

**COMITE MARITIME INTERNATIONAL (CMI) QUESTIONNAIRE: STUDY  
RELATING TO LIABILITY FOR WRONGFUL ARREST**

**NIGERIAN MARITIME LAW ASSOCIATION'S RESPONSE**

**I. INTERNATIONAL CONVENTIONS**

- (a) Nigeria acceded to the **Arrest Convention 1952** but did not promulgate it into law to have the force of law in Nigeria, as required by section 12 of the Constitution of the Federal Republic of Nigeria 1999, Cap C23 Laws of the Federation of Nigeria (“**LFN**”) 2004 (“**Nigerian Constitution**”).

Nonetheless, provisions of the Arrest Convention 1952 were incorporated into the **Admiralty Jurisdiction Act**, Cap A5 LFN 2004 (“**AJA**”).

Nigeria is not a party to the **Arrest Convention 1999** and the **Maritime Liens and Mortgages Convention 1926**.and is yet to domesticate the **Maritime Liens and Mortgages Convention 1993**..

- (b) **Grounds on which a Vessel can be arrested**

The AJA and the Admiralty Jurisdiction Procedure Rules 2011 (“**AJPR**”),made pursuant to AJA, govern the substantive and procedural requirements for the arrest of vessels in Nigeria.

For an admiralty action to be maintained as an *action in rem*, it has to be established that the claim falls within the admiralty jurisdiction and under the maritime claims listed in section 2 of the AJA. Section 2 of the AJA set out “proprietary” and “general” maritime claims.

The “proprietary” maritime claims are claims related to ownership, possession and mortgage of ships, whilst the “general” claims cover other shipping claims such as damage done or received by a ship, personal injury, etc.

The litmus test required for arrest proceedings is the principle of beneficial ownership which arises in relation to the mode of exercise of admiralty jurisdiction in the AJA. It is instructive to note that the AJA entitles a Claimant with a proprietary maritime claim to proceed with an *action in rem* against the ship in connection with which the claim arises. A claimant with a general maritime claim is vested with only an *in personam* right.

Notwithstanding the foregoing, Section 5 of the AJA entitles a Claimant to proceed in an *action in rem* against a person who ordinarily would have been liable in an *action in personam* (.i.e. the “**Relevant Person**”) in respect of general maritime claims where the claim arises in connection with a ship. Section 5(4) (a) and (b) of the AJA entitles a

Claimant to commence an *action in rem* against the offending ship or any other ship PROVIDED that the relevant person is the beneficial owner of that ship as respects all the shares in it or the bareboat charterer of the ship or the alternative ship (often called “sister” ship) as respects all the shares in it.

A ship can also be arrested on the basis of a maritime lien or other charge on the ship. Section 5(3) of the AJA defines maritime lien as a lien for “*Salvage, damage done by a ship, wages of the master or a member of the crew of a ship or master’s disbursements.*”

## II. QUESTIONS RELATING TO WRONGFUL ARREST

### 1. Security for an Order of Arrest, or subsequently, to maintain an Arrest

When ships are arrested the Admiralty Marshal incurs costs which are recouped by the Admiralty Marshal from the arresting party. In addition to the filing fee that is payable for the issuance of a Writ in Rem, an arresting party is generally required to pay an initial upfront deposit in respect of the Admiralty Marshal’s costs and expenses for maintaining the vessel whilst under arrest in line with the undertaking given pursuant to Order 9 of the AJPR.

The AJPR 2011 provides that the Admiralty Marshal may accept an amount of money not less than **One Hundred Thousand Naira (₦100,000.00) (circa (US\$278.00))**<sup>1</sup> and not more than **Five Hundred Thousand Naira (₦500,000.00) (circa (US\$1,389.00))** as deposit towards discharging the liability(ies) associated with maintaining the vessel whilst under arrest. And he may make more demands fortnightly for payment on account of those expenses. The Admiralty Marshal is also required to file a return or receipts and expenditures to the Court within **seven (7) working days** of the release of the ship – **Order 9 Rule 2 (2 a, b, c & d) AJPR 2011.**

In addition to the foregoing, a party seeking to arrest a vessel may be required to provide security for costs. Pursuant to Order 13 Rules 1 and 2 of the AJPR, the Court may subsequently, on the application of an interested party (e.g. ***where the Plaintiff’s claim is for an amount in excess of Five Million Naira (N5,000,000.00) (circa Thirteen Thousand Eight Hundred and Eighty Nine United States Dollars (US\$13,889.00) (or its foreign currency equivalent); or the Plaintiff has no assets within jurisdiction***), order the Plaintiff/arresting party to put up security for costs. In determining the quantum of the security to be provided by the Plaintiff/arresting party, the Court shall have regard to all the circumstance of the case.

