a court makes an order for Stay of proceedings under Subsection (1), the court may, for the purpose of preserving the rights of the parties make an interim or supplementary order as may be necessary.[21]

Arrest of Ship and Arbitration Clause

A party to an agreement with an arbitration clause has the option to either submit to arbitration or to have the dispute decided by the court. The choice of arbitration does not bar resort to the court to obtain security for any eventual award. See *NV Scheep v. MV's Araz,*[22] *Obembe v. Wemabod Estates*[23] and *K.S.U.D.B. v. Fanz Ltd.*[24] In the case of *M.V Parnomous Bay & Ors vs. Olam Nigeria Plc*[25] The Hon. Justice Galadima delivering the lead judgment stated that the object of section 20 of Admiralty Jurisdiction Act,…was to limit enforceable arbitration agreements to those having Nigeria as its forum. The court reasoned that since the object of the arbitration clause in the bill of lading is to oust the jurisdiction of Nigerian courts to exercise its admiralty jurisdiction over the case, the said clause is null and void. However, it also did not say Court is automatically divested of jurisdiction where the Arbitration is to hold in Nigeria. In *Owners of M.V Lupex v. Nigerian Overseas Chartering and Shipping Ltd*, the Hon. Justice Utham Mohammed JSC reading the lead judgment stated thus: - 'These uncontroverted facts explain clearly that by submitting to arbitration the respondent had compromised its right to resort to litigation in court. Where parties have chosen to determine for themselves that they would refer any of their dispute to arbitration instead of resorting to regular courts a prima facie duty is cast upon the courts to act upon their agreement.' Arbitration had commenced before litigation; Section 20[26] was not pronounced upon. Did not state that Court has no jurisdiction in the face of Arbitration clause as is popularly reported.

There must be Arbitrable dispute.

To invoke arbitrable jurisdiction, there must be dispute between parties, where there's no dispute, only a claim for debt, there is nothing to refer to arbitration.[27] In *Alhaji Atiku Abubakar & Ors. v. Alhaji Umaru Musa Yar'adua & Ors*.[28] per Tobi, JSC, the Supreme Court held that:

> Rules of court are meant to be obeyed. Of course, that is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that their obedience cannot or should not be slavish to the point that justice in the case is destroyed or thrown overboard. The greatest barometer, as far as the public is concerned, is whether at the end of the litigation process, justice has been done to the parties. Therefore, if in the course of doing justice, some harm is done to some procedural rule which hurts the rule, such as paragraph 7 of the Practice Directions, the court should be happy that it took that line of action in pursuance of justice. This court cannot myopically or blindly follow the Practice Directions and fall into a mirage and get physically and mentally absorbed or lost. Let that day not come.

Forms of Security

Bank Guarantee in the sums specified in the Order of Court Deposit by cash or Bank Draft into the Registry of the Court Insurance Bond P & I Club Letter of Undertaking

[20] Arbitration and Mediation Act (AMA) 2023
[21] S. 5 Arbitration and Mediation Act 2023
[22] (2001) FWLR (Pt. 34) 543 at 596
[23] (1977) 5 SC 115 at 131
[24] (1986) 5 NWLR (Pt.39) 74 at 86
[25] (2004) 5 NWLR 1
[26] AJA 1991, Cap. A5 LFN, 2004
[27] *United World Limited Inc v. Mobile Telecommunication Services* [1998] 10 NWLR (Pt. 568) 108
[28] (2008) 4 NWLR (Pt.1078) 465 at 511, paras D - G

7. Costs of Arrest and Custody

Where an application via a motion *ex parte* is be filed for an order of court for the arrest of a ship, a Written Undertaking is required from the applicant seeking the arrest to pay the costs and expenses of the Admiralty Marshall in respect of the arrest. There is a requirement for the arrestor, upon the granting of the application, to deposit the sum of one hundred thousand naira (N100, 000) for the preservation and custody of the arrested vessel every two weeks. The Admiralty Marshall retains the services of security agencies, who place security personnel (not the police) on board of every arrested vessel to guard against its escape from custody, damage or vandalism. As a result of the 1999 amendment of the Nigerian Ports Act, the defendant or owner of the vessel is now (contrary to the provisions in the Rules) liable for payment of berthing and other port dues while the vessel is under arrest. It is usual, however, for the port authorities to move arrested vessels to lay berths and away from service areas within the ports where the claim is eventually successfully determined, the plaintiff would be entitled to recover the cost of arrest and custody from the defendant. On the other hand, where the arrest is declared to be needless or unwarranted, the defendant would be entitled under the Act and the Rules to damages for the needless or wrongful arrest and any losses arising therefrom.

