**Arrest of Ship and Process: Nigeria in Perspective**

**Abstract**

*In the Nigerian admiralty jurisdictions, when a shipowner or the ship-agent commits an offense that falls within a maritime claim,* *admiralty marshal or his delegated substitute deals with the offender to arrest the ship so that it does not take another route. Ship arrest requires that the applicant or the claimant should possess a maritime claim. The admiralty jurisdiction act defines the maritime claim. the admiralty jurisdiction empowers the relevant authority to arrest the offending ship for breaching maritime laws. Subsequently, the ship cannot continue to move or trade once there are pending maritime claims imposed on it in the court of law.*

*Also, the admiralty jurisdiction act (2004) have provisions for the arrest of sister ships. In such a way, not only will the offending ship be arrested but also other vessels that are owned by the owner of the offending ship can be arrested. To circumvent some of these liabilities, many shipping companies have registered each of their vessels under a separate/ distinct corporate organization with a unique owner.*

*Ship arrest by an action in rem is a significant aspect of international maritime jurisdiction. Often maritime claims are not properly articulated, and this creates some challenges to Claimants in invoking the admiralty jurisdiction of Admiralty Court s and proving their claims. To end this, there is a need for a robust and effective admiralty for the enforcement of maritime claims by an in-rem action. Admiralty in rem procedure could be cumbersome if wrongly approached. This underscores the need for any party seeking in rem arrest of a ship to adequately satisfy Court’s procedures on enforcement of maritime claims vide in rem actions under the Admiralty Jurisdiction Procedure Rules and the Admiralty Jurisdiction Act.*

**Introduction**

**Background**

In admiralty law, the provision for ship arrest is “a corollary of in rem actions.” The arrest warrant is issued in such a way that the owner of the ship provides security to guarantee a judgment that may be imposed on him in the due Court processes. Unfortunately, ship owners want to try all possible means to escape the liability imposed on his vessel[[1]](#footnote-1).

Another important feature of the admiralty law is that the owner of the ship or the offensive vessel cannot be implicated except in the jurisdictions of the Court of the country in whose territory was the offensive ship[[2]](#footnote-2). In most cases, the owner of the ship is outside the jurisdictions, yet the ship can move from the coast of one state to the coast of another state. Therefore, the task of arresting the ship is simpler than the task of arresting the shipowner.

The concept of action in rem was developed against the above background such that the action is taken against the ship, not the owner. The reason for the introduction of the action in rem concept was to prevent the ship from moving away from the jurisdictions of the country in the offense when there is a pending action or a claim against it[[3]](#footnote-3). That is how the concept of ship arrest was developed to deal with ship owners who tend to apply all reasonable means to circumvent the arrest of their vessels.

**Rationale**   
*In rem* arrest of the ship is both a thought-provoking and challenging topic of discussion in the maritime law. This legal field dynamic since vessels trade worldwide and spend much of their time in international waters.[[4]](#footnote-4) Thus, the arrest of ships could pose physical and economic challenges to claimants. The principal advantage of action *in rem* is that the offending vessel (ship) can be arrested from anywhere even if it is in a state other than the state where it breached the agreement caused the damage to the claims against her.[[5]](#footnote-5) It is noteworthy that arrest of the ship and other property through an *in rem* action is primarily to obtain prejudgment security to satisfy the Court decision in favour of the claimant. The arrest of the vessel (ship) and the provision of prejudgment security to secure the release of an arrested ship are some of the critical elements that differentiate admiralty action *in rem* from other civil matters or cases. Any country can arrest the ship when and only the ship enters those 12 nautical miles of the sea near to the boundary of that country.

Based on the previous Court ruling, a claimant’s right to apply for the arrest of the ship by an action *in rem* has played an invaluable role in recovering debts and enforcing claims against the operators and the owners of the ship. In some circumstances, there has been the wrongful arrest of the ship, and this has created many losses to the ship owners. Many ship owners and mortgagees claim that wrongful ship arrests or injunctions instituted against their vessels impede the legal movement of their vessels.[[6]](#footnote-6) In most jurisdictions, there are remedies available for damages affected to the owner of the ship due to the wrongful arrest of a ship.[[7]](#footnote-7) The struggle between legal experts and other opposing forces has been on the rise for centuries forming a contradiction that still exists today’s Courts. Both sides believe that the existing admiralty laws in most jurisdictions are not in their favour and that the one side is more advantaged under the current international law.[[8]](#footnote-8)

This research aims at exploring the processes through which the arrest of the ship is conducted in Nigeria and suggest the appropriate ways through which the offending ships can be brought to justice by the requirements of the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules. This research project begins by discussing the jurisprudential foundations of ship arrest, the relevant international conventions and the general processes adopted to conduct ship arrest in Nigeria.

**Problem statement**

Often maritime claims are not properly articulated, and this creates some challenges to Claimants in invoking the admiralty jurisdiction of Admiralty Courts and proving their claims. To end this, there is a need for a robust and effective admiralty for the enforcement of maritime claims by an in-rem action. Admiralty in rem procedure could be cumbersome if wrongly approached. This underscores the need for any party seeking in rem arrest of a ship to adequately satisfy Court’s procedures on enforcement of maritime claims vide in rem actions under the Admiralty Jurisdiction Procedure Rules and the Admiralty Jurisdiction Act.

**Research objectives**

This research projects will achieve the following objectives

1. To discuss the concept of the arrest of the ship and the relevant processes applicable to Nigeria
2. To explore the reasons for action in rem and explore the various claims that can be made by the claimant in a maritime dispute
3. To examine the legal means in which the offending ships can be brought to justice by the provisions of the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules and provide relevant recommendations

**Jurisprudential foundations of ship arrest**

The maritime industry is largely comprised of huge commercial ventures and business undertakings, which exposes it to countless financial risks. Also, the maritime industry is characterized by commercial disputes between the regulatory authorities and the players. Issues such as ship management, issues of ship finance, shipbuilding, marine insurance, charter party and contract of commodity carriage are very common[[9]](#footnote-9).

Claims in admiralty disputes are either made in personam, actions or in rem actions to enforce the rights of the claims. These are the two common forms in which claims are normally made. In personam, the claim is made against an individual based on his jurisdiction and his right[[10]](#footnote-10). The black Laws dictionary defines the action in personam as “*an action directed against the particular person who is to be charged with the liability.”*

On other hand, the same dictionary defines an action in rem as

*“a suit directed against a specific thing (as a vessel) irrespective of the ownership of it, to enforce a claim or lien upon it, or to obtain, out of the thing or out of the proceeds of its sale, satisfaction for an injury alleged by the claimant”*[[11]](#footnote-11).

On the other hand, the action in rem is the groundwork for the arrest of ship doctrine. Action in rem is an action that is principally commenced in contrast to the ship (not the owner) for the harm, the damage or the loss suffered by the claimant instituting the proceedings[[12]](#footnote-12). This form of admiralty claim has been utilized in many Court systems to bring justice for claimants against the owners of the ship. The most significant element of the action in rem is that the res is the defendant and can be sold or arrested by the Court to satisfy the claims made by the claimant as long as the Court has approved and satisfied the claim[[13]](#footnote-13).

