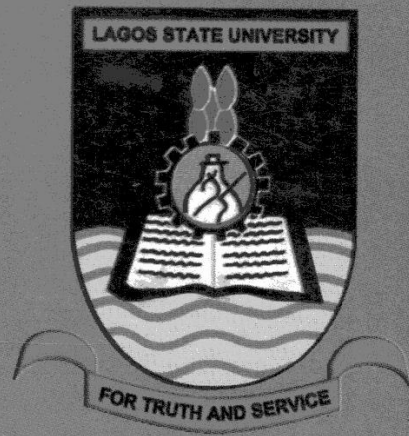


LASU Law Journal



Vol. VII, No. 1, May/June 2010

LASU LJ 1-213 ISSN 1115837

Articles

-
- i. **The Nigerian Girl Child and the Challenges of Sexual Abuses**
Olugbemi Fatula
-
- ii. **The Global Struggle for Legal Recognition of Unconventional Sexual Orientation: Any Hope for Nigeria's Lesbians, Gay, Bisexuals and Transgenders?**
Funminiye Adeleke
-
- iii. **A Jurisprudential Review of Death Penalty under Regional and International Human Rights Instruments: Implications for Nigeria**
Ikenga Oraegbunam
-
- iv. **Overview of the Arrest and Release of Ships under Nigerian Laws: Practices and Procedures**
Bose Lawal
-
- v. **Tax Clearance Certificates and Eligibility for Election into Public Office: Discordant Views of Courts and INEC**
Kareem Adedokun
-
- vi. **Mainstreaming Principles of Islamic Banking into the Nigerian Banking System**
Muhammed Akanbi
-
- vii. **An Overview of Tax Appeal Tribunal in Nigeria**
Hafsat Sa'adu
-
- viii. **Modern Manifestation of Techniques and Instruments of Torture**
Kolawole Odeku
-
- ix. **Judicial Interpretation of Constitutional Right to Personal Liberty and Imperativeness for the Establishment of Constitutional Courts**
Lateef Ogboye

LASU Law Journal

EDITORIAL BOARD

Prof. Olusegun Yerokun	<i>Chairman</i>
Prof. Olanrewaju Fagbohun	Institute of Advanced Legal Studies
Prof. Felicia Monye	University of Nigeria, Nsukka
Prof. Iysa Ade Bello	Lagos State University, Ojo
Prof. Boyce Wanda	Nelson Mandela School of Law, South Africa
Prof. Kolawole Odeku	University of Limpopo, South Africa
Dr. Rufus Olaoluwa	Lagos State University

EDITORIAL COMMITTEE

<i>Editor-in-Chief</i>	Prof. Olusegun Yerokun
<i>General Editor</i>	Funminiyi Abiodun Adeleke, Ph.D.
<i>Deputy Editor-in-Chief</i>	Joel Olasunkanmi Anwo, Ph.D.

© Faculty of Law, LASU

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the law relating to Copyright. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.

The views expressed in this journal are those of the contributors and not necessarily those of the Faculty of Law of the Lagos State University.

Contents

i.	The Nigerian Girl Child and the Challenges of Sexual Abuses —Dr. Olugbemi Fatula	5
ii.	The Global Struggle for Legal Recognition of Unconventional Sexual Orientation: Any Hope for Nigeria's Lesbians, Gay, Bisexuals and Transgenders?—Dr. Funminiye Adeleke	20
iii.	A Jurisprudential Review of Death Penalty under Regional and International Human Rights Instruments: Implications for Nigeria —Dr. Ikenga Oraegbunam	38
iv.	Overview of the Arrest and Release of Ships under Nigerian Laws: Practices and Procedures—Bose Lawal	58
v.	Tax Clearance Certificates and Eligibility for Election into Public Office: Discordant Views of Courts and INEC—Dr. Kareem Adedokun	74
vi.	Mainstreaming Principles of Islamic Banking into the Nigerian Banking System—Dr. Muhammed Akanbi	79
vii.	An Overview of Tax Appeal Tribunal in Nigeria—Hafsatu Sa'adu	108
viii.	Modern Manifestation of Techniques and Instruments of Torture —Dr. Kolawole Odeku	116
ix.	Judicial Interpretation of Constitutional Right to Personal Liberty and Imperativeness for the Establishment of Constitutional Courts —Dr. Lateef Ogboye	130

**Editorial services, page composition and book design,
and print production by**



FREE ENTERPRISE PUBLISHERS IBADAN

IV.

Overview of the Arrest and Release of Ships under Nigerian Laws: Practices and Procedures

Bose Lawal¹

Introduction

SHIPPING IS OF ENORMOUS IMPORTANCE TO the economic wellbeing of Nigeria. This makes ship an important object in the sustenance of Nigeria's economy. The definition section of the Admiralty Jurisdiction Procedure Rules 1993 defines ship to include any description of vessels used in navigation.² A ship can also be defined as a vessel of any kind used or constructed for use in navigation by water, in whichever way it is propelled or moved. Thus, ship includes a barge, lighter, drilling rig, hovercraft, an offshore industry mobile unit, and a vessel that has sunk or is stranded and the remains of such vessel. It however excludes a vessel under construction that has not been launched.³

As a human being has certain constitutional rights amongst which is the freedom of movement, with limitation attaching thereto,⁴ so also does international communities recognize the freedom of a ship to berth and conduct its commercial activities. However, the freedom attaching to a ship can sometimes be restrained. The restraint may arise as a result of any claim or dispute on the ship which results into its being detained or arrested. Similarly, the Nigerian Admiralty Court recognizes situations whereby claims are presented by a receiver against a vessel without the owner, charterer or other person

¹ Bose Lawal lectures in the Department of Business Law, Lagos State University.

² Order 1, Rule 3 of the Admiralty Jurisdiction Procedure Rules, 1993, now Admiralty Jurisdiction Procedure Rules, Cap. A5, *Laws of the Federation of Nigeria*, 2004.

