

## **ADMIRALTY PRE-JUDGEMENT ARREST – FOR WHOSE BENEFIT?**

The weapon of pre-judgment arrest in the arsenal of the modern maritime lawyer is undoubtedly a much-vaunted proposition. In Nigeria, it has often been used to force a swift settlement or enforce a sometimes-uneven compromise. The overall rationale behind the procedure has never really been in doubt but it must be said, and boldly too, that its fallibility currently threatens to emasculate its advantages. Indeed with a very critical eye one may like it to 'Ship without a Rudder'.

The Principles of arrests are founded on the right of a claimant to detain a vessel or cargo if he has a maritime claim against its owners in personam. A court or Judge in or out of chambers may grant such an application often after a very cursory review of the claim and upon satisfaction of the existence of a prima-facie case.

In the frenetic 'cut' and 'thrust' of arrest proceedings, such details as the monetary worth of the claimant are ill considered, such that proceedings based on unlawful arrest which call on the claimant to make good his undertaking in damages, become a lesson in futility.

The conduct of the more inexperienced maritime judges in our courts has led to complaints of sloppiness in the sudden exigency of arrest matters. Claimants have often seized this opportunity to present incongruous claims in the knowledge that the pains and penalties of the arrest will force on early compromise of their terms. The delay sometimes experienced in the disposal of release applications has left many ship owners in a state of mind, which could be better imagined than described. The root cause of delay is a hydra-headed

monster, which cannot be considered within the scope of this work.

However suffice to say that the abundance of blame must rest at the footstool of the unreasonable claimant, who emboldened by the system has all to gain and nothing to lose.

Prominent pronouncements on terms of release have been made vide – **ANGLO FRENCH STEEL COMPANY –VS- PANFIXING SHIPPING CO. LTD (1976) 2 F. R. C. R 160** “the owner of the property under arrest may ordinarily secure its release by giving bail...it is however rare in practice for bail to out up. In vast majority of cases the arresting party will agree to release the vessel on security being produced by way of a guarantee or undertaking by a bank or Protection and Indemnity Association or other body known to him to be good standing.

This is all well and good, the prevailing practice is such that arrestors overtly evince a desire for bank guarantees over and above all other modes of security, although these can be urged upon the court sometimes successfully vide – **DANGOTE Vs THE OWNERS OF THE M.V REA (Suit No. FHC\L\63\91).**

It is well known that in legal conflicts such as this, discretion can be better part of valor and the claimants position has been viewed as unduly parochial, it had the virtue of certainty.

With the new foreign exchange directives operative in Nigeria today, foreign payments to Nigerians become compulsorily convertible into Naira. The Nigerian claimant is thus potentially empowered to insist that his bank guarantee be made in Naira. Thus enabling a claimant who has no

defendant stand to lose the convertibility of the guarantee to insist on it in favorable compromise.

The bonafide and well advised Nigerian claimant should however concede to an offshore guarantee as a mutually beneficially solution and to avoid diminution of his claim.

**ADEDOLAPO AKINRELE [DECEMBER1994]**