Generally, an action in rem is comprehensively accepted as an exemption to the territorial jurisdiction principle. Many countries such as Nigeria that exercise the admiralty jurisdiction have accepted the action in rem concept in their laws.[[14]](#footnote-14) It confers a special prerogative to the country and “the challenge for any nation is to equilibrate the interests of ship owners and that of cargo owners and other persons that deal with ships.”[[15]](#footnote-15)

In admiralty disputes, an action in rem can be instituted on five categories of res. These include ships (vessels), bunkers, freight, cargoes laded on board, and aircraft-borne in waters[[16]](#footnote-16). In the context of this research study, my interest is put on ships (vessels). Under the doctrine of action in rem, the ship can be arrested as security to bring justice to the party who suffered the damage or loss by the wrong committed by the process or service on the ship when it was still in the territory of the Court jurisdiction.[[17]](#footnote-17) Therefore, the ship is arrested mainly for two reasons namely; to provide security to the claimant and to force the defendant to appear in Court and respond to the instituted claims. If the defendant refuses to appear in court within six months to defend such admiralty on rem claims and the value of the arrested ship is deteriorating, the court can sale the vessel and compensate the claimant[[18]](#footnote-18). The Admiralty Marshal conducts the sale of the arrested ship after the Federal High Court has ordered for sale in two national newspapers.[[19]](#footnote-19) The sale has to be conducted in 21 days after the publication of the order for the sale of the ship and the proceeds of sale and valuation as well as the vouchers account are paid to the court[[20]](#footnote-20).

In many admiralty disputes, the defendant wants to dodge or escape the wrath of the law even if they know that they committed the wrong, caused the loss or damage or breached the law. In most cases, the owners of the ships plan their ‘game of hiding and seek’ in such a way that they cannot be held responsible for the damages or the wrongs committed by their vessels. They normally do so by voiding the jurisdictions/ territories where they can be implicated for the wrongs committed[[21]](#footnote-21). As a result, the admiralty jurisprudence of action in rem was developed to target the ship against which the damages or any other claims have been instituted[[22]](#footnote-22). It is unfortunate that ship owners still apply all possible means to circumvent the liability be avoiding the navigation of the ship in territorial jurisdictions where that ship is likely to be arrested. The effect of these circumventions is that the claimant in the maritime dispute may not have a remedy for the losses, damages or any other wrong committed to him by the ship owner, the vessel (ship) in question or the sister's vessel once the res owner refuses to come with jurisdiction[[23]](#footnote-23). The challenge associated with this lacuna is what brings the legal implication of the action in rem doctrine. Nevertheless, Admiralty in rem procedure could be cumbersome if wrongly approached. The claimants seeking action in rem arrest of a ship have to adequately satisfy the procedures the Court on enforcement of maritime claims vide in rem actions under the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules.

**International conventions on ship arrest**

Generally, there are only two international treaties on the arrest of ship namely; “International Convention on the Arrest of Ships (1999) and Convention on the Arrest of Sea-Going Ships 1952”[[24]](#footnote-24). The 1999 arrest convention has been endorsed and adopted by eleven countries[[25]](#footnote-25); the most recent one is Albania which adopted the convention on fourth match 2011[[26]](#footnote-26). The arrest convention of 1952 has been endorsed and adopted by more than 70 states. Nigeria has not ratified the 1952 arrest convention though it leans on it. Nigeria’s endorsement of the Arrest convention 1952 has not promulgated the treaty into its national laws.

The Aim of accenting to the 1952 arrest convention was to facilitate and promote its international trade and specifically in the transport department. The treaty prescribes the legal norms that regulate the arrest of ships or any other res and strikes a balance between the cargo owners and the claimant's right to acquire security for his claims[[27]](#footnote-27).  
The framers of the 1952 arrest convention were bothered by four itching questions namely “Which ship may be arrested? Who is entitled to arrest a ship? Where can the arrest be made? How can a ship be released from arrest? What is the liability for wrongful arrest?”[[28]](#footnote-28) As a result, the convention framers decided to merge the English concept of ship arrest by action in rem on maritime claims and the French pre-trial Court remedy of the “saisie conservatoire.”[[29]](#footnote-29)

According to article 1 of the 1952 Arrest convention, “*a ship can be arrested for a limited list of maritime claims, and it also allowed the arrest of ships in the same ownership as the ship in respect of which the original claim arose*.”[[30]](#footnote-30)

Also, the arrest convention (1952) in article 1 requires that “*ship flying the flag of one of the Contracting States in the jurisdiction of any of the Contracting States in respect of the closed list of maritime claims, but in respect of no other claim*” should be arrested.[[31]](#footnote-31)

Section 3 of article 3 of the 1952 arrest convention prohibits additional and repeated arrests of the ship over similar claims by the same claimant in a different country when the former ship arrest was warranted in another or the same member state.

Nevertheless, the 1952 arrest treaty has been criticized for three major reasons[[32]](#footnote-32). First, its fixed list of maritime claims is closed and does not reflect the shipping realities. Secondly, some of its provisions are ambiguously worded hence create dissenting interpretations in judicial Courts[[33]](#footnote-33). Lastly, the convention has some linguistic tones that generate some inconsistencies between the manners in which common law and civil law prerogatives manage the admiralty dispute in which the ship is arrested.

Article 3 (4) of the 1952 arrest convention has sometimes been differently understood in civil law Court jurisdictions. Some Courts have interpreted this section as authorizing the arrests of the vessels for debts acquired by its time charterer. In jurisdictions of the common law, the arrest of individuals other than the demise charterers or the ship owners for the debts can only happen after the sale of the ship. It also has to take place in reverence of the maritime claims or the rem claims against the sale of the ship in question.

The 1999 arrest convention established some changes in the 1952 arrest treaty. The first change is that the arrest convention of 1999 has a comprehensive list of claims for which the arrest of the ship is possible[[34]](#footnote-34). Also, its list of claims is somehow open-ended not closed as evidenced in the 1952 arrest convention[[35]](#footnote-35). Moreover, under the 1999 arrest convention, a claimant has multiple opportunities to secure his or her claims[[36]](#footnote-36).

In 1999 arrest convention, article 5 has a provision for the claimant to re-arrest the ship after its release. Besides, article 5 provides for arresting of multiple vessels belonging to the same owner to raise the security for the claimant’s claim. The claimant can make a rem claim based on the above provision if the previously provided security not adequate (for example where the offered security is less than the value of the arrested vessel). Other circumstances under which multiple ships can be arrested to top up the claim include cases where the individual who is providing the security is likely to fail to fulfil the obligations of that security. It also includes if the previous security or the ship was released because the plaintiff could not stop the release of the ship and the ship was released on reasonable grounds following the claimant’s consent.

**Ship arrest in Nigeria: The legal processes involved**

Nigeria has neither ratified the 1952 convention nor the 1999 convention on ship arrest. Therefore, the arrest of vessels (ships) in Nigeria solely depends on the case law and the local laws[[37]](#footnote-37). Before progressing with the discussion about ship arrest in Nigeria, it is crucial first to discuss the Courts that have jurisdictions to address admiralty matters. The constitution of the Federal Republic of Nigeria 1999, through section 251(1) provides that the jurisdiction over admiralty matters lies in the powers of the Federal High Court in Nigeria[[38]](#footnote-38). No, any other Court is allowed to handle admiralty issues[[39]](#footnote-39). The same powers are also provided for in section 7 (1) g of the Federal High Court Act 1973[[40]](#footnote-40).

Besides, the Admiralty Jurisdiction Act (AJA) of 2004, in section 19, provides that the Federal High Court of Nigeria has exclusive powers to handle admiralty matters or cases both criminal and civil[[41]](#footnote-41). Therefore, an issue or matter regarding admiralty such as the arrest of ships (vessels) can be handled under the exclusive powers of the Federal High Court of Nigeria hence it cannot be handled or heard in other Court (s).

The action in rem can be filed in any Federal High Court division in which the ship in question may be found[[42]](#footnote-42). As earlier explained, the arrest of the ship comes with action in rem. There are four circumstances under which the action in rem can be instituted. The first instance is when the admiralty dispute is a maritime lien. According to section 5(3) of the Admiralty Jurisdiction Act requires that in circumstances where the incident is a nautical lien, the claimant may bring an action in rem to Court[[43]](#footnote-43).