³ Section 25(1) (a)–(d) of the Admiralty Jurisdiction Act, Cap. A5, *Laws of the Federation of Nigeria*, 2004. See also, Section 26(1) of the Admiralty Jurisdiction Decree 59 of 1991, now Admiralty Jurisdiction Act, Cap A5.

⁴ See Section 41(1) of the 1999 Constitution, which confers right to freedom of movement on every citizen, and Section 41(2), which imposes restrictions on the right.

having a relationship with the vessel being joined as party to the proceedings.⁵ This paper therefore seeks to analyze the position of Nigerian laws regarding the arrest and release of a ship. What procedure should be taken when there is any claim or dispute over a particular ship? Who has *locus standi* to arrest such action? Which court has jurisdiction to entertain the action, and what remedy does an aggrieved party have? In addition, this paper looks at the provisions of the Nigerian laws regarding the circumstances under which an arrested vessel may be released and the proper reparation where there exists wrongful arrest of a ship.

This paper consists of an introduction, the legal framework guiding the practices and procedures for the arrest of ships in Nigeria, the types of action under Nigerian admiralty laws and claims that may fall within the Laws. The paper also specifies the relevant party whose ship may be arrested, caveat against arrest of ship and security for costs. The paper further analyzes the procedures and conditions under which an arrested ship may be released as well as proper reparation where there is wrongful arrest of ship. This paper ends with conclusion to the effect that there should be concise, unambiguous, and non-conflicting statutory provisions and guidelines regulating the arrest of ships.

The Legal Framework for Arrest of a Ship

Internationally, the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952⁶ governs the arrest of ships, while the International Convention on Maritime Liens and Mortgages, 1993 governs maritime liens. Although, Nigeria is a signatory to both conventions, however, it has not domesticated the provisions of either of the conventions. At the national level, initially, there was no comprehensive law setting out the jurisdiction of Nigerian courts in admiralty matters. There were also disputes between the Federal High Court and the state High Court with respect to which of the two courts possesses jurisdiction on maritime claims. The *status quo* remained until the emergence of the Admiralty Jurisdiction Decree,⁷ in 1991 which appears to have laid the matter to rest. Currently, the legal regime for the arrest of ships in Nigeria are the Federal High Court Rules, the Constitution of the Federal Republic of Nigeria 1999, the Admiralty Jurisdiction Act, 2004, and the Admiralty Jurisdiction Procedure Rules, 2004. Both the Admiralty Act and the Admiralty Rules make provisions for the proprietary maritime claims and general maritime claims. Also, the former sets out, among other things, the circumstances in which an action *in rem*⁸ can be validly maintained and also defines the circumstances where any admiralty action⁹ can be validly brought in Nigeria.¹⁰ The exclusive jurisdiction in admiralty causes and matters is conferred on the Federal High Court, as the 1999 Constitution provides that—

5 In particular, with respect to admiralty actions *in personam*.

6 The Convention is popularly known as the Brussels Convention on the Arrest of Sea-Going Ships 1952.

7 Admiralty Jurisdiction Decree, *supra*, note 2.

8 This is an action in which the plaintiff is entitled to an arrest of a ship or cargo. See Chudi Nelson Ojukwu, "Arrest and Detention of Ships and Other Property in Nigeria" (Summer 2004) 28 Tul. Mar. LJ 249.

9 Whether *in rem* or *in personam*.

10 These laws came into being as a result of the steps taken by the Babangida military government with the promulgation of Admiralty Jurisdiction Decree 59 of 1991 and Federal High Court (Amendment)

Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction, *to the exclusion of any other court*¹¹ in civil causes and matters . . .

- (g) any admiralty jurisdiction, including shipping and navigation on the River Niger or river Benue and their effluents and on such other inland water way ... and carriage by sea.¹²

Buttressing this provision, the Admiralty Act provides that, “notwithstanding the provisions of any other enactment or law, the court shall, as from the commencement of this Act, exercise exclusive jurisdiction in admiralty causes or matters, whether civil or criminal.”¹³ The interpretation section of the Act¹⁴ defines court to mean “the Federal High Court.”¹⁵ In Nigeria, there is only one federal high court,¹⁶ with various judicial divisions for convenience. Admiralty proceedings may however be filed in any of the judicial division of the court wherein the ship is located. Defining the extent of the admiralty jurisdiction of the Federal High Court, the Admiralty Jurisdiction Act stipulates that “the admiralty jurisdiction of the Federal High Court ... includes ... jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim specified in section 2 of this Act.”¹⁷

All the above provisions confirm the exclusive jurisdiction of the Federal High Court on admiralty matters in which the arrest of ships is one. Having known the statutes regulating the arrest of ships and the court having exclusive jurisdiction to adjudicate on the matter, what then are the steps to be taken in effecting such arrest? Also, the conditions to fulfill before a ship could be justifiably arrested are subject of discussion in the following paragraphs.

Procedures for Arrest of Ship in Nigeria

There are no express constitutional or statutory provisions in Nigeria defining the term “arrest.” However, the 1952 Brussels Convention on the Arrest of Sea-Going Ships, often resorted to by both the English and Nigerian courts,¹⁸ defines “arrest” as “the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.”¹⁹ This definition is however narrower because under Nigerian law ships can be arrested in satisfaction of judgment debt. Commenting on the limitation of the definition, Sanyaolu, J., in the *Al-Ak-*

11

Emphasis mine.

12

Section 251(1)(g) of the 1999 Constitution. See also, section 42 of the Coastal and Inland Shipping (Cabotage) Act 2003.

13

Section 19 of the Admiralty Jurisdiction Act.

14

Section 25 of the Admiralty Jurisdiction Act.

15

Section 25(1) of the Admiralty Jurisdiction Act.

16

See section 249(1) of the 1999 Constitution.

17

Section 1(1) (a) of the Admiralty Jurisdiction Act.

18

See *M/V Da Qing Shan & 3 Ors v. Pan Asiatic Commodities Ltd.* (1991) 8 NWLR, 354 at 367.

