



Arrest of Ship in Nigeria and the new Admiralty Jurisdiction Procedure Rules 2023

Introduction

The practice and procedure for arrest of ship in Nigeria are governed by the Admiralty Jurisdiction Procedure Rules applicable to the Federal High Court. On 18 May 2023, the Chief Judge of the Federal High Court “enacted” the Admiralty Jurisdiction Procedure Rules, 2023 (“the new Rules” or “AJPR 2023”) which effectively repealed the Admiralty Jurisdiction Procedure Rules, 2011. The new Rules introduced significant innovations to ship arrest practice in Nigeria. For one, the Federal High Court can now arrest a ship to aid a foreign court, or an arbitration commenced within or outside Nigeria. The new Rules equally introduced e-filing for applications for warrant of arrest of a ship and provided an enviable timeline for the hearing and determination of such applications. This article seeks to examine these innovations in detail with a view to highlighting the extant position of the law as regards the practice and procedure for arrest of ship in Nigeria.

Key innovations of the new Rules regarding ship arrest

The innovations introduced by the new Rules concern the arrest of ship in cases where the substantive action is pending in a foreign court or before an arbitral tribunal sitting in or outside Nigeria; the filing of an application for a warrant of arrest of a ship; and the hearing of the application. Each of these innovations will be discussed in turn in the next paragraphs.

Arrest of ship in cases pending before an arbitral tribunal or foreign courts

Order 7 rule 8 (1) of the AJPR 2023 introduced a very radical change in the practice and procedure of Admiralty jurisdiction in Nigeria. The new Rules provide that an application for a warrant of arrest of a ship could be made in Nigeria even where the substantive action is pending in a foreign court or in an arbitration proceeding commenced within or outside Nigeria. In other words, the new Rules empower the Federal High Court to simply order an arrest of a ship as security or interim measure for a potential foreign judgment or arbitration award.

Prior to the new Rules, an application for a warrant of arrest of a ship cannot be made in a matter where the substantive action is pending before a foreign court or arbitral tribunal. This was the position of the Nigerian Supreme Court in *NV Scheep v MV "S.Araz"* (2000) 15 NWLR (Pt. 691) 622 where the Supreme Court held that the Federal High Court could not order an arrest of a ship for the purpose of obtaining security in respect of arbitration proceeding in London as the actual matter giving rise to the demand for security was not before the court.

In that case, the Supreme Court however conceded that an order for arrest of a ship as security for an action is within the realm of adjectival law which is governed by the rules of court. The Supreme Court further made the point that a statute could create a cause of action that allows an arrest to be made as security for an action such as section 26 of the U.K. Civil Jurisdiction and Judgments Act, 1982. The court then examined the Admiralty Jurisdiction Act (AJA) of 1991, particularly sections 1, 2, 5 and 10 and held that the admiralty jurisdiction of the Federal High Court could not be invoked for the sole purpose of obtaining security for the satisfaction of a potential award in a foreign arbitration.

The crux of the position before the new Rules is that a substantive action must be filed at the Federal High Court before an order of arrest could be made. In *K. Maertsch v. Bisiwa* (2014) 10 NWLR (Pt. 1416) 479, the Court of Appeal put it this way, ***“in an admiralty action, the jurisdiction of the court to arrest a ship cannot be activated until a writ of summons is issued and a statement of claim is served on the said ship.”*** In other words, a party who has commenced an arbitration in Nigeria or elsewhere could not approach the Federal High Court for a warrant of arrest of a

ship. Similarly, a party who has approached a foreign court to adjudicate a claim could not approach the Federal High Court for a warrant of arrest of a ship in order to obtain security for the claim.

However, the new Rules have now changed the outlook of the law in this respect. For the avoidance of doubt, Order 7 rule 8 (1) of AJPR 2023 provides as follows:

Notwithstanding the provision of Order 3 and Order 7 (1) of these Rules, where an application is for a warrant of arrest of a ship or other property in respect of a claim commenced in a court outside Nigeria or commenced by way of arbitration proceedings within or outside Nigeria, such an application can be made without commencing an action before the Court for the substantive claim.