In addition, the admiralty jurisdiction act allows the institution of an action in rem against the vessel (property or ship) in claims related to the ownership of the vessel, the possession of the vessel, and the mortgage of the vessel. It also relates it with the freight of the ship or the claims concerning the ownership, earning, possession and operation of the ship between the co-owners of the ship[[44]](#footnote-44).

The Admiralty Jurisdiction Act in section 5(4)(a) requires that;

*“in any other maritime claim (whether it gives rise to a maritime lien or not) where the claim arises in connection with a ship, and the person who would be liable on the claim in action in personam was, when the cause of action arose, the owner or charterer of or in possession or in control of the ship, an action in rem may be brought against that ship, if at the time the action is brought the person is either the beneficial owner of that ship as respects all the shares in it or the charterer of the ship under a charter by demise”[[45]](#footnote-45)*.

This provision implies that for the Court to enforce action in rem, the person involved in the case (relevant person) must be the charterer, the controller, the owner or the possessor of the ship at the time when the source of action arose[[46]](#footnote-46).

Besides, the defendant must be the main beneficiary of all the interests in the ship when the action in rem was instituted[[47]](#footnote-47). When the Court is determining the relevant person in the case [defendant], it assumes that such a person habitually resides within Nigeria or the place of his business is located in Nigeria[[48]](#footnote-48). Therefore, if any action in rem is to be instituted by the Court, the conditions above have to be satisfied. For example, in the case between “*MX Development and National Oil and Chemical Marketing Company,”* the Federal High Court of Nigeria held that when the three conditions are not fulfilled, the ship in question will be released.[[49]](#footnote-49)

The Admiralty Jurisdiction Act in section 5(4) also provides for the institution of the action in rem against the “sister-ship” if the person was the sole proprietor of all the dividends in the vessel when the in-rem action was brought[[50]](#footnote-50). Also, the key [Relevant] person must be the possessor, the charterer, the owner or the controller of the sister ship when the damage or the cause for action in rem arose[[51]](#footnote-51).

The sister ship arrest is slightly different from other ship arrests. This is because action in sister ship arrest is not instituted against the offending ship rather it is instated against another ship that is possessed or owned or controlled by the relevant person. This person would be held responsible or liable if the same action in rem had been instituted against the offending ship. Unlike in other ship arrests, action in rem for a sister ship arrest does not apply to those ships for which the defendant was the charterer of the ship when the in-rem action was brought. Consequently, only charterer-owned ships under the same ownership of the offending vessel can be prosecuted as sister ships belong to the offending ship hence referred to as “deemed sister ship.”

The doctrine of the “sister ship” requires that in circumstances where the offending ship does not lie within the Court jurisdiction, any other ship belonging to the offending ship owner that may appear within the jurisdiction of the Court can be legally arrested as the offending ship[[52]](#footnote-52). When action in rem was applied for, the deemed sister vessel must have been owned by the same relevant person at the instance when the damage or the loss happened.

When the offending ship is sold, the claimant is not legally permitted to arrest the sister ship on the accounts of the person who bought the ship rather the shipowner when the cause of action arouses[[53]](#footnote-53).

One of the common elements the sister ship arrests and the deemed sister ship arrests as actions in rem is that the relevant person by the time of the cause of action [damage or loss] has to be the same relevant person when the action was taken to Court. The time at which the action in rem is brought to Court amounts to what the English Law has interpreted as “the time of issue of the writ.” In so doing, it becomes difficult for the relevant person to defeat the right of arrest by simply changing the ownership of the vessel after the writ has been brought to Court.

Nigeria stands firm in the above position by the provisions of S (7.1) of the Admiralty Jurisdiction Act[[54]](#footnote-54). Under section 7(2), the admiralty jurisdiction act provides that the ship pursuant to the action in rem should be arrested as highlighted in the following provision; “*A ship or other property may, in any proceeding under subsection (1) of this section – that is any proceeding in rem, be arrested at any place within the limits of the territorial waters of Nigeria*”[[55]](#footnote-55).

The Admiralty Jurisdiction Procedure Rules established 2011 sets the procedure for getting the warrant of arrest of the ship[[56]](#footnote-56). Rule 1(1) of Order 7 requires that the party to the action in rem proceeding may apply for the arrest warrant by “a motion ex-parte” instead of the vessel against which the proceedings were commenced. Nevertheless, this submission for the warrant of arrest can only be initiated if the vessel in question lies within the territorial waters of Nigeria or if the ship is expected to arrive in Nigerian territorial waters within three days.

Also, the provisions of limits Nigerian Territorial waters to only twelve maritime (nautical) miles from the lower water mater or the baseline[[57]](#footnote-57).

Therefore, any application for arrest warrant has to be made when the ship was within the limits of 12 nautical miles at the time when the cause of action arose or when the ship is expected to come within the territorial waters in 3 days to come.

Several documents should accompany the solicitation document for the warrant of ship arrest. These include the statement of claims, the writ of summons, the supportive affidavit indicating the background of the claim and proving that the ship lies with the territorial jurisdictions of the Court or the vessel or the ship is anticipated to leave the Court jurisdictions any time or arrive within the Court jurisdiction within three days. Other important documents include “the motion ex-parte” that discloses a solid prima facie case for ship arrest.

The affidavit or urgency of the matter must be provided by the claimant before the warrant of ship arrest is granted. Also, the claimant must provide an indemnity to the Admiralty Marshall for the expenses incurred when he is implementing the ship arrest order. Besides, the claimant must provide an undertaking to accept the damages committed against the defendant(s)[[58]](#footnote-58).

After getting granted, the warrant of ship arrest is binding for six months and can be renewed for more six months. The arrest of the ship can only be implemented by the admiralty marshal or his delegated substitute[[59]](#footnote-59).

Admiralty Jurisdiction Procedure Rules also requires that warrant of ship arrest be granted after the client has searched for the caveat book to confirm the existence of a caveat against the arrest[[60]](#footnote-60). Court’s need to be informed whether there is a caveat against the arrest.

After the action in rem is instituted, the Admiralty Jurisdiction Act, section 7(1), requires that “the writ of the summons should be served on the vessel (ship) whose warrant of arrest has been applied.” Therefore, the writ of summons has to be attached to the offending ship. If the summons suffices to serve the writ on the superior ship officers or the master, the relevant person shall be specified in the writ as the defendant by reference to the ownership of the offending ship in question. It is, however, important to note that the right of a claimant in rem cannot be defeated by selling the ship in question. Even after the sale of the ship, the same actions in rem can still be maintained[[61]](#footnote-61). Even though the ship can be detained under any other relevant Nigerian law, any other power to arrest the ship can be suspended once the ship has already been arrested or the subject of arrest under the Admiralty Jurisdiction Procedure Rules[[62]](#footnote-62).

Nevertheless, if the detained ship were arrested in pursuant of the civil claims, the pursued civil claim would take priority to the previous claims made against the detained ship other than the Admiralty Marshal claims for the expenses unless the jurisdiction Court dictates otherwise[[63]](#footnote-63). Also, where the offending ship has been arrested under the admiralty laws, no other vessel belonging to the same owner should be arrested in the same proceedings unless the arrested ship has been released after being unlawfully or invalidly detained. If the jurisdiction Court has sufficient reasons to arrest the released ship, it can order the re-arrest of the already released- offending ship[[64]](#footnote-64). Thus, the arrest order may be warranted subject to the above conditions as deemed in the circumstances by the Court.