19

Article 1(2) of the 1952 Brussels Convention on the Arrest of Sea-Going Ships.

bar case,²⁰ held that the definition of arrest in Article 1 (2) of the Brussels Convention is limited only to prejudgment arrest. Under Nigerian law, any ship may be arrested, but proceedings *in rem* against government ships or property are disallowed and the arrest, detention or sale of government ship or property are also exempted from arrest.²¹ However, government ship is defined to exclude ships belonging to a corporation that is an agency of the government.²²

Once an applicant has ascertained that his claim falls within the meaning of a maritime claim as defined by the Act,²³ he may commence the proceedings in the Federal High Court in the judicial division covering the port or area where the ship is located by the issue of writ of summons which must be endorsed suitably to reflect the appropriate claim made.²⁴ The writ must specify a relevant person in relation to the maritime claim concerned as a defendant, by reference to ownership or other relationship to the ship.²⁵ The writ amongst other documents filed in the action *in rem* shall contain the heading "Admiralty Action in Rem."²⁶ Once the writ is issued, any subsequent change in the ownership of the ship will not affect the plaintiff's statutory right of action. However, the jurisdiction of the court is invoked when the writ is served on the *res* and warrant of arrest executed, and not when the writ is issued.²⁷

Under Nigerian admiralty law, there are two types of actions available—the action *in personam* and the action *in rem*.²⁸ In *Anchor Ltd. v. The Owners of the Ship Eleni*,²⁹ the Supreme Court remarked that an action *in rem* is one in which the subject matter is itself sought to be affected. In such actions, the claimant is enabled to arrest the ship and to have it detained until the claim has been adjudicated upon, or until security by bail has been granted for the amount, or for the value of the property proceeded against, where the value is less than the amount of the claim. Whilst all cases within the admiralty jurisdiction may be brought *in personam*, not all cases within that jurisdiction can be brought *in rem*. An arrest in admiralty practice is peculiar to the vessel and thus differentiated from the owners of the vessel. Remarking on this, Fletcher Moulton, L.J., said that an action *in rem* is—

an action in which the owners may take part if they think proper in the defense of their property, but whether they will do so or not is a matter for them to decide, and if they do not decide to make themselves parties to the suit in order to defend their property, no personal liability can be established against them in that action.³⁰

²⁰ (1990–1993) 4 NSC, 251 at 255.

²¹ Section 24(2) of the Admiralty Jurisdiction Act.

²² *Ibid.*, section 24(4).

²³ See section 2 of the Admiralty Jurisdiction Act which defines what maritime claims are.

²⁴ Order II, Rule 2(1) of the Admiralty Rules.

²⁵ *Ibid.*, Order IV, Rules 1 & 2.

²⁶ *Ibid.*, Order II Rule 3.

²⁷ See *The Banco* (1971) Probate 137 at 153.

²⁸ The former is an action against persons who are usually the owners of the ship that gave rise to the cause of action, while the latter is an action against a *res* or property, which is usually the vessel or ship itself but may also be the freight or cargo or proceeds of sale of a vessel.

²⁹ (1956) 1 NSC, 16.

³⁰ *The Burns* (1907) Probate 137 at 149.

Although the effect of an action *in rem* is to bring the owner of the *res* before the court to defend his property, thus imploring him to answer to the judgment of the court to the extent of his interest in the property,³¹ this does not in itself change the nature of the proceedings so as to be, in form, an action against the *res*; and in substance, a proceeding against the owners.³²

Prior to the coming into force of Admiralty Jurisdiction Procedure Rules, applications for the arrest of ship in Nigeria were brought mainly under the provisions of Order XXI, Rule 1 and Order XLVII, Rule 2 of the Federal High Court (Civil Procedure) Rules 1976, wherein the court exercised discretion on whether or not to order the arrest of a ship depending on the peculiar facts and circumstances of each case.³³ The provisions of the Admiralty Rules are however elaborate on how a ship may be arrested. The Rules provide—

A party to a proceeding commenced as an action *in rem* may by motion *ex-parte* apply for an arrest warrant in respect of the ship.... The application shall be supported by an affidavit of the applicant or of a solicitor or agent of the applicant, which shall disclose a strong *prima facie* case.³⁴

From the provisions of the above rule, it is noted that for an applicant to successfully be issued an arrest warrant for action that was commenced *in rem* in the Federal High Court, he must satisfy certain criteria. First, he must establish to the satisfaction of the court that his action was commenced *in rem*. Second, he must apply by motion *ex-parte*. Third, his application must be supported by an affidavit of either himself (the applicant), his solicitor or agent, and fourth, his affidavit must disclose a strong *prima facie* case. For an affidavit to reveal a strong *prima facie* case, the applicant's affidavit must, among other things, state the nature of the claim, that the ship is within the jurisdiction of the court, and that the ship may leave the jurisdiction of the court at any time, thereby depriving the applicant of his prejudgment security. In *James Cook Shipping Company Ltd. v. Owners of the Vessel M/V Mulhem and Anor.*, Anyaegbunam, C.J., dismissing an application for the arrest of a ship, observed—

No court would order the arrest of any ship as a matter of course. A case, a *prima facie* case, for the arrest must be made out by the party applying. I must state that I have never come across any action more ill-received and carelessly formulated. In the result, I would refuse it.³⁵

The warrant of arrest, although may be applied for after the issuance of a writ of summons, but in practice it is simultaneously applied for with the writ. In *M/V Da Qing*

31 Madarikan, J.S.C (as he then was), in Chief Registrar, High Court of Lagos State and *Anor. v. Amos Navigation Ltd. (Owners of Vessel Bellatrix 1)* 1976 1 ANLR, 11, Par. 10 at p. 20.

32 Abiola, O. Falase Aluko, "The arrest of the MV Abuja—Issues Arising," (1998), *Modern Practice Journal of Finance and Investment Law*, 2(2): 18 at 21.

33 The exercise of the court's discretion is preceded by an application by the plaintiff supported by an affidavit of facts.

34 Order VII, Rules 1(1) & (2) of the Admiralty Jurisdiction Procedure Rules.

35 (1986) *FHCLR*, 43 at 48.