The above provision derogated from Order 3 rule 1 of the AJPR 2023 which requires that an admiralty action should be commenced by a Writ of Summons or Originating Summons. The provision equally derogated from Order 7 rule 1 which stipulates that an application for a warrant of arrest of a ship is open to a party to a proceeding commenced as an action in rem. In other words, a substantive action needs not be filed at the Federal High Court before the court can order the arrest of a ship.

As earlier noted, the Supreme Court of Nigeria in *NV Scheep v MV "S.Araz"* decided in the year 2000 recognised the fact that the issue of security for an action is within adjectival law which is covered by the rules of court and could equally be provided for in a statute. Twenty-three (23) years after that decision, the new Admiralty Jurisdiction Procedure Rules 2023 has now provided for an application for a warrant of arrest of a ship where the substantive case is pending before a foreign court, or where an arbitration is pending in or outside Nigeria. Particularly in relation to arbitration pending in or outside Nigeria, there is also the new Arbitration and Mediation Act 2023 (AMA 2023) which empowers the Nigeria courts, the Federal High Court included, to grant interim measures where arbitration is pending in Nigeria or elsewhere. There was no such power under the repealed Arbitration and Conciliation Act, Cap A18, LFN 2004. To be sure, section 19 of the AMA 2023 establishes as follows:

“Without prejudice to section 16 of this Act, a Court has the power to issue interim measures of protection for the purpose of, and in relation to arbitration proceedings whose seat is in the Federal Republic of Nigeria or is in another country as it has for the purpose of, and in relation to proceedings in the Courts, and shall exercise the power within 15 days of any application, in accordance with the rules set out in the Third Schedule of this Act”

Section 91 of the AMA 2023 defined “Court” to include the Federal High Court. The implication is that the Federal High Court is empowered by both the AMA 2023 and the AJPR 2023 to order the arrest of a ship as an interim measure or security for a potential arbitration award. The new Rules extend the powers of the court to make such an order for a potential foreign judgment.

An arresting party seeking to take advantage of the new position in Nigeria is required by Order 7 rule 8 (2) of the new Rules to support his application with the original or certified true copy of the processes pending before the foreign court or arbitral tribunal. The arresting party is also required to submit an undertaking to indemnify the ship or the owners for losses suffered if it turns out that the arrest ought not to have been made. Finally, Order 7 rule 8 (5) of the new Rules provides that the original copy of the indemnity must be served on the ship at the time of executing the arrest.

Filing of an application for a warrant of arrest of ship

Another innovation introduced by the new Rules relates to the filing of an application for a warrant of arrest. Specifically, Order 7 rule 1(2) of the new Rules introduced e-filing for application for a warrant of arrest of a ship. That is, a party seeking to arrest a ship in Nigeria is at liberty to file the application for warrant electronically or physically at the Admiralty Registry. Interestingly, the e-filing envisaged by the new Rules is simplified as the new Rules only require the applicant to send the Portable Document Format (PDF) copies of all relevant processes to the email address designated by the Admiralty Marshall. By Order 7 rule 1 (3) of the Rules, the Admiralty Marshall is required to provide email address for receipt of processes relating to arrest of ships in Nigeria. The new Rules further provide that payment for the processes shall be made online and evidence of payment forwarded to the designated email address.

The new Rules are, however, silent on the assessment of the processes sent to the designated email by the Admiralty Registry and the timeline for such assessment. No doubt, the assessment of the processes sent to the designated email must precede any payment by the applicant. It is therefore expected that upon receipt of the processes via email, the Admiralty Registry will assess the processes and reply to the email by providing the amount payable by the applicant. It is only upon receipt of the assessment from the Admiralty Registry that an applicant will make payment online and forward evidence of payment to the designated email.