What about when the dispute has to be addressed by a foreign country against the Nigerian ship. When the nautical dispute is to be determined by a foreign Court (subject to arbitration), but the action in rem stated in the Nigerian Federal High Court, the admiralty act in its section 10(1) provides that the foreign Court may order the stay of the action in rem[[65]](#footnote-65). However, this happens under the condition that the detention and arrest of the ship must continue. Otherwise, the “*satisfactory security for the shipping release is given as security for the satisfaction of any award or judgment that may be made in the arbitration or a proceeding in the Court of the foreign country*.” Therefore, when the case is to be tried in a foreign Court, and the proceedings are to stay, the arrested vessel or any other property arrested for security will not be released. However, the Court still retains powers to reject the application for proceedings to stay if it is deemed necessary hence its position on this provision cannot affect any other policy. Therefore, even if the applicant adopted the right procedures that would successfully make him exercise his right to arbitration; other circumstances may deter the Court from granting the application[[66]](#footnote-66).

The task of determining whether the application for proceeding stay will be rejected depends on whether the steps taken by the applicant are so clear that they can amount to an abandonment of the right or a total wave to insist on the arbitration agreement.

**Case law analysis**

***In*** *Obi Obembe v. Wemabod Estates Li,* the Federal High Court of Nigeria held that for the application for proceedings stay to be allowed; the applicant should have taken no steps in the proceedings[[67]](#footnote-67). This decision was based because the application for proceeding stay should be the first reaction to the proceeding made by the applicant. The Justice emphasized that any application or statement of defenses delivered to Court will mount to taking a step into the judicial proceedings even if it is simply the application for the time extension.

In *Fanz Construction Limited vs. Kano state Urban Development,* the defendant applied for a pleadings’ order, and the Court filed it. The statement of claim was filed by the plaintiff accordingly. Then, the defendant went on and applied for the proceeding stay. Court rightly refused the application[[68]](#footnote-68).

The same reasoning is evidenced in Yaganathan & Anor100 Vs. Nissan (Nig.) Ltd. The defendant applied to refer the matter to arbitration. The Court of appeal held that the application of the defendant to refer to the matter to arbitration would be successful if the application were filed after the applicant had entered the appearance before taking any step in proceedings or before filing the pleadings[[69]](#footnote-69).

The principle of arbitration is sometimes difficult to bring justice in admiralty disputes where both the defendant and the claimant had accepted to arbitrate, and one party went to Court and arrested the ship. If we consider the impact of ship arrest on the owner of the ship, the claimant would first apply for the shipping release. The Court decision in *Obi Obembe v. Wemabod Estates Li* would imply that if claimant applies for a stay of the proceedings, his or her application will be rejected. In such circumstances, the decision of the Court would be contrary to the spirit and letters of section 10(1) which provides the application for proceedings stay would be granted on the condition that the arrest of the ship and its circumstances still stands. Putting aside the Court decision taken in Obembe's case, in many admiralty disputes, the Court has been hesitant to reject the application parties for proceeding stay simply because the application is filed after the other party has applied for the release of the vessel[[70]](#footnote-70).

For example, in “*The owners of M.V. Lupex v. Nigerian Overseas Chartering and Shipping Limited*,” the parties had an admiralty dispute arising from the agreement (charter-party covenant) that had an arbitration clause[[71]](#footnote-71). The claimant filed the case against the defendant at the Federal High Court while claiming the damages for breaching the terms of the charter party agreement. The claimant later obtained an “order ex-parte” for the chartered vessel arrest. The vessel in question (M.V. Lupex) had at the time of the damage docked at the Warri Port. When the appellant got the knowledge of the ex-parte order, he went on and filed a motion to order the unconditional release of the arrested vessel by setting aside the order for which the vessel was arrested. Also, the appellant filed the order for proceeding stay. In its jurisdictions, the Federal High Court of Nigeria held that it the submission of the appellant for proceedings stay, and the release of the arrested vessel could not be granted. The decision of the Court was backed by the condition that the appellant must first pledge security of $735,000.00 or its Naira equivalent as a guarantee.

When the appellant appealed to the Nigerian Supreme Court, the Court raised an issue of whether the lower Courts were bound to proceedings stay where the party(s) before the action had succumbed to arbitration voluntarily in agreement with among other things contract terms. This time, the Supreme Court held that “*Where the parties agreed that all disputes that may arise between them in consequence of this contract having been entered into should be referred to arbitration is held to be a strong ground for granting a stay of proceedings.”* Finally, the Supreme Court granted the application of stay of proceedings so that the parties can resort to arbitration and decision was taken without making any statement regarding the conditions for the release of the ship in question.

*The Owners of MV Matrix & Ors Vs. Onward Enterprises Limited*, the claimant sued the defendant on claims of losses or damages for breaching the affreightment agreement and got an “ex-parte order” for detention and arrest of the defendant’s ship.[[72]](#footnote-72) The defendant also filed a submission for the unconditional releasing of the vessel and the application to transfer the anchorage of the vessel pending to the Court hearing for the vessel release application. The claimant approved the vessel release, and the defendant went on to apply for the stay of the proceeding pending the case reference to London arbitration. The Court of Appeal granted the application/motion for proceeding s stay. Court held that;

*“In the instant case, respondents entered a conditional appearance and filed two motions on notice before the application for stay. One sought the release of the vessel, while the second sought an order to shift the vessel to anchorage*”.[[73]](#footnote-73)

**Exemption from arrest and Wrongful arrest of the ship**

Some categories of vessels are exempted from being arrested under the Admiralty Laws. These include ships being used by the Nigerian Navy or in connection with Navy and ships that belong to state or Federal government or being demised to the Nigerian Government. In case they commit any wrong or offend some party they are exempted from detention, arrest and judicial sale; therefore, an action in rem cannot be preceded against such ships.[[74]](#footnote-74)

There remains a question of what can happen when the claimed nature cannot permit the claimant to institute an action in rem against the ship in question? When the ship is arrested on such a claim, such an arrest would be considered as the wrongful arrest of the ship.

In international trade and commerce, the arrest of the ship must be handled with maximum dispatch and expeditiously treated.[[75]](#footnote-75) The Federal laws in Nigeria do not Condon any acts of wrongful arrest of the vessel.[[76]](#footnote-76)The Admiralty Jurisdiction in section 13(1) provides that in circumstances where a party without reasonable cause demands excessive security in action in rem proceedings or obtains the warrant for the arrest of the ship, that party will be held responsible for the damages to the proceeding who has suffered damage or loss.

Order 11 of the 2011 AJPR under rule 2 requires that:

*“if 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 the suit was dismissed, or judgement given against the plaintiff. Moreover, it appears to the Court that there was no probable ground for instituting such suit, the Court may, on the application of the defendant, award against the plaintiff such amount, as it may deem a reasonable compensation to the defendant for any loss, injury, or expenses which he may have sustained”.*

If the defendant is to establish a wrongful arrest, he or she must give a proof beyond doubt that the claimant acted without good cause and unreasonably. It is unfortunate that in many Court proceedings, this phrase has not been considered. Rule number 2 (under order 11) of the 2011 AJPR considered the grounds of insufficiency and “no probable” situations.

Therefore, if the defendant can prove that the ground for the case was not sufficient, the Court will favour him and award damages. The compensation or the amount of damages made to the defendant is what the Court considers reasonable if the Court finds that the arrest of the ship was wrongfully executed.

In the pursuit to section 12 clauses 2 of the Admiralty Jurisdiction Act, the Federal High Court shall summarily determine the matters of wrongful vessel arrest. Rule number 4 of the 2011 AJPR under order 11 which permits the oral application of wrongful vessel arrest after the Court has read the judgment of the suit, which can be followed immediately by hearing the facts from both parties and passing the final judgment either refusing or granting the damages. This implies that the victim of wrongful vessel arrest has legal provisions to immediately claim his or her damages by applying to the Court once the Court handling the case found that the arrest order could not be granted in the first case. However, this does not stop the offended person to seek damages after the termination of the case.[[77]](#footnote-77)

**Classifications of maritime claims made in action in rem vessel arrests**

Maritimes are special commercial claims in Nigeria's judicial system, and they enjoy special privileges over other categories of claims arising from other commercial transactions. Some of the special privileges include rights to institute the actions in rem against the ship and arrest it. In other admiralty matters, maritime claims can only be instituted within the jurisdiction of the Federal High Court of Nigeria as provided for in section 1(1) (a).[[78]](#footnote-78)

The Admiralty Jurisdiction Action empowers the Federal High Court of Nigeria with jurisdictions to determine and hear any questions regarding the proprietary interests in any maritime claim against the arrested ship. In the judicial proceedings, the claimant should ensure that his or her claims fall within the definitions of the maritime claims or else he will stand the risks of wrongful arrest of the vessel and the associated damages.