Shan v. Pan Asiatic Commodities Ltd.,³⁶ the Court of Appeal stated that once an action *in rem* is available, a plaintiff who has duly taken steps to procure a writ or a defendant who counterclaims may, even before service of the writ, apply for a warrant of arrest of the ship against which the action is brought or against the sister-ship, as the case may be.³⁷ The main objective of a pretrial arrest of a ship is for the ship to serve as a security for judgment and costs, which the plaintiff hopes to obtain in the substantive suit of which the ship or sister ship is the subject matter. Confirming this fact is the *obiter dictum* of Mohammed, J.C.A., in the *M/V S. Araz & Anor. v. N.V. Scheep & Anor.*³⁸ He said—

As could be seen from the particulars of claim and the affidavit in support of the *ex-parte* motion to arrest the ship, the sole purpose for instituting this action is to obtain security from the appellants to ensure payment of any arbitration award in favor of the respondents. Also, the reason for the arrest of the ship was to ensure that the appellants provide security in the form acceptable by the respondents.³⁹

The execution of an arrest warrant is only by the Admiralty Marshal who must, subject to the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules, have custody of the ship.⁴⁰ In discharging his duties, he must not be interfered with. In *Universal Fishing Co. Ltd. v. The Owners of the Ship Polar*,⁴¹ the court held, *inter alia*, that interference with the officer while discharging his duties amounts to contempt of court and it is punishable. An arrest warrant shall not be executed on a ship unless the writ in the proceeding concerned has previously been served or is to be served concurrently with the execution of the warrant, on the ship.⁴² To effect service on a ship, a sealed copy of the arrest warrant, the writ of summons and the statement of claim must be securely affixed on the mast of the ship or some other conspicuous part of the ship, or by delivering same to the master of the ship⁴³ on any day of the week.⁴⁴ Substituted service of the writ or warrant that is to be served on a ship is however not allowed.⁴⁵

The socioeconomy of ship owners are taken into circumstances under Nigeria's admiralty law. This is because, where a ship is arrested, none of the parties is under duty to pay port charges or dues. The statutory protection is found in Order VIII, Rule 2(1), which provides that "...whilst a ship is under arrest, no port or other dues shall be payable by an interested person to any person, and no application for the same shall be

36 Supra, note 17.

37 *Ibid.*, at 366.

38 (1996) 5 *NWLR* (pt. 447) 204 (C.A.).

39 *Ibid.*, at 224, para. F.

40 Order VII, Rules 4(1) & Order VIII, Rule 4(1) of the Admiralty Rules.

41 FRC/PH/15/77 unreported decision of the Federal High Court, Port Harcourt, dated 14/3/78.

42 See, Order VII, Rules (4) (2) of the Admiralty Rules.

43 Order V, Rule 1.

44 Order V, Rule 9.

45 Order V, Rule 8.

entertained by the court.”⁴⁶ Despite this provision, however, section 56 of the Nigerian Ports Decree No. 38 of 1999⁴⁷ provides that:

- ... the Authority shall levy such harbour dues and rates it may deem fit on every ship—
- (a) entering or leaving a port or the approach to a port in respect of the passengers, animals, or cargo carried on the ship;

(b) arrested on any berth or place within the port....

Section 56 of the Nigerian Ports Decree is therefore a contravention on the laws regulating admiralty matters.⁴⁸ Although, the court in *NPA v. M/V S. Araz and Anor.*⁴⁹ held that a vessel under arrest is not liable to pay port charges or dues and that before the Nigerian Ports Authority (NPA) can exercise the power conferred under the provision, the ship must either be entering a port or approaching a port, not that one arrested. But with the provisions of section 56(1)(b), it is definite that arrested ships are involved. It is the recommendation of this writer that there must be a concise, uniform, non-conflicting and unambiguous statutory provisions regarding whether arrested ships shall be liable to harbor dues and rates or not.

To successfully effect an arrest, the ship to be served with court processes for purposes of being arrested must be the erring ship or her sister ship. The most disturbing issue is how do we determine a sister ship or which ship to arrest? Determining the ship to be arrested is very important in order that an arrestor will not be liable for wrongful or needless arrest of ship. This is considered next.

The Relevant Party

An arrest of a ship is only legitimate where the person liable for action leading to the arrest of the ship is at the same time the beneficial owner, demise charterer or in possession or control of the erring vessel or the sister ship. Thus, where a sister ship is found within Nigerian territorial waters, it may be arrested in place of the erring ship on the condition that the “relevant person” is also the beneficial owner in respect of all shares in the sister ship.⁵⁰ But, as a result of the fact that the arrest of sister ship forestalls ship owners or erring ships from escaping the long arms of the law, in recent times, ship owners register their ships in the name of different companies, thus making it impossible for a sister ship owned by the same person or company to be arrested since it is owned by different corporate entity. This tactic is employed to circumvent the concept of sister ship.

Under the South African Admiralty Jurisdiction Regulation Act of 1983,⁵¹ the veil of incorporation is pierced through to discover the shareholders in a company owning the sister ship where attempt is made by the defendants to circumvent the concept of

46

Order VII, Rule 2(1).

47

Now Section 56, Nigerian Ports Authority Act, Cap. N126, LFN 2004.

48

The Nigerian Ports Authority Act contravenes both the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules.

49

(1996) NSC 138.

50

Note that a writ may identify more than one ship as a sister ship. See also Order IV, Rule 3of the Admiralty Jurisdiction Procedure Rules.

51

The South African Admiralty Jurisdiction Regulation Act 1983.

sister ship by evading the responsibility of holding down the sister ship where the offending ship is nowhere to be found.⁵² This writer humbly suggests that Nigeria should borrow leaf from the South African admiralty law by enacting similar provision that will aid the Federal High Court to pierce through the veil of incorporation to discover the shareholders of the company owning the erring ship and the sister ship.

