



Spotlighting the Key Innovations and Changes in the Admiralty Jurisdiction Procedure Rules 2023

Introduction

The Nigerian maritime industry has in recent times been getting the much-needed attention it requires. Aside the dedicated ministry of marine and blue economy that was established by the Federal Government of Nigeria to manage the nation's vast marine resources for the benefit of Nigerians, the much-anticipated Admiralty Jurisdiction Procedure Rules (AJPR) 2023 (the "**AJPR 2023**") was recently introduced. Further to the procedural and substantive reforms which have been underway since the constitution of the Nigeria Admiralty Law and Procedure Reform Committee by the Nigerian Maritime Law Association in 2020, the AJPR 2023 was birthed and launched by the Chief Judge of the Federal High Court, Hon. Justice John Terhembra Tsoho to replace the Admiralty Jurisdiction Procedure Rules 2011 (the "**AJPR 2011**"). The AJPR 2023 introduces several ground-breaking provisions that would particularly reshape and refine maritime practice and procedure within the Federal High Court of Nigeria ("**FHC**" or the "**Court**") by bringing it in conformity with recommended standards and international best practices. In this paper, we highlight some core innovations and changes introduced by the AJPR 2023. In all, the introduction of the AJPR 2023 is a most welcome development and it is hoped that the full promise of the rules will be actualised.

Key Innovations and Changes

1. Establishment of Admiralty Divisions

The AJPR 2023 has empowered the Chief Judge of the FHC to establish Admiralty Divisions within the FHC.¹ These Divisions will be dedicated to handling Admiralty matters alone. The Chief Judge is required to issue directions to establish the Admiralty Registry of the Admiralty Divisions of the FHC.² The Admiralty Marshal shall play a pivotal role in these newly created divisions and shall be the head of the Admiralty Registry of the various Admiralty Divisions.³ The duties of the Admiralty Marshal includes (i) serving originating processes, (ii) executing arrest warrants, (iii) managing the financial aspects like filing return of expenditure for deposited funds relating to ship arrests, (iv) taking steps to preserve a ship or other property under arrest, including moving a ship that is under arrest, arranging for the release or the valuation and sale of a ship or other property under arrest, etc.⁴ This clear delineation promises a more structured and efficient maritime adjudication in the FHC.

2. No objection to jurisdiction in an action commenced in a wrong judicial division

Notably, a suit commenced in a wrong judicial division can still be heard in that judicial division, **unless otherwise directed by the Court**.⁵ This provision would fundamentally reduce the frequency of jurisdictional objections previously allowed a defendant under the AJPR 2011⁶.

Similarly, any warrant of arrest issued against a *res* in a wrong judicial division remains valid and enforceable against the *res* even after the action *in rem* is transferred to the appropriate judicial

¹ Order 2 Rule 1, AJPR 2023

² Order 2 Rule 3, AJPR 2023

³ Order 2 Rule 4, AJPR 2023

⁴ Order 2 Rule 5, AJPR 2023

⁵ Order 2, Rule 9, AJPR 2023

⁶ Even though the AJPR 2011, provided that a suit commenced in a wrong judicial division may be tried in that division unless the Court otherwise directs, it permitted the defendant to object to the jurisdiction before or at the time of filing his defence. Consequently, although the Court had a discretion, the discretion was not complete since it was circumscribed by the defendant's right to object. By deleting the phrase "*or the defendant pleads specially in objection to the jurisdiction before or at the time when he is required to state his answer or to plead in the cause*" the AJPR 2023 has granted the Court the full discretion to decide whether an action commenced in the wrong judicial division may be heard in that division.

division.⁷ This provision is commendable as it ensures continuity and flexibility in the enforcement process notwithstanding the transfer of the case to the appropriate jurisdiction.