On most cases, there is more than one claim instituted against the vessel. When such circumstances happen, Courts raise the question of priority on how different claims can be satisfied. This has always created difficulty when handling multiple claims against one vessel. The research into the categorization and prioritization of maritime claims in rem against the arrested ship is still lacking. However, there are different classes of maritime claims and their rankings in settling of admiralty disputes to address the interests of the claimant.

According to section 2 clause 1 of the Admiralty Jurisdiction act, “a reference to maritime claim is a reference to a proprietary maritime claim or a reference to general maritime claim.” Therefore, special classes of maritime claims were introduced to address the issue of claim prioritization.

Proprietary maritime claims address all the claims regarding the ownership, the control of the ship or having the ship title or having some shares in the ship or a mortgage of the ship[[79]](#footnote-79). This category of claims also addresses the claims between co-owners of the vessel regarding the operation, earning or ownership of the vessel.[[80]](#footnote-80)

On the other hand, general maritime claims are catered for in section 2 clause 3 of the Admiralty Jurisdiction Act.[[81]](#footnote-81) For purposes of our discussion, much emphasis is put on general claims. The first category of general claims is the claims for the damages encountered by the vessels irrespective of the cause of the damage. The Admiralty Jurisdiction Act section 2 clause 3(a) addresses these claims in judicial proceedings.[[82]](#footnote-82) There as some damages received by the ship and other damages done by the ships. The AJA has supplementary provisions for each of these damages since the main receiver of the damages is the ship in question. Before claims are legally instituted, certain elements have to be fulfilled.

In *Berliner Bank v. C Czarnikow Sugar Ltd, Justice* Clarke J emphasized that:

*“In my judgment, the cases show that the ‘damage done by a ship’ … three criteria must be satisfied: 1. the damage must be caused by something done by those engaged in the navigation or management of the ship in a physical sense; 2. the ship must be the actual or noxious instrument by which the damage is done; and 3. the damage must be sustained by a person or property external to the ship”.[[83]](#footnote-83)*

In *Fournier v. Ship Magaret,* we see the first element among the conditions set By Justice Clarke, working here. In this Court proceeding, the Federal High Court of Nigeria held that for the claims to be instituted, the damages should have stemmed from the active operation of the vessel crew[[84]](#footnote-84). However, it is questionable as to why it is only the operation of the ship crew that should be considered in the case. In some instances where for instance some other elements rather than the vessel crew such as the stowaway or the passenger can interfere with the ship navigation. In such circumstances, such substances are likely to be excluded from the case jurisdictions[[85]](#footnote-85). Such circumstances should be addressed and decided upon considering the facts in the cases and the associated circumstances. Nevertheless, justice cannot be denied to the claimant because the operation of the ship crew did not handle the damage that was caused to him. The ship should also be held the actual tool in causing the damage.

In the case of Eschersheim, the Court held that there should be no contact between the property that was damaged and the ship the caused the damage[[86]](#footnote-86). In the case of The Jades, the ship caused a wash (negligently) by which other ashore properties got damaged[[87]](#footnote-87). The Federal High Court of Nigeria held that the claim falls within the Clarkes Category. Also, in Abadesa and Miraflores, the Court concluded that the grounding of the vessel caused damage to other ashore property[[88]](#footnote-88). In this head also falls the claim for consequential damages.

Besides, the damage can also be sustained by the property or the person external to the ship while in other circumstances; the damage can be done to another vessel irrespective of whether is foreign or not, property or the person such as the divers. In such a case, an injury sustained on the vessel does not come with this head.[[89]](#footnote-89) Secondly, the damage may be by any part of the ship such as the propeller or the anchor. Also, damage may be caused by nuclear or oil pollution. All claims related to these categories fall into the claims for the damages done by the ship.[[90]](#footnote-90)

In case there was a transaction resulting from the contract between two persons, the third party cannot be exonerated from causing the action based on the claims that he was not a party to the agreement whose non-performance or mid-performance caused the damages. This duty is because the defendant had not intended to injure the plaintiff. The obligations of contracting the offending party extend to all the persons who had a likelihood of getting injured by the omissions or the acts of the defendant. They are contemplation neighbours to the defendant.

Another important category of priority claim are the claims for the loss of lives or injuries caused to a person in question. These claims are also categorized as the general maritime claims according to the admiralty jurisdiction act.[[91]](#footnote-91) Personal injury or the loss of life may happen due to the defects in the ship equipment o the ship itself or in consequence of an action taken by the crew. It may also be because after the omissions made by the charterer or the owner of the ship or any other person in control or possession of the ship or the employees or the agent to the ship.[[92]](#footnote-92) It is unfortunate the claims under this head overlap with the claims for the damages caused by the ship under section 2(3) (a) of the AJA act since the claimants in both cases may present the same facts. The difference is that in section 2(3) (c) of the same AJA act, the defect in the equipment or the ship should be the main substance for the personal injury or the loss of life. In such circumstances, the causation to the damage is determined by applying the “But for test”[[93]](#footnote-93).

The Admiralty Jurisdiction Act under section 2(3) (d) provided that the personal injury or the loss of life must have been raised as the outcome of the omission or the act of the shipowner or the ship charter or any other person in control or possession of the ship. Also, the omission or the act must relate to the ship management, offloading or the loading of goods, disembarkation or embarkation of the persons on the vessel or the carriage of persons or goods by sea[[94]](#footnote-94). The Admiralty Jurisdiction Act under section 2(3) (e) also provides that the claims for the damage or the loss of commodities carried by vessel should come within the category of the general maritime claims. In the Jade, the Court held that the damages caused should have been done by the ship carrying the goods.[[95]](#footnote-95) This means that any category of goods whether the luggage of the passenger or the goods in transit by the ship also qualifies to be referred to as goods under this precedence. Nevertheless, the Court held that damages considered under this head exclude the property or belongings to the person who is on-board such as the crew employees.[[96]](#footnote-96)

In [The Jade] the Federal High Court concluded that the claims arose out of the salvage agreement, towage contracts or the contract for mooring the vessel can fall within the scope of general maritime claims.[[97]](#footnote-97)The facts of the case were as follows; the claim was raised out of the contract between Erkowit [the damaged vessel] and Rotesand [the salvage tug]. The owner of the cargoes and the vessel sued for negligence in the performance of the salvage tug. Court held that the substances and the facts of the case fall within section 2(3) of the admiralty jurisdiction act.

Despite the comprehensive interpretation of section 2(3), claims arising out of the agreement which is not related to the contract to the hire or carriage of use for the vessel in question are not inclusive. Therefore, in *Obi Iroegbu v MV Calabar Carrier & Ors,* the claimant was hired to provide services to the Maine Alpha services in one of the four ships owned by the same company. The claimant sued the company because his claim was connected to the usage or hire of the vessel. According to the memorandum of understanding, none of the services was found associated with the usage or hire of the vessel. The Court concluded that the agreement between the respondents and the appellant was simply a partnership deed and it does not fall in the provisions of the Federal High Court’s Admiralty Jurisdictions.