A person seeking to arrest a ship in Nigeria’s territorial waters must satisfy the Federal High Court that his claim qualifies as a “maritime claim.”⁵³ Maritime claim comprises of maritime liens, the proprietary maritime claim, and a general maritime claims which give rise to statutory maritime liens. They are briefly discussed as follows:

Maritime liens: These are claims that are intrinsic to the vessel and follow it about everywhere during its lifetime, irrespective of sale and new ownership. It is a claim or privilege on maritime *res* in respect of service done to it or injury caused by it. A maritime lien travels with the *res* into whosoever’s possession it may come, and even in cases where the *res* may have been purchased without notice of the lien.⁵⁴ Thomas Gilbert Carver notes that “a maritime lien attaches to the property from the time the claim first arises, and clings to it without regard to the persons who may have possession and notwithstanding any transfers of the general rights in the property.”⁵⁵ Thus, maritime liens are claims relating to salvage, damage done by a ship, wages of the master or a member of a crew, or master’s disbursements.⁵⁶

Proprietary Claims: These include claims relating to the possession, or a title to or ownership of a ship or a share in it or mortgage of its freight,⁵⁷ a claim between co-owners of a ship relating to the possession, ownership, operation or earning of a ship,⁵⁸ a claim for the satisfaction or enforcement of a judgment given by any court against a ship or other property in an admiralty proceeding *in rem*,⁵⁹ and a claim for interest in respect of the above-mentioned claims.⁶⁰

General Maritime Claims or Statutory Liens: These may be brought as actions *in rem* against a ship or other property where the conditions stated in section 5(4) of the Admiralty Jurisdiction Act are fulfilled, namely:

- i. That the claim must have arisen in respect of ship;
- ii. That there is a valid claim *in personam* against the owner or charterer in possession of the ship when the cause of action arose;
- iii. The person liable *in personam* is at the time the action is brought the beneficial owner of that ship as regards all the shares in it, or the charterer of the ship under a charter by demise⁶¹; or

52 See also *Belfry Marine Ltd v. Palm Base Maritime* SDN BHD 1999(3) SA, 1083 (SCA).
53 See, generally, Section 2 of the Admiralty Jurisdiction Act.
54 Abiola, O. Falase Aluko, 31 at 24.
55 Thomas Gilbert Carver, *Carriage of Goods by Sea* (12th ed.) Vol. 2, par. 1383 at 1172.
56 Section 2 (3) (a), (g), (p) & (r) of the Admiralty Jurisdiction Act.
57 See Section 2 (2) (a) (i) to (iv).
58 Section 2(2) (b).
59 Section 2 (2) (c).
60 Section 2(2) (d).
61 *MV Araz v. LPG Shipping SA* (1996) 6 NWLR (pt. 457) 720 (C.A.).

- iv. A sister ship which is owned by the person liable *in personam* as regards all the shares therein.⁶²

The person who fits the above stated conditions is known as the “relevant person” and it is this relevant person whose vessel is liable to be arrested. Failure to comply with the statutory provisions regarding the arrest of ship belonging to the relevant person, will vitiate an action, thereby resulting in the discharge of the ship. So, a relevant person is “a person who would be liable in claim in a processing commenced in an action *in personam*.”⁶³ As noted above, a beneficial owner will also qualify as a relevant person. Thus, in *Sugar Exporters London Ltd. & Ors. v M/V Fairwind & Ors.*,⁶⁴ a beneficial owner was held to be a legal owner or an equitable owner or the person who has full lawful possession and control and has all the benefits and use of the ship which a legal or equitable owner would normally have.

Confirming the significance of a beneficial owner, in *M.V. Araz v. LPG Shipping SA*,⁶⁵ an arrest of a ship was set aside and the ship became released because the person who would have been liable in an action *in personam* was not the beneficial owner of the vessel. Interpreting the provisions of the law in *National Oil & Chemical & Marketing Plc. V. MX Dev. Ltd.*,⁶⁶ the Supreme Court said that the plaintiff must establish at the institution of the action that the defendants in the suit must either be named as the beneficial owner of the vessel or that he is a charterer of the ship under charter by demise. The court further held:

A plaintiff who wishes to sue on a bill of lading has the heavy onus of finding out the proper party to be sued, namely, the owner of the vessel or the demise charter. It seems to me therefore that the onus is on the plaintiff/respondent to prove that they have complied with the provisions of section 5(4) of the Admiralty Jurisdiction Decree 1991 by bringing the action against the owner or the charterer of the ship by demise. This, in my view, they have failed to do. I am of the view that exhibits Vol. 1–Vol. 6 have not assisted the court on the issue. As the plaintiff/respondents have negligently failed to search for the proper party to be sued, namely, the owners of M/T Phoenix. I therefore have no difficulty in granting the release of the vessel.⁶⁷

With the above decision, the apex court granted the release of the ship. Also, in *Ibrahim v. Habu*,⁶⁸ the court held that “the effect of noncompliance, with the absence of any special leave given by the court, is that any proceedings, hearing and final determination in such circumstances will be vitiated by the noncompliance.”

Similarly in 1995, a decision was made in *M/V S. Araz v. Scheep*,⁶⁹ wherein

62 The relevant time for determining the ownership of sister ship is when the action is brought.

63 Section 25 of the Admiralty Jurisdiction Act.

64 Vol. 7, NSC, 330. See also *The Andrea Ursula* [1971] 1 All ER, 821.

65 Supra, note 60.

66 (1990–1993) 4 NSC, 260 at 263.

67 *Ibid.*

68 [1993] 5 NWLR (pt. 295) 570. See also *Oyebade v. Ajayi* (1993) 1 NWLR (pt. 269) 313 at 331–332.

69 Supranote 37.

Nwaifo, J.C.A., said that “I am of the view that the court will not have jurisdiction to arrest a ship when no proper action *in rem* is before it.” Thus, it is firmly rooted that failure to sue the relevant person would be fatal to the arrest of ship as it affects the jurisdiction of the court. Where this occurs, the court can do nothing but to order the release of the ship where it has been arrested.