8. Caveat

A Caveat Against Arrest: This is a formal legal undertaking filed in a court's registry (such as the Federal High Court in Nigeria) by a ship owner or interested party to prevent the arrest of a vessel, provided they promise to enter an appearance in court and provide bail or security.

A Caveat against release: A caveat can be entered against an arrest or the release of an already arrested vessel. This applies where a person has a claim against the vessel or other property already under arrest with the caveat being in lieu of having to obtain further arrest of the ship or other property.[29] It is essentially a 'do not release' stamp. A caveat against release ensures that the caveator is notified of applications for the release of arrested properties.[30] There are no detailed requirements to enter a caveat against release; however, the court may not recognise or grant such orders without an existing claim against the ship. It is also prudent to ensure that the caveat against release is notified to the parties in the original suit against the arrested ship. The caveator must ensure that notice is served. Where the caveator fails to do so, the courts have held that the caveator cannot expect the parties to the relevant suit to provide a copy of the application for release.[31]

The Process of Filing a Caveat

Filing: An undertaking is filed in the Admiralty Registry of the Federal High Court of Nigeria.[32] The undertaking is usually accompanied by a bank guarantee, an insurance bond, or a Letter of Undertaking (LOU) from a recognized Protection and Indemnity (P&I) Club. Where a claimant files an in-rem action against the vessel, they must put the court on notice of the existing caveat. If the shipowner fails to honor the undertaking or provide the bail, the court will set aside the caveat and authorize the Admiralty Marshal to proceed with the arrest.

Commercial and Legal Purposes of a Caveat

Prevents Business Disruption: It allows valuable vessels (including oil rigs) to continue trading and generating revenue without being detained or held at the mercy of creditors.
Provides Security: The caveator undertakes to pay the bond or claim sum into court within a specific timeframe (usually 3 days) if the court rules in favor of the claimant.
Notifies the Owner: It ensures the claimant cannot secretly or immediately arrest the ship. Under admiralty rules, claimants must search the Caveat Book before obtaining an arrest warrant.

Caveat Against Release and Arrest

A Caveat Against Arrest prevents an initial seizure, while a Caveat Against Release acts as a 'do not release' stamp filed by an aggrieved party to ensure a ship already in custody cannot be released unconditionally without their knowledge.

Search of Caveat Register

A caveat registered in the courts serves to prevent a ship's arrest by committing to pay a bond for any sum claimed against the ship which is equal to or less than the amount stated in the caveat. This is understandable as ships are highly valuable and must trade daily or run huge losses. It is better to pay a bond into the court and remain in business than find the ship at the mercy of the admiralty marshal and creditors. This is particularly relevant when the payment bond does not amount to the admittance of the claim or submission to the court's jurisdiction. In short, the vessel remains in business, and the bond payment remains with the ship owner.

[29] Order 8, Rule 6 of the Admiralty Jurisdiction Procedure Rules 2023.
[30] Order 10, Rule 6 of the Admiralty Jurisdiction Procedure Rules 2023.
[31] *MT Delmar V MT Ane (Ex MT Leste)* (2016) 13 NWLR (Pt 1530) 482.
[32] Order 8 of the Admiralty Jurisdiction Procedure Rules, 2023

5. Arrest of Ships in Some other Jurisdictions

United Kingdom Jurisdiction

The legal framework for the arrest of ships in the United Kingdom is governed primarily by the sections 20 & 21.[33] These statutes establish the Admiralty jurisdiction of the High Court and provide the substantive rules for arresting a vessel to secure a maritime claim.

The Two-Pronged Legal Test: To lawfully arrest a ship in the UK, a claimant must satisfy the court with two key criteria:
The Claim Must be a 'Maritime Claim': The claim must fall into one of the recognized categories outlined in Section 20(2).[34] These include claims regarding loss of life, damage done by a ship, salvage, goods supplied to the ship, and master/crew wages.
Sufficient Connection with the Ship: Section 21[35]specifies which ship can be arrested in connection with the claim. Claimants can generally proceed via an *action in rem* against the specific ship involved in the claim or a sister ship (a vessel owned by the exact same beneficial owner as the ship related to the claim).