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<sup>1</sup>Converted at the exchange rate of US\$1.00 to ₦360.00

The security is required to be in the form of cash deposit, Bank Guarantee, Insurance Bond or Protection and Indemnity (P&I) Club Letter of Undertaking.

It is mandatory that the arrested vessel shall be released where the Plaintiff fails to provide the required security for cost within the specified time<sup>2</sup>. This principle has been extended by **Order 13 Rule 7(c) of the AJPR** to circumstances where the Defendant to the action has a cross-action or counter-claim arising from a collision between ships.

2. **Wrongful Arrest – Case rejected following the hearing on its Merits**

- (a) The test for wrongful arrest under Nigerian law is as set out in Section 13 of the AJA. The test, which has introduced less stringent criteria for establishing wrongful arrest in Nigeria, is one of “**unreasonably and without good cause**”. The aforesaid section of the AJA also extends liability for wrongful arrest to parties who demand or try to exact outrageous and disproportionate security or withhold consent for the release of the vessel.

Mere rejection of the claim would not ground a claim for wrongful arrest. Pursuant to Order 11 Rules (2)(a) of the AJPR, the arrestor, following the dismissal of the suit, would be liable for damages for any loss, injury or expenses that the Defendant may have sustained by reason of such arrest, upon the application of the Defendant made at any time before the expiration of three (3) months from the termination of the suit, where the Court is satisfied that there was no probable ground for instituting the suit.

Notwithstanding the foregoing, Order 11 **Rule 3(1) and (2) of the AJPR** provides the defendant with the right to institute an action for wrongful arrest against the arrestor as long as the action is not based on the same grounds upon which the Court may have made award of compensation; and the defendant shall be awarded costs, damages, demurrage and expenses against the arrestor where the Court is satisfied that the arrest **was occasioned unreasonably and without good cause**.

**Order 11 Rule 4 of the AJPR** also empowers the Court to summarily determine the issue of wrongful arrest, granting or refusing damages, further to an oral application by the defendant immediately after the judgement of the Court (in favour of the defendant) is read.

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<sup>2</sup>Order 13, Rule 4 of the AJPR

(b) Please refer to our response under paragraph 2 (a) above for the test for wrongful arrest under Nigerian law.

3. **Wrongful Arrest – Arrest set aside by an appeal court (without deciding on the merits of the claim)**

Please refer to our response under paragraph 2 (a) above for the test for wrongful arrest under Nigerian law.

4. **Wrongful Arrest – Arrest not against the owner of the ship or not enforceable under the law of the state where the vessel is arrested**

(a) Yes, assuming the arrest was effected in Nigeria.

(b) Yes.

5. **Wrongful Arrest – Grossly exaggerated claim**

(a) Yes. Please refer to our response under paragraph 2 (a) above for the regime for wrongful arrest under Nigerian law.

(b) Please refer to our response under paragraph 2 (a) above.

6. **Wrongful Arrest – Solvent Relevant Party**

(a) Please refer to our response under paragraph 2 (a) above for the regime for wrongful arrest under Nigerian law.

(b) Please refer to our response under paragraph 2 (a) above.

7. **Wrongful Arrest – Other Circumstances for Damages under Nigerian Law**

Please refer to our response under paragraph 2 (a) above for the regime for wrongful arrest under Nigerian law.

8. **Wrongful Arrest – Penalty or sanction under Nigerian Law**

Aside damages, there is no provision for penalty or sanction for wrongful arrest in Nigeria. However, in addition to damages, the Court may award costs, demurrage and expenses against the arrestor where it is satisfied that the arrest **was occasioned unreasonably and without good cause.**

9. **Wrongful Arrest – Lex Forum Arresti, Lex Fori or substantive law**

There is no provision in Nigerian law that gives the Court jurisdiction to hear a claim for damages for the arrest of a ship in another country or jurisdiction. Generally, arrest and wrongful arrest proceedings are conducted in accordance with the provisions of the *lex fori*.