In some instances, relevant person being the defendant whose ship is to be arrested, or any interested party, may want to prevent the arrest of a ship. This act of the defendant is termed “caveat against arrest.” In doing this, the question arises as to the steps he must take to prevent the arrest and what is the provision of the law in this respect? This is considered next.

Caveat Against Arrest and Security for Costs

Where a person wishes to prevent the arrest of a ship and undertakes to enter an appearance in any action which may be instituted against a ship, he is, after the commencement of the action, required to file a caveat. The caveat may be in form of bail bond or some forms of security,⁷⁰ and may be filed in the registry of the Federal High Court.⁷¹ In the Admiralty registry, there is a caveat book in which all caveats against arrest of ships are registered. Where a caveat is entered in respect of a particular ship selected for arrest, this does not however prevent arrest. The plaintiff can proceed but does so at his peril. According to Mike Igbokwe,⁷² it is pertinent to search the caveat register to see whether there is a caveat against arrest registered in respect of a ship before applying for a warrant of arrest. I humbly share the same view with the learned writer as the conduct of caveat search by legal practitioners will go a long way to avoid the rigorous proof of “good and sufficient reason”⁷³ for arresting in the face of the caveat.

In similar manner, there is statutory protection given to ship owners in the form of counter-security to arrest a ship. Thus, an applicant for an arrest order may be required to give security for costs on the application of an interested person where the claim is in excess of one million naira or its foreign currency equivalent or where the plaintiff has no assets in Nigeria.⁷⁴ The form of security required is usually a deposit of the sum specified by the court, or a guarantee supplied by a protection and indemnity (P&I) club, an insurance company of repute or a bank.⁷⁵ In *M/V S. Araz v. LPG Shipping SA*,⁷⁶ the claim of the plaintiff was in excess of one million naira and there was un-

70 Order 1, Rule 1 of the Admiralty Jurisdiction Procedure Rules.

71 *Ibid.*, Order VI Rule 1. A bail bond can be provided to the court, although, this is not so commonly done. A bail bond and other types of security differ in that under a bail bond, the court is empowered to “call it in” (see Christopher Hill, *Maritime Law* (Lloyd’s of London Press Ltd. 1989, 3rd ed. at 130)), whereas other types of security are given to the claimant who would eventually be obliged to bring action to enforce the guarantee if the guarantor subsequently displayed reluctance to honor the guarantee in accordance with its terms. A common form of security being used, however, is a written undertaking by a protection and indemnity (P&I) club or a bank or reputable insurance company doing business within Nigeria, to satisfy any judgment for the amount specified in the caveat, (see, generally, Order VI of the Admiralty Jurisdiction Procedure Rules. Also, note that an undertaking once given cannot be withdrawn.

72 See Mike Igbokwe, “Arrest of ships and release—A Synoptic Guide on Procedure and Laws,” paper presented at the 11th workshop series of Alpha Jurist Continuing Legal Education Department, held June 5–6, 2003, at Port Harcourt, Rivers State, at 9.

73 Igbokwe, *op. cit.*

74 Order 10, Rule 1 of the Admiralty Jurisdiction Procedure Rules.

75 *Ibid.*, Rule 2.

76 *Supra*, note 60.

controverted affidavit evidence that he had no assets in Nigeria, the Court of Appeal reversing the decision of the trial judge, held that the plaintiff should have made security for cost.⁷⁷ It is of interest to note that the essence of this rule is to prevent frivolous application for arrest of ship and to avoid any form of embarrassment. To determine the quantum of security to be provided, the court must have regard to all the circumstances of the case and must not restrict itself to the costs of the legal proceedings.⁷⁸ However, the security must cover the amount of "claim with interest and costs on the basis of ... reasonably arguable best-case."⁷⁹ In determining the plaintiff's arguable best-case, the particulars of the claim must indicate how the figure claimed is arrived at.⁸⁰

Where a ship is arrested, it remains so from the time the warrant of arrest is executed until the ship is lawfully released from arrest or sold by the order of court. However, the Admiralty Rules provide for occasions by which an arrested ship may be released, as discussed below.

Release of Ship from Arrest

There are many ways through which an arrested ship may be released. First, the registrar of the Federal High Court, in the exercise of his discretion upon a written application by a relevant person for such release, may release an arrested ship. The discretion is nevertheless based upon the court's satisfaction that an amount equal to the amount claimed or equal to the value of the ship (whichever is less) has been paid into court, or a bail bond for an amount equal to the amount claimed or equal to the value of the ship (whichever is less) has been filed in the proceeding. When this condition is satisfied, the registrar may release the ship from arrest.⁸¹ However, where the ship has been arrested in a proceeding concerning a claim for salvage, unless the value of the ship under arrest has been agreed between the parties or determined by the court, the registrar must not release the ship. Second, where, in a proceeding, the party on whose application a ship was arrested consents in writing to the release from arrest, the ship will definitely be released. In this instance, there is an obligation on the registrar to release the ship. This is different from the above-mentioned instance where he uses his discretion for the release of the ship.

Third, when a ship has been arrested in a proceeding which has been discontinued or dismissed, the court, in the exercise of its discretion, *may*⁸² release the ship. It is respectfully submitted that legislators should amend this section by removing the "may" clause which results in court's discretion in releasing the ship so that when the suit being the basis of an arrest order is discontinued or dismissed, the arrested ship must be released from arrest. This will prevent unnecessary exercise of discretionary power, and there will be uniformity in the application of the rule.

Fourth, party to a proceeding may apply to the court for the release of a ship which is under arrest in connection with the proceeding. This, however, is not automatic as

⁷⁷ *Ibid.*, at 735, paras. D-F.

⁷⁸ Order X, Rule 3 of the Admiralty Jurisdiction Procedure Rules.

⁷⁹ *MV S. Araz v. LPG Shipping SA*, *supra*, note 60 at 734, paras E-G.

⁸⁰ *Ibid.*

⁸¹ Order IX, Rule 1(1) of the Admiralty Jurisdiction Procedure Rules.