Required Documentation and Procedure: To initiate an arrest, the claimant must file an application in the Admiralty Court. The key steps include:
Claim Form: Filing an Admiralty claim form (Part 61) detailing the nature of the claim and the amount sought.
Affidavit to Lead Arrest: A sworn statement establishing the facts of the claim, identifying the ship, and verifying that the required amount remains unpaid.
Caveat Search: Running a search to ensure there are no existing caveats against arrest that could stall the process.

Execution: Once the court grants the arrest warrant, the Admiralty Marshal (or an authorized bailiff) executes the warrant. This is typically done by affixing the arrest warrant to the ship's mast or superstructure and serving a copy upon the master of the vessel, officially detaining the ship.

Release and Security: A ship will generally remain under arrest until the shipowners provide adequate security to cover the claim, including interest and legal costs. This is usually achieved by providing a bank guarantee, an undertaking from a Protection and Indemnity (P&I) Club, or paying the demanded sum into court.

Wrongful Arrest: Unlike many other jurisdictions, English courts do not mandate that claimants post countersecurity (a financial deposit) to cover potential damages for wrongful arrest. However, the English court may still order damages if the claimant acted in bad faith, with gross negligence, or with malice in securing the arrest. An application on paper is made to the Admiralty Marshal. Evidence must be filed showing that the claim comes within the Court's Admiralty Jurisdiction. There is a sliding scale of fees; the fee on issuing proceedings for amounts up to £200,000 is 5% (i.e. a maximum of £10,000 court fee) plus a further £225 for issuing the arrest warrant. In addition, the applicant must give an undertaking to pay the Admiralty Marshal's costs which should be recovered as they are a first charge on the proceeds of the vessel ranking before maritime liens.[36]

South Africa Jurisdiction

Ship arrests in South Africa are governed by the Admiralty Jurisdiction Regulation Act 105 of 1983 (AJRA), read alongside the Admiralty Rules. South Africa operates independently of international arrest conventions, utilizing highly robust domestic legislation that allows for both *in rem* arrests (against the ship itself) and *associated ship* arrests.

Applicable Statutes and Rules: The primary statutory instrument. Section 3[37] outlines how and when a vessel may be arrested, while Section 1[38] provides a comprehensive definition of the 'maritime claims' that justify an arrest. The Admiralty Rules govern the procedural mechanisms for securing and executing the warrant of arrest.

Types of Arrests Permitted

In Rem Arrest: Target is the ship itself or its associated property (such as cargo, bunkers, or freight). The claim must relate directly to that specific ship, and it requires that the claimant holds a maritime lien or the owner is personally liable in *in personam* proceedings.
Associated Ship Arrest: A unique and powerful feature of South African maritime law. Section 3(6) and Section 3(7)[39] allow a claimant to arrest a ship that is 'associated' with the guilty ship. This applies if the owner of the guilty ship controlled it at the time the debt arose and controlled the associated ship at the time the action commenced.

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[33] Senior Courts Act 1981 and the Civil Procedure Rules (CPR) Part 61
[34] Senior Courts Act 1981
[35] Ibid
[36] Lewis Moora, *Ship Arrest in England & Wales* (Questions 1 to 9) Swinnerton Moore LLP, 2025
[37] The Admiralty Jurisdiction Regulation Act (AJRA) 105 of 1983
[38] ibid
[39] The Admiralty Jurisdiction Regulation Act (AJRA) 105 of 1983

6. Conclusion and Recommendations

From the foregoing, Nigerian maritime is well regulated by modern laws which tend to make the sector secured for investors and causing a seamless environment for investors to thrive. That the Federal Government interventions to open the maritime sector is yielding expected results as genuine investors has found need to invest in Nigerian Maritime sector. However, there's more need to boost investors' confidence by reducing the overtaxing of investors who come to invest in Nigeria. There should be reliable insurance system to enhance investors' confidence as to the security of their investment in the maritime sector. Government should reduce interference in the private sector business space to boost investors' confidence. There should be adequate financial security to protect Foreign Direct Investment (FDI), when investors are sure of the security of their investment, they spread more investment. There should be more stringent requirements before a court can grant the order for the arrest of a vessel, as it should not be abused by litigants.