3. Commencement of actions

The AJPR 2023 outlines detailed procedure for commencing an action *in rem*. An action *in rem* shall be commenced by writ of summons as in Form 1 and accompanied by (i) statement of claim, (ii) list and copies of documents to be relied on at trial, (iii) a list of non-documentary exhibits, and (iv) a list of witnesses to be called at trial. The statements on oath of witnesses outside the Court's jurisdiction are to be notarised by a foreign notary public or signed before anyone authorised to administer oaths in the foreign jurisdiction.⁸ The statements on oath of subpoenaed witnesses need not be filed at the commencement of the suit⁹ and witnesses to be subpoenaed or summoned must be served with Form 3 (Summons to Witness Requiring Subpoena) prior to the filing of their statements¹⁰. The AJPR 2023 also requires the statements on oath of witnesses outside jurisdiction in an action *in personam* to be notarised by a foreign notary public or signed before any person authorised to administer oaths in the foreign country.¹¹

4. Enforcement of Arbitral Agreement or Award

The AJPR 2023 prescribes that an application for the recognition or enforcement of maritime-related arbitral awards or agreements in both domestic and foreign-seated arbitration proceedings is to be made by Originating Motion.¹²

5. Naming of a relevant person as a defendant in an action in rem partially dispensed with

The AJPR 2023 has made a clear distinction in the naming of defendants in an action *in rem* in relation to a proprietary maritime claim and a general maritime claim.¹³ It is no longer required to name a relevant person¹⁴ as defendant in an action *in rem* for proprietary maritime claims while it remains necessary to name a relevant person as defendant in an action *in rem* in a general maritime claim.¹⁵

6. Service in an action in rem

The AJPR 2023 provides more comprehensively for the service of court processes in admiralty proceedings. By the AJPR 2023, service of a writ of summons, a court order of arrest and a warrant of arrest in an action *in rem*, shall be by physical service¹⁶ while other processes may be served by email to the defendant or through the defendant's counsel, where the defendant is represented by a counsel.¹⁷ Service of a process in an action *in rem* by securely affixing to a mast or other conspicuous part of the ship or delivering to the master of the ship constitutes sufficient service on the owners of the ship or other property (equivalent to physical service).¹⁸ In the case of a property that is not, at the time of service, on board a ship, it is considered sufficient service on the owners of the property to

⁷ Order 2 Rule 10, AJPR 2023

⁸ Order 3 Rule 3(2)(a), AJPR 2023

⁹ Order 3 Rule 3(2)(b), AJPR 2023

¹⁰ Order 3 Rule 3(2)(c), AJPR 2023

¹¹ Order 3 Rule 4(1)(e)(i), AJPR 2023

¹² Order 3 Rule 5, AJPR 2023. It should be noted that Rule 1(1) of the rules of court made pursuant to the Reciprocal Enforcement of Judgment Ordinance, Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 prescribes that such application for registration and enforcement shall be made by **petition** *ex parte* or on notice.

¹³ See section 2(2) and (3) of the Admiralty Jurisdiction Act 1991 for the differences between proprietary maritime claim and general maritime claim.

¹⁴ See section 5(4) of the Admiralty Jurisdiction Act 1991 for the meaning of 'relevant person'.

¹⁵ Order 5 Rules 1 and 2(1), AJPR 2023

¹⁶ Order 6 Rule 3(1), AJPR 2023

¹⁷ Order 6 Rule 3(2), AJPR 2023

¹⁸ Order 6 Rule 1, AJPR 2023

affix a sealed copy of the process to the property or to a package or container or on the storage facility containing the property (equivalent to physical service).¹⁹

The AJPR 2023 has now specifically required to be served on the Harbour Master of the Nigerian Ports Authority a copy of every court order for the arrest of a ship or other property.²⁰

7. Provision for E-filing of an ex-parte application for a warrant of arrest of a ship or other property

Ex-parte applications for a warrant of arrest of a ship or other property may now be filed either physically or **electronically**. Electronic filing is to be done at the Admiralty E-filing Unit with the e-filed arrest processes in Portable Document Format (PDF) to be sent to the email address(es) to be provided by the Admiralty Registry of each Admiralty Division. Fees shall be assessed and paid through an electronic payment platform designed for that purpose with evidence of payment forwarded to the designated email address(es).²¹ The introduction of electronic filing of warrants of arrest marks an innovative drift from the AJPR 2011 and a commendable move towards digitization of the filing system. It is, in fact, more desirous in view of the extreme urgency usually associated with the arrest of ships or other properties.