⁸² Emphasis supplied. See Order, IX Rule 1(4).

the court has the discretion to release or not.⁸³ It needs be noted that the Admiralty Rules provide no guide as to what the Admiralty judge must consider in granting a release order.⁸⁴ But in practice, in the course of exercising its discretionary power, the Federal High Court is guided by two fundamental principles. The first of these is the principle based on the value of vessel. This principle was applied in *Delta Steel Company Ltd. v. The Owners of the Ship Aditya Probha and the Master of the Ship Aditya Probha*.⁸⁵ In this case, the court stated that where the court adopts the value of vessel principle in fixing the amount of security for the release of the ship, the court would have to decide which of the valuation report to accept, whether that of the ship-owner or the claimant.⁸⁶ The second principle guiding the discretion of the Federal High Court is the reasonable arguable best-case. In this instance, the court will fix a sum of money that would provide sufficient security to cover the amount of claim and cost. The Court of Appeal adopted this principle in the case of *S. Araz No. 2*.⁸⁷

Nevertheless, when invoking any of the two principles, the circumstances of each case must be put into consideration. Thus, Belgore, C.J. of the Federal High Court (as he then was), said:

Without attempting to lay down any criteria, I am of the view that in the circumstances of this case, particularly considering the claim, the parties and the cause of action, the principle of value of the vessels should be adopted.”⁸⁸

It is this writer's view that the value of the vessel principle should be the only principle guiding the court in the release of ship. This is based on the fact that the *res* is what is to be given security for in exchange for its release and nothing more. Thus, the value of the *res* should be exchanged for it. The claimant can however make his total claim and cost if successful in the substantive action. In addition, adopting the reasonable arguable best-case principle will be tantamount to breaching the provision of the Admiralty Jurisdiction Act, which states that “where in relation to a proceeding commenced under this Act, a party unreasonably and without good cause demands excessive security in relation to the proceeding, the party or person shall be liable in damages....”⁸⁹

Where a ship arrested in a proceeding on a maritime claim has been released, it cannot be re-arrested in the proceeding in relation to the same claim, except where the owner has defaulted in the performance of a guarantee undertaking given to procure the release of the ship from the earlier arrest or where exists some other sufficient reason[s].⁹⁰ It must be noted that it is the duty of the party applying for the release of an arrested ship to pay the fees and expenses already incurred or to be incurred by the Admiralty Marshal or make adequate arrangements with him for the settlement of such

83 Order IX, Rule 2 (1) and (3).

84 Wilson Inam, “Principles Governing Security for Costs in Admiralty Claims” (Feb.–Apr. 1998), *Maritime Newsletter*, Vol. XXI at 17–18.

85 (1990) *FHCLR* 10.

86 *Ibid.*, at 15.

87 Vol. 6 NSC, 149. See also *Funinion Ltd. v. The MV Briz and Anor.* (1997) 10 NWLR (pt. 523) 95 at 104–105.

88 *Delta Steel Company Ltd. v. The Owners of the Ship Aditya Probha and Anor.*, *supra*, note 84.

89 Section 13(1) (a) of the Admiralty Jurisdiction Act.

90 Section 6 (1).

expenses in connection with the arrest, care and custody of the *res* while under arrest and release.

In all the above mentioned circumstances under which a ship can be released, except for the condition under Order IX Rule 1(3) above, where a caveat lies against the release of a ship, such ship shall not be released and a copy of the application shall be served on the caveator.⁹¹ The Admiralty Rules also provide that where a ship or other property is under arrest in a proceeding, a person may file in the court a caveat⁹² against release from arrest of the ship or property in lieu of obtaining further arrest of that ship or property. This rule applies only to another person who may wish or may have wished to have the vessel arrested.

The procedure for the caveat is by filing a precept for caveat against release in the registry whereupon the caveat will be duly registered in the caveat book. This applies whether an action *in rem* has been commenced or not, and allows a claimant to be protected, as no order for release can be made or payment of the proceeds of sale can be effected without notice to the caveator and upon obtaining his consent.⁹³ Where a ship is wrongfully arrested or arrested without any just cause, the owner of such ship will be entitled to damages. The damages he is entitled to vary from statutory provisions to those damages that exist under common law. Nevertheless, he cannot make the claims under the statutory and common law provisions cumulatively. The position regarding the damages for wrongful or needless arrest is considered next.

Proper Reparation for Wrongful and/or Needless Arrest of Ship

The words “wrongful” and “needless” are used interchangeably. However, an arrest is wrong when there is no cause of action *in rem* against the ship *ab initio*.⁹⁴ On the other hand, a needless arrest is that which is not justifiable in the circumstance, even if there is any cause of action.⁹⁵ Where a ship is arrested without justifiable reason, it would be released promptly from custody as the courts frown at such acts. Irritated by this act, Uwaifo, J.C.A., said—

The ship in question was arrested without proper cause. Having been so arrested, it ought, on the strength of the appellant’s application, to have been released unconditionally. I think it cannot be overemphasized that an indiscriminate arrest of a ship causes undue loss to the owners or charterers and the courts would be well advised to take extra care in their jurisdiction in admiralty matters. In the present case, the ship has been under detention for about 18 months. It cannot be disputed that the loss arising from the arrest will be colossal.⁹⁶

91 See Order IX, Rule 1(5) of the Admiralty Rules.

92 See Order 1, Rule 3 for the definitions of caveat and caveator.

93 The proceeds of sale is included because of the provisions of Section 8 of the Admiralty Jurisdiction Act to the effect that, where but for the sale of a ship, a proceeding could have been commenced as an action *in rem* against a ship, the proceeding may be commenced as an action *in rem* against the proceeds of sale that have been paid into a court under the Act.

94 An instance is where the plaintiff arrests an alternative ship which is not of the same beneficial ownership with the ship that caused the damage.

95 For instance, where the plaintiff exaggerates his claim to secure the arrest of a ship.

96 *MV S. Araz v. LPG Shipping SA*, supra, note 60 at 736.