**Discussion**

The section presents the discussion of the ship arrest processes, evaluating the loops holes about the judicial precedencies so far reviewed and suggests the recommendations.

According to section 1(1) of the Territorial waters (Amendment) Act 1998, the arrest of the ship (vessel) can only be executed when it is within or expected to be within twelve nautical miles for the baselines within three days. The claimant or the plaintiff is required first to get the warrant of arrest when he or she expects the offending ship will be in the 12-mile territorial limits in 3 days period. According to the Inland and Coastal Shipping Act (2003), the jurisdiction of the Federal High Court of Nigeria has been extended to deal with maritime claims for action in rem regarding the arrest of the vessel. Since the Jurisdiction of the Court is limited to 12 nautical miles from the lowest water market (baseline), many research experts have found that the Federal High Court of Nigeria cannot execute the arrest of the offending ship (vessel) where the damages were caused beyond the limited 12 nautical miles.

The case of “*Maxwell Ebube-v-Gold Star Line”* creates a difference, whereby the arrest warrant was issued after the vessel was anticipated to arrive in the territorial waters Nigeria and the vessel (ship) was arrested after landing on the territorial waters[[98]](#footnote-98). This practice of issuing a warrant of arrest (writ in rem) and waiting for the vessel to arrive in the territorial waters within the time to pounce, is the best way to get the owner of the ship within the grasp of the plaintiff. The only challenge in this judicial proceeding is that the offending ship may take another route to avoid being arrested when the arrest warrant is issued against it before reaching the 12 nautical miles. In such a circumstance, the claimant may suffer the losses if the vessel refuses to come back to Nigeria’s Territorial waters.

The action in rem of arresting the sister ship and claiming the action in rem would bring justice to the claimant. However, another issue has been raised in circumstances where the company has only one ship, and such an offending ship takes another route in the process of dodging the proceedings against it. Although the concept of arbitration and stay of proceedings may bring security to the claimant, it is not clear whether at one day, the offending ship will come back to the territorial waters of Nigeria so that it can be arrested and the judicial proceedings get instituted against it especially where the vessel is sold after taking a different route.

The Jurisdiction of the Federal High Court of Nigeria should apply to all vessels notwithstanding of the domicile of ownership of the ships, the places of residence and all maritime claims should be made as provided by the law[[99]](#footnote-99). Usually, the jurisdiction of the Court beyond these 12 nautical mile limits is still lacking; hence the action in rem of arresting the vessel beyond the 12 miles is very difficult. The warrant of arrest assumes that the vessel will appear in the territorial waters within three days, but the owner of the vessel still retains the obligations to dodge the arrest either by taking another route or selling the vessel[[100]](#footnote-100). Also, this provision of arresting the sister ships has many limitations, especially where the owners of the vessel have registered the ships in different ownership so that the Court cannot interpret the vessels to be under one ownership. The provision for the arrest of the offending vessel beyond the territorial waters of Nigeria is still necessary. That comes with international treaties and bilateral agreements between Nigeria and its trading partners.

The Federal High Court of Nigeria does not only have statutory jurisdictions to conduct ship arrests and releases but also is empowered to enforce the maritime claims or solve admiralty disputes between the defendant and the claimant. No admiralty matters should be handled by the State High Courts. In addition, the Admiralty Jurisdiction Act under section 19 and the constitution of Nigeria 1999 (as amended) under section 251 (1)g empower the Federal High Court to have exclusive jurisdiction in both criminal and civil admiralty matters including the navigation and shipping in the international inland waterways and in the rivers Benue, Niger, and their tributaries.[[101]](#footnote-101) Although the Federal High Court of Nigeria has many judicial divisions, it is fortunate that for purposes of convenience, the plaintiff is authorized to initiate admiralty proceedings against any Court Division in which the vessel was located at the time of the cause of action. Besides, all ships except the government ships or the ships being used by the Nigerian Navy are bound to admiralty jurisdictions; hence all maritime claims are valid irrespective of the circumstances under which the claims may arise.

The use of the term “includes” in s.1(1) of the Admiralty Judicial Act implies that some subject matters involving admiralty jurisdictions may not be exhaustive. Therefore, the admiralty claims have to be instituted on the writs such that they conform to the Federal High Court Jurisdiction under the Admiralty Jurisdiction Act. Many cases that fall within the admiralty jurisdictions of the Federal High Court may be established by “an action in personam.” In very rare cases, the action in rem has been successful in arresting the ship as a security to the claimant once the action in rem is brought against the ship for the damages caused.

Despite the enactment of Admiralty Jurisdiction laws, the implementation of the law still faces many obstacles. Interstate cooperation is still lacking which limits the implementation of the Nigerian Admiralty laws beyond the 12 nautical miles. Where the state looks at another state as a threat to its sovereignty and national interests, they cannot coordinate to first against those who want to circumvent the law by taking other routes or changing their navy equipment. Cooperative initiatives to implement admiralty laws are hampered by maritime boundary disputes, and the culpable owners of ships tend to exploit this loophole to circumvent the admiralty laws. This hinders the national efforts to bring justice to the claimants when the laws are circumvented. For example, the dispute between Cameroon and Nigeria over the Peninsula of Bakassi has limited the arrest of vessels which would be arrested over maritime claims.

In the Gulf of Guinea, all the states have different cultures, different approaches to governance, different standard operating procedures and different navy equipment[[102]](#footnote-102). For such reasons, some of the navies in the region tend to withhold some key information that would be helpful in the judicial proceedings against the owners of the vessels or the vessels. Lack of adequate information sharing systems limits effective interstate cooperation hence allowing the circumvention of the admiralty laws[[103]](#footnote-103). To combat these challenges, there a need to improve operational and legal measures to extend the Jurisdictions of the Federal High Court beyond the maritime boundaries. The admiralty jurisdictions should be extended through regional institutionalization of the maritime laws such that the action in rem of ship arrest can be conducted by a neighbouring country upon receiving the orders from the Federal High Court in Nigeria. More bilateral agreements would improve the institutionalization of maritime claims beyond Nigeria maritime claims.

Secondly, laws governing wrongful arrests still have many flaws in terms of the compensations that should be given to the owners of the ships for the time in which the ship was under custody. The law is still leaning more on the side of the claimants than the side of the defendant. Since 2011, Nigeria’s admiralty laws have not been reformed, yet the business dynamics at the coast have significantly changed.

**Conclusion**

In most maritime disputes raised out of maritime claims, the arrest of the ship is the central element. The claimant seeks his or her claim on the ship to force the shipowner to enter the judicial appearance and defend the instituted claim (s) against his ship or property. The ship has to be arrested for acting as pre-judicial security, so the owner of the ship has no another alternative other than appearing in Court to defend the release of the ship in question.

Once the ship is arrested, the impact of such arrest is significantly felt by the owners of the ship who may at the end of judgment lose the revenue that he could have earned when the vessel was still in detention.

However, we have seen that some maritime claims may become devastating to the claimant for wrongful arrests when they are not properly articulated by the Court. The claimant may find many difficulties in invoking admiralty Jurisdiction Court’s when proving his or her claims. To end this, there is a need for a robust and effective admiralty for the enforcement of maritime claims by an in rem action. Admiralty in rem procedure could be cumbersome if wrongly approached. This underscores the need for any party seeking in rem arrest of a ship to adequately satisfy Court’s procedures on enforcement of maritime claims vide in rem actions under the Admiralty Jurisdiction Act and the Admiralty Jurisdiction Procedure Rules.

In all judicial proceedings, the owner of the ship wants to try all possible means to avoid the arrest of his vessel (ship) and the subsequent claims for the damages caused. This usually happens when the ship owners have more than one ship. They try to create different ownerships such that each ship is registered under different ownership. Currently, the Federal High Court of Nigeria has no jurisdiction to handle such cases. The aspect of arresting sister's vessels may not be possible. According to the Admiralty Jurisdiction Act, the entire claim for the action in rem should fall within the maritime claims. Therefore, if any claim is not within the definitions of a maritime claim, the ship cannot be arrested for such a claim irrespective of whether it may arise out of a maritime dispute.