8. Flexibility in hearing of application for warrant of arrest

The hearing of an application for a warrant of arrest of a ship or other property has now been made more flexible in that such application may now occur physically or **virtually**, even on **Sundays** and **public holidays**. The ultimate aim being to achieve an expeditious determination of such application **within 24 hours**, where feasible.²²

9. Reporting obligations of the Admiralty Marshal

The Admiralty Marshal being the head of the Admiralty Registry now has a duty to issue a report of the outcome of any search of the register of caveat against arrest procured by a party as in Form 8A. The Admiralty Marshal is also mandated, when a ship or property is under arrest, to regularly submit a monthly report to the Court or the issuing Judge. The report should state the location, security status, and condition of the ship or property under arrest. The Admiralty Marshal must also deliver a copy of the monthly report to the parties to the suit or as the Court may order.²³ This will enhance transparency in the process.²⁴ The Admiralty Marshal is also required to file, within 7 working days of a ship or other property release, in addition to receipts and expenditures, a return of expenditure for deposit made for arrest of ships or vessels before further deposits are made.²⁵

10. Powers of the Admiralty Marshal

The Admiralty Marshal may, for good cause and upon application to the Court by the arrestor, caveator against release, port authorities, relevant government or law enforcement agencies, and any other interested party, move a ship under arrest to a safe berth or location within jurisdiction.²⁶ The Admiralty Marshal may also seek directives of the Court where an arrestor fails to continue to meet the expenses in relation to the continued arrest of a vessel.²⁷

¹⁹ Order 6 Rule 2, AJPR 2023

²⁰ Order 6 Rule 5, AJPR 2023

²¹ Order 7 Rules 1(2), (3) and (4), AJPR 2023

²² Order 7 Rule 1(5) and (6), AJPR 2023

²³ Order 9 Rule 3(3), AJPR 2023

²⁴ Order 7 Rule 1(8), AJPR 2023

²⁵ Order 9 Rule 2(4), AJPR 2023

²⁶ Order 9 Rule 3(2)(d), AJPR 2023

²⁷ Order 9 Rule 6(2), AJPR 2023

11. Warrant of arrest where ownership has changed

The AJPR 2023 has made more detailed provisions on the issuance of a warrant of arrest in respect of a ship or other property whose beneficial ownership has changed since the issuance of the writ of summons. Under the AJPR 2011, these provisions did not consider section 71(2) of the Merchant Shipping Act 2007 (MSA),²⁸ thereby suggesting that it is in all cases where the beneficial ownership of a ship has changed due to sale or disposal, that the FHC may not issue a warrant of arrest.²⁹

The AJPR 2023 has now brought these provisions in tandem with section 71(2) of the MSA by expressly exempting an action *in rem* based on a maritime lien commenced in relation to a general maritime claim from the situation where the FHC shall not issue a warrant of arrest against a ship or other property whose beneficial ownership has changed since the issuance of the writ of summons, as a result of a sale or disposal.³⁰

It is noteworthy that the word ‘*may*’ under the AJPR 2011 has now been changed to ‘*shall*’ under the AJPR 2023 which means that the element of the Court’s discretion is removed.

12. Arrest without prior commencement of a substantive claim in court

The AJPR 2023 allows for an application for a warrant of arrest of a ship or other property to be made without the prior commencement of a substantive claim in court, where the claim originates from a foreign court or from both local and foreign-seated arbitration proceedings. Such application is to be supported by the original or certified true copy of the papers filed in the foreign court or arbitration proceedings and a duly notarized undertaking to indemnify the ship or other property, its owners, and any other interests in the ship or other property in case the arrest is later deemed unnecessary. Unless the undertaking is provided, the order of arrest shall not be made.

Where the arrest order is granted, an original of the undertaking to indemnify will be delivered alongside the arrest warrant during execution. Additionally, the court may make the arrest order of a ship subject to such other conditions it deems fair in the given circumstances.³¹

13. Provisions relating to caveat against release

Unlike the AJPR 2011, the AJPR 2023 clearly stipulates that only “a person having a claim against” a ship or other property under arrest in a proceeding may file in the Court, a caveat against the release from arrest of the ship or other property. This is a welcome improvement on similar provision under the AJPR 2011 which stipulated that “*a person may...file in the Court a caveat against the release from arrest of the ship or other property*” thereby giving room to meddlesome interlopers who have no business against a ship or property to randomly file a caveat against the release of a ship or other property.