Having noticed the undue losses that the owner[s]/charterer[s] of a vessel will undergo economically and psychologically, with exception to the release of his ship, the question lingering one's mind is, "will this man (the owner or charterer of the ship) be left without any reparation when eventually the arrest is found to be unwarranted?" This is negatively answered because the Nigerian admiralty laws make provisions for damages against an applicant for an arrest order where such arrest is wrongful, and several options of remedies are opened to ship owner for the wrongful arrest of his ship. As provided under Order XI of the Admiralty Jurisdiction Procedure Rules, where an arrest order has been made—

- a) If it afterwards appears to the court that the arrest of any defendant, or any order of attachment, sale or injunction or any warrant to stop the clearance of, or to arrest any ship was applied for on insufficient grounds; or
- b) If the suit in which any such application was made is dismissed or judgment is given against the plaintiff by default or otherwise and it appears to the court that there was no probable ground for instituting such suit, the court may (on application of the defendant made at any time before the expiration of three months from the termination of the suit) award against the plaintiff such amount not exceeding the sum of twenty thousand naira as it may deem a reasonable compensation to the defendant for any loss, injury, or expenses which he may have sustained by reason of such arrest ... provided that the court shall not award a larger amount of compensation under this rule than the court is competent to award in an action for damages.⁹⁷

The summary of the above rule is that where a court holds that there is need- less or wrongful arrest of ship, the ship owner may apply to Federal High Court within three months from the termination of the suit for damages not exceeding N20,000. In- terpreting the three months limitation, in *Compania Navegacion of Financiera Bosnia SA. V. Mercantile Bank of Nigeria Ltd.*,⁹⁸ the then Federal Revenue Court held that the three months limitation under Order 22, Rules 2 of the Federal High Court Rules does not constitute an absolute time bar to claims for compensation under the Rule. Thus, it seems the applicant would have to ask for extension of time if he makes the applica- tion after three months. It is opined by this writer, however, that a statutory provision reflecting the court's ruling in this case is needed to clear any uncertainty regarding the time frame.

Additionally, this Rules limits compensation to twenty thousand naira only. This sum is not a proper compensation for arrest of a ship bearing in mind the economic circumstances of our nation. This provision is restrictive and creates unfair reparation as a result of which this writer humbly recommends that an open provision for liability which will vest in the court a discretionary power to award proper damages be en- trenching in the Rules to cater for inflammatory trend.

Aside from the above provisions, Order XI, Rule 4 also makes provision for an ap-

97 Order XI, Rule 2(1) & (2) of the Admiralty Rules.

98 [1988] 2 NSC 176.

plication for damages for wrongful arrest which may be taken summarily. Thus, where an oral application is made immediately after the judgment of the court is read, the court shall, where possible, proceed to hear arguments on the issue of wrongful arrest and must make an order granting or refusing damages.

Moreover, there is also a claim for damages under the common law which has been given statutory efficiency by the provision of Order XI, Rule 3 to the effect that "the provisions of this Order shall not take away any right of action or other right which would otherwise have existed."⁹⁹ However, the claim for compensation under Order XI and damages under the common law are alternative reliefs and both cannot be claimed cumulatively as the Rules also provide that "no action shall be commenced or continued in respect of the same grounds on which the court may have made an award of compensation."¹⁰⁰

Another statutory compensation for wrongful or needless arrest of ship is contained under the Admiralty Jurisdiction Act¹⁰¹ which makes wider provisions for relief for wrongful arrest. It provides:

1. Where, in relation to a proceeding commenced under this Act—
 - a. a party, unreasonably and without good cause, demands excessive security in relation to the proceeding or obtains the arrest of a ship ... under this Act; or
 - b. a party or other person unreasonably and without good caused fails to give a consent required under this Act for the release from arrest of a ship, the party or person shall be liable in damages to a party to the proceeding, being a party or person who has suffered loss or damage as a direct result.

It further provides that the jurisdiction of the court shall extend to determining summarily, in relation to the proceeding, a claim arising under section 13(1) of the Act.¹⁰² This subsection allows the court to summarily give relief to the defendant in the same proceedings, in which the arrest was made, usually by proceeding to discharge the arrest order. As beautiful as this provision is, the compensating limitation of twenty thousand naira under Order XI, Rule 2 is a setback to the provision, which requires an amendment.¹⁰³

Conclusion

This paper has clearly set out the practices and procedures for the arrest, release and reparation for wrongful arrest of ship. It is noted that the legal framework for the arrest of ship in Nigeria includes the provisions of the Admiralty Jurisdiction Act, the Admiralty Jurisdiction Procedure Rules, and the Constitution of the Federal Republic of Nigeria which confer exclusive admiralty jurisdiction on the Federal High Court. Suggestions

⁹⁹ This other right is the common law remedy of damages for wrongful or needless arrest having its root in the old case of *The Evangelisms* (1858) 12 MOO P.C.

¹⁰⁰ Order XI, Rule 3 of the Admiralty Rules.

¹⁰¹ Section 13(1) of the Admiralty Jurisdiction Act.

¹⁰² *Ibid.*, section 13(2).

¹⁰³ See the criticism against Order XI, Rule 2 of the Admiralty Jurisdiction Procedure Rules, and suggestion to the way forward by the writer above.

have also been made to pave way for a better economic dependence on ship. As already pointed out in the paper, it is highly recommended among others that there should be uniform, clear and unambiguous statutory provisions and guidelines regulating the arrest of ships. An arrest order is not automatic, the ship owners or charterers should not be held to ransom by the plaintiff who assumes that an application for the arrest order guarantees the order itself.

Similarly, Nigerian admiralty laws should contain provisions similar to South African admiralty laws which will enable the Federal High Court to pierce through the veil of incorporation to discover the shareholders of the company owning the erring ship. With this, the act of circumventing the law regarding which sister ship could be arrested in the absence of the erring ship will be put to rest. Moreover, the discretionary power vested in the court should be used cautiously and justifiably with the monetary peg for wrongful arrest of ship legislatively modified. If these recommendations are implemented, it is hopeful that indiscriminate and arbitrary practices in the arrest of ships will be minimized, if not stopped in Nigeria, and the courts will not be overcrowded with frivolous cases. ⚖️