1. A.A Olawoyin SAN, “Admiralty Jurisdiction” in Emmanuel O. Akank i (ed), Commercial Law in Nigeria, (University of Lagos Press: Lagos, 2007) P. 824. [↑](#footnote-ref-1)
2. Id [↑](#footnote-ref-2)
3. I. Rizwanul ‘The Arrest of Ship Conventions 1952 and 1999: Disappointment for Maritime Claimants’.(2007) 75 J. Mar. L. & Com. 38. [↑](#footnote-ref-3)
4. Id. [↑](#footnote-ref-4)
5. Nordquist, Myron, and Satya N. Nandan, eds. ‘United Nations Convention on the Law of the Sea 1982’, Volume VII: A Commentary. Vol. 7. 2011 Martinus Nijhoff Publishers. [↑](#footnote-ref-5)
6. C. N. Ojukwu. ‘Arrest and Detention of Ships and Other Property in Nigeria’. (2003): 249 Tul. Mar. LJ 28. [↑](#footnote-ref-6)
7. Ibid n 3. [↑](#footnote-ref-7)
8. O. Aginam. ‘Ship Agent Liability in Nigeria: Has the Common Law Been Overthrown’. (2000): 125 J. Mar. L. & Com. 31. [↑](#footnote-ref-8)
9. Brume-Eruagbere, Omovigho Cynthia. "Maritime law enforcement in Nigeria: the challenges of combatting piracy and armed robbery at sea." (2017). [↑](#footnote-ref-9)
10. A.A Olawoyin SAN, “Admiralty Jurisdiction” in Emmanuel O. Akank i (ed), *Commercial Law in Nigeria,* (University of Lagos Press: Lagos, 2007) P. 824 [↑](#footnote-ref-10)
11. Id [↑](#footnote-ref-11)
12. L. Chidi Ilogu SAN, *Foundation of Carriage of Goods by Sea. The Nigerian Perspective,* (Odade Publishers: Lagos, 2016), p. 296. [↑](#footnote-ref-12)
13. Otto an Charles Giles, N. J. J. Gaskell, Charles Debattista and Richard J. Swatton, Chorley and Giles’ Shipping Law, (Pitman: Virginia, 1987), P. 6-7. [↑](#footnote-ref-13)
14. Section 3 of Admiralty Jurisdiction Act, 1991 Cap. A5, Laws of the Federation on Nigeria, 2004. See also section 3(4)(a) of High Court (Admiralty Jurisdiction) Act, Cap 123, Statutes of the Republic of Singapore, 2004. [↑](#footnote-ref-14)
15. Adewale A. Olawoyin SAN, "Contemporary Developments in Nigerian Maritime Law" (2014) 2 NIALS Maritime Journal, 11 [↑](#footnote-ref-15)
16. A freight can be arrested only if the freight is subject to a maritime lien. See The Castlegate (1893) AC 38. [↑](#footnote-ref-16)
17. Soumyajit Dasgupta, “Ship Arrest Under Maritime Law: Reasons, Procedure, and Precautions”,

    https://www.marineinsight.com/maritime-law/ship-arrest-under-maritime-law-reasons-procedure-and- precautions/, July 21, 2016. [↑](#footnote-ref-17)
18. Order 9 (6) (b) AJPR 2011 [↑](#footnote-ref-18)
19. Order 16 Rule (4) (2) AJPR 2011. [↑](#footnote-ref-19)
20. Id [↑](#footnote-ref-20)
21. Meeson, Nigel, and John Kimbell. *Admiralty jurisdiction and practice*. Informa Law from Routledge, 2017. [↑](#footnote-ref-21)
22. Carlo Corcione, “Bring the vessel to court: The unique feature of the action in rem in the admiralty law proceedings” https://doi.org/10.5339/irl.2013.7, August 1 2013. [↑](#footnote-ref-22)
23. Brume-Eruagbere, Omovigho Cynthia. "Maritime law enforcement in Nigeria: the challenges of combatting piracy and armed robbery at sea." (2017). [↑](#footnote-ref-23)
24. Hereafter referred to as Arrest Convention of 1999 and 1952 Arrest Convention [↑](#footnote-ref-24)
25. Mohammed-Faraj, Omar. "The Arrest of Ships: Comprehensive View on the English Law." (2012). [↑](#footnote-ref-25)
26. Other members include Algeria, Benin, Bulgaria, Congo, Ecuador, Estonia, Latvia, Liberia, Albania, Spain, and Syrian Arab Republic. See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\_no=XII-8&chapter=12&clang=\_en [↑](#footnote-ref-26)
27. Mohammed-Faraj, Omar. "The Arrest of Ships: Comprehensive View on the English Law." (2012). [↑](#footnote-ref-27)
28. Conference d’Anvers, 1930, CMI Bulletin No. 91, pp.76 and 105 [↑](#footnote-ref-28)
29. Nadiya Isikova “*The Ship Arrest Conventions of 1952 and 1999: International and Ukrainian perspectives” (*2012)

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    15 [↑](#footnote-ref-29)
30. Convention on the Arrest of Sea-Going Ships, 1952, Article 2 [↑](#footnote-ref-30)
31. Ibid [↑](#footnote-ref-31)
32. Ibid [↑](#footnote-ref-32)
33. Nadiya Isikova “The Ship Arrest Conventions of 1952 and 1999: International and Ukrainian perspectives” (2012)

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    15 [↑](#footnote-ref-33)
34. The list which hitherto contained 17 claims now contains 22 claims. [↑](#footnote-ref-34)
35. See Bob Deering and Jonathan Resse “An Overview of the 1952 and 1999 Arrest Conventions”

    <https://www.incelaw.com/en/knowledge-bank/overview-of-the-1952-and-1999-arrest-conventions> September 30, 2011 [↑](#footnote-ref-35)
36. The list which hitherto contained 17 claims now contains 22 claims [↑](#footnote-ref-36)
37. It is noteworthy that Nigeria has not ratified any of these conventions. Thus, none of them is of a binding effect in Nigeria. [↑](#footnote-ref-37)
38. The 1999 Constitution, Admiralty Jurisdiction Act, 1991, *Admiralty Jurisdiction Procedure Rules, 2011* [↑](#footnote-ref-38)
39. Act No. 24 of 1999 Cap. 23, Laws of the Federation on Nigeria, 2004 [↑](#footnote-ref-39)
40. **Section 7[I][G] of the Federal High Court Act 1973** reads:-

    **"7[I] The Court shall to the exclusion of any other Court have original jurisdiction to try civil causes and matters connected with or pertaining to –**