Prompt assessment of the processes by the Admiralty Registry is key to success of the e-filing regime. Since the assessment of physical processes submitted for filing is usually done in a matter of minutes, it is expected that the Admiralty Registry should provide an assessment of the

processes within 1 or 2 hrs of receipt of the applicant's processes. Where an applicant submits incomplete processes, the Admiralty Registry should be able to respond to the email within 1 hr of receipt thereof.

Finally, the processes to file in order to arrest a ship in Nigeria remain the same. The only innovation is that there is now a prescribed format for the outcome of the search required to be made in the caveat book. In practice and prior to the new Rules, the outcome of the search made in the caveat book is usually written on the applicant's application to conduct search in the caveat book. However, under the new Rules, the Admiralty Registry is to issue a report of the search as in Form 8A which the applicant will file along with other processes. It is not clear from the new Rules whether a search in the caveat book can be undertaken online. It is suggested that the Admiralty Registry should make relevant arrangements to facilitate a party to conduct search in the caveat book online without the need for physical contact with the Admiralty Registry.

The hearing and determination of an application for a warrant of arrest of ship

Prior to the new Rules, no timeline was in place for the hearing of an application for the arrest of ships in Nigeria. However, given the nature of the application which is always *ex parte*, the Federal High Court usually entertains the application expeditiously. This notwithstanding, there were cases of such application being heard after one week of filing. Late hearing of an application for a warrant of arrest of a ship usually gives room for a ship sought to be arrested to leave or escape the jurisdiction of the court.

By Order 7 rule (1) (5), the new Rules in clear terms now specifies that any application for warrant of arrest of a ship shall be heard and determined within 24 hours of filing of the application where practicable. Notably, by Order 7 rule 1 (6) of the Rules, the hearing and determination of the application for warrant of arrest of a ship could be conducted physically or virtually on any day inclusive of Sundays or public holidays.

This innovation as regards the timeline for the hearing and determination of an application for warrant of arrest of a ship in Nigeria is quite commendable. The new Rules clearly ushered in a fast-track regime where applications for warrant of arrest are given priority over and above any other application filed at the Federal High Court. The necessary implication of Order 7 rule (1) (5) of the new Rules is that an application for warrant of arrest of a ship is required to be heard and determined on the day of filing of the application or latest the next day after the filing of the application. In this regard, it is immaterial that the next day is a public holiday or a Sunday.

Ordinarily, the Federal High Court does not hear matters on Sundays or public holidays. For the Federal High Court to hear any urgent matter on a public holiday or on Sunday, there is usually an application via Summons for such hearing. However, the new Rules clearly dispense with such application for urgent hearing by providing that the hearing of an application for arrest of ship shall be determined within 24 hrs and may be done on a Sunday or public holiday. That said, a commercial party wishing to have its application determined on a Sunday or public holiday may do well to liaise with the Admiralty Registry to confirm the availability of the Judge for the hearing and determination of its application.

Conclusion

The practice and procedure of the admiralty jurisdiction continue to evolve globally, and Nigeria is not left out. The Federal High Court which is imbued with original admiralty jurisdiction in Nigeria can now order the arrest of a ship to aid arbitration or foreign proceedings and there is no need to bring the substantive claim before the Nigerian court. The simplification of the filing processes and the timeline for the hearing and determination of an application for warrant of arrest of a ship are quite commendable innovations by the new Rules. These innovations have properly positioned Nigeria as admiralty friendly jurisdiction for arresting parties. It is expected that there will be a corresponding increase in admiralty litigation and issues in Nigeria.

Note: This article does not constitute a legal advice. For proper legal advice or inquiries on the issues raised in this article or general inquiries relating to arrest of ship in Nigeria or other admiralty and maritime issues, please contact Aret & Bret LLP. You can also reach out to the author:



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