Further, the AJPR 2023 requires that a person filing a caveat against the release of a ship or other property under arrest must not have initiated an admiralty action *in rem* before filing the caveat against the release of the ship or property. Where the caveator furnishes security relating to the caveat against release from arrest, the caveator must file an action in respect of the claim to which the caveat relates

²⁸ Section 71(2) of the MSA provides that “[S]ubject to the provisions of section 75 of this Act, **the maritime liens** securing the claims set out in section 67 of this Act, **remain attached to the ship notwithstanding any change of ownership or registration of the ship.**”

²⁹ See Order 7 Rule 1(4), AJPR 2011

³⁰ Order 7 Rule 1(10), AJPR 2023

³¹ Order 7 Rule 8, AJPR 2023

within 14 days of the security issuance. Failure to file such action within the stipulated period, the security will be immediately cancelled and released by the Admiralty Marshal to the caveator.³²

14. Reparation against needless arrest

While the AJPR 2023 reinforces the stance against wrongful arrest and grants the defendant a right to apply for compensation for any loss, injury or expenses incurred by reason of such wrongful arrest, it has now changed the test for determining wrongful arrest. Whilst the AJPR 2011 set the test for determining wrongful arrest to be proof that the arrest was applied for on “insufficient grounds”³³ (that is, unreasonably and without good cause), the AJPR 2023 has shifted from this position and now requires such defendant to establish a seemingly more cumbersome ground that the arrest was sought in “bad faith or in gross negligence, or unlawfully”.³⁴

The phrase “bad faith or in gross negligence” is the English representation of ‘*malafide or crassa negligentia*’ which was first used in the old English case, *The Evangelismos*³⁵. Indeed, the Admiralty Jurisdiction Act 1991 (the “AJA 1991”) and the AJPR 2011 by using the phrase ‘unreasonable and without good cause’ intended to dispense with the ‘*malafide or crassa negligentia*’ test which was considered a more stringent standard. The framers of the AJPR 2023 perhaps did not avert their minds to this fact. By introducing the phrase ‘bad faith or in gross negligence’, the AJPR 2023 may have introduced a more stringent standard of proof which appears to afford more protection to the plaintiff who effects a wrongful arrest.

Moreover, Order 11 Rule 2(a) of the AJPR 2023 appears to be inconsistent with section 13(1)(a) of the AJA 1991 which stipulates “unreasonably and without good cause”. The AJPR 2023 being a subsidiary legislation made pursuant to the AJA 1991³⁶ cannot override the provisions of its enabling Act. It remains to be seen how such conflict between the AJA 1991 and AJPR 2023 will be resolved.

15. Increase in the monetary threshold for a claim to qualify for an order for security for costs

In an action *in rem*, the Court upon the application of an interested person has a discretion to require a plaintiff arresting a ship to give security for costs. Like the AJPR 2011, the AJPR 2023 also sets out instances where such security for costs must be mandatorily given.³⁷ However, whereas under the AJPR 2011, the requirement for an order for security for costs was that the “plaintiff’s claim is in excess of five million naira or its foreign currency equivalent or where the plaintiff has no assets in Nigeria...”³⁸, the AJPR 2023 has increased the monetary threshold for an order for security for costs to a claim in excess of ₦10,000,000.00 (Ten Million Naira) or its foreign currency equivalent³⁹.

16. Priority of claims

While the AJPR 2011 provided for the determination of the order of priority of claims against a ship, it was very unclear as to how the claims are to be prioritized. This lacuna has now been filled in the AJPR 2023. Order 17 Rule 1(2) of the AJPR 2023 has now set out in clear terms the order of priority of claims over an arrested ship or other property as follows:

³² Order 8 Rule 7, AJPR 2023

³³ See Order 11 Rule 2, AJPR 2011

³⁴ Order 11 Rule 2(a), AJPR 2023

³⁵ (1858) 166 ER 1174 (PC)

³⁶ See section 21, AJA 1991

³⁷ Order 13 Rule 2, AJPR 2023

³⁸ See Order 13 Rule 1(b), AJPR 2011

³⁹ Order 13 Rule 1(2), AJPR 2023

- a. statutory or court charges and expenses like the Admiralty Marshal's expenses in connection with the ship or property;
- b. salvage, wreck removal and contribution in general average;
- c. wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship;
- d. disbursements of the master on account of the ship;
- e. loss of life or personal injury occurring whether on land or on water in direct connection with the operation of the ship;
- f. ports, canal and other waterways, dues and pilotage dues;
- g. possessory liens (repairer's lien – where ship is still in possession);
- h. mortgages – priority of mortgages is determined by the date on which