    **[g] any admiralty matter, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterways as may be designated by any enactment to be an International Waterway, all Federal Ports, including the constitution and powers of the Ports authorities for Federal ports and carriage by sea;"** [↑](#footnote-ref-40)
41. 1991 Cap. A5, Laws of the Federation on Nigeria, 2004. [↑](#footnote-ref-41)
42. AJA, 1991 Cap. A5, LFN, 2004, s. 22 [↑](#footnote-ref-42)
43. See section 9(2), (3), (4) of the Supreme Court Act 1997 Cap. 53, Statute Law of the Bahamas, 2001 [↑](#footnote-ref-43)
44. AJA, 1991 Cap. A5, LFN, 2004, s. 5(2) [↑](#footnote-ref-44)
45. See AJA, 1991 s.5 (4); MV “S. Araz” v. Messrs N. V. Scheep Vaatmij [1996] 5 NWLR (part 457) 204. [↑](#footnote-ref-45)
46. Ibid [↑](#footnote-ref-46)
47. See Owners of MV Araz v. LPG Shipping S.A [1996] 6 NWLR (part 457) 720 per Mohammad JCA [↑](#footnote-ref-47)
48. AJA, 1991 Cap. A5, LFN, 2004, s. 5(7) [↑](#footnote-ref-48)
49. **[see National Oil and Chemical PLC V. MX Development LTD – THE Phoenix [1992] 4 N.S.C. 260]** [↑](#footnote-ref-49)
50. AJA, 1991 Cap. A5, LFN, 2004, s. 5(4)(b). [↑](#footnote-ref-50)
51. Id [↑](#footnote-ref-51)
52. L. Chidi Ilogu SAN, Foundation of Carriage of Good by Sea – The Nigerian Perspective, (Odade Publishers: Lagos, 2016), p. 296 [↑](#footnote-ref-52)
53. . Watson, Farley and Williams "Sister Ship Arrest" Maritime Briefing,3 [↑](#footnote-ref-53)
54. 1991 Cap. A5, Laws of the Federation on Nigeria, 2004. [↑](#footnote-ref-54)
55. Id [↑](#footnote-ref-55)
56. Hereinafter referred to as AJPR, 2011 [↑](#footnote-ref-56)
57. 1971 Cap. T5, Laws of the Federation of Nigeria (LFN) 2004. [↑](#footnote-ref-57)
58. Adedoyin Afun “Ship Arrest- Recent Developments in Nigerian Arrest Law” being presented at the 8th

    Shiparrested.com Conference, Athens, June 2011. [↑](#footnote-ref-58)
59. Order 7 Rule 3 AJPR, 2011; Order 7 Rule 4 AJPR, 2011 [↑](#footnote-ref-59)
60. Order 7 Rule 1(2) AJPR, 2011 [↑](#footnote-ref-60)
61. AJA, 1991 Cap. A5, LFN, 2004, s. 8. [↑](#footnote-ref-61)
62. AJA, 1991 Cap. A5, LFN, 2004, s. 15. [↑](#footnote-ref-62)
63. 1991 Cap. A5, Laws of the Federation on Nigeria, 2004. [↑](#footnote-ref-63)
64. AJA, 1991 Cap. A5, LFN, 2004, s. 6(1). [↑](#footnote-ref-64)
65. AJA, 1991 Cap. A5, LFN, 2004, s. 6(2) [↑](#footnote-ref-65)
66. Kayode Omosehin Esq, “Taking Steps Frustrates Arbitration in Nigeria”

    https://www.linkedin.com/pulse/taking-steps-frustrates-arbitration-nigeria-kayode-esq-omosehin June 18, 2015. [↑](#footnote-ref-66)
67. [1990] 4 NWLR (Part 142) 1 [↑](#footnote-ref-67)
68. [2010] 4 NWLR (Part 1183) 135 [↑](#footnote-ref-68)
69. Id [↑](#footnote-ref-69)
70. The court has, however, not overruled the decision in Obembe’s case [↑](#footnote-ref-70)
71. (2003) LPELR-SC.21/2000 [↑](#footnote-ref-71)
72. [2010] 2 NWLR (Part 1179) 530 [↑](#footnote-ref-72)
73. Re Hohenzollern etc. Arb. (1886) 54 L.T. 596; Union of India v. E. B. Aaby's Rederi A/S (1974) 2 All ER 874; The Chaparral (1968) 2 Lloyd's Rep. 158 [↑](#footnote-ref-73)
74. AJA, 1991 Cap. A5, LFN, 2004, s. 24. [↑](#footnote-ref-74)
75. Glomite (Nig.) Ltd. v. Shellborn Marine Co. Ltd. [2004] 10 NWLR (Pt. 880) [↑](#footnote-ref-75)
76. Id [↑](#footnote-ref-76)
77. Order 11 Rule 2 of AJPR 2011 gives the defendant the grace of three months to sue for damages for wrongful arrest [↑](#footnote-ref-77)
78. 1991 Cap. A5, Laws of the Federation of Nigeria, 2004 [↑](#footnote-ref-78)
79. AJA, 1991 Cap. A5, LFN, 2004, s. 2(2)(a [↑](#footnote-ref-79)
80. AJA, 1991 Cap. A5, LFN, 2004, s. 2(2)(b). [↑](#footnote-ref-80)
81. 2003, Cap. A75, Laws of the Federation of Nigeria, 2004 [↑](#footnote-ref-81)
82. Id [↑](#footnote-ref-82)
83. The Nigerian association of CMI is Nigerian Maritime Law Association. See http://comitemaritime.org/about-us/ [↑](#footnote-ref-83)
84. [1999] 3 NZLR 111 [↑](#footnote-ref-84)
85. Nigel Meeson, Admiralty Jurisdiction, and Practice, (Informa Law & Finance: the United Kingdom, 1993), pp 66-67. [↑](#footnote-ref-85)
86. [1976] 1 WLR 430 at 438. [↑](#footnote-ref-86)
87. The Jade [1976] 1 AC 826. [↑](#footnote-ref-87)
88. [1976] 1 AC 826 [↑](#footnote-ref-88)
89. Hamilton v. SS Monterey [1940] NZLR 31; Queen Eleanor (1899) 18 NZLR 78. [↑](#footnote-ref-89)
90. Outhouse and Himmelman v. The Thorshavn [1935] 4 DLR 625; The Swift [1901] P 168; Elbe Shipping South Australia v. Ship Global Peace (2006) 232 ALR 694. [↑](#footnote-ref-90)
91. 2003, Cap. A75, Laws of the Federation of Nigeria, 2004 [↑](#footnote-ref-91)
92. AJA, 1991 Cap. A5, LFN, 2004, s. 2(3)(d) [↑](#footnote-ref-92)
93. Barnett v Chelsea & Kensington Hospital [1969] 1 QB 428. [↑](#footnote-ref-93)
94. AJA, 1991 Cap. A5, LFN, 2004, s. 2(4) [↑](#footnote-ref-94)
95. [1976] 2 Lloyd ’s Rep 1 [↑](#footnote-ref-95)
96. R v. The Judge of the City of London Court (1883) 12 QBD 115 [↑](#footnote-ref-96)
97. [1976] 2 Lloyd ’s Rep 1 [↑](#footnote-ref-97)
98. See Maxwell Ebube V Gold Star line Limited 4 N.S.C. 226] [↑](#footnote-ref-98)
99. Again Section 3 of The Admiralty Jurisdiction Decree no. 59 OF 1991 reads:

    "3 Subject to the provisions of this Decree, the admiralty jurisdiction of the Court shall apply to –

    all ships, irrespective of the places of residence or domicile of their owners; and

    all maritime claims, wherever arising" [↑](#footnote-ref-99)
100. See Section 5[2][3] Admiralty Jurisdiction Act 1991 [↑](#footnote-ref-100)
101. Section 251[1][G] of The 1999 Constitution reads:

     "251[1] 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 in civil causes and matters

     [g] any admiralty jurisdiction, including shipping and navigation on the River Niger or River Benue and their affluents and on such other inland waterway as may be designated by any enactment to be an international waterway, all Federal Ports, [including the constitution and powers of the Ports Authorities for Federal Ports] and carriage by sea;" [↑](#footnote-ref-101)
102. Mandanda, Devotha Edward, and Guo Ping. "The Gulf of Guinea Piracy: Impact and Effectiveness of Control Measures." *JL Pol'y & Globalization* 55 (2016): 105. [↑](#footnote-ref-102)
103. Mandanda, Devotha Edward, and Guo Ping. "The Gulf of Guinea Piracy: Impact and Effectiveness of Control Measures." *JL Pol'y & Globalization* 55 (2016): 105. [↑](#footnote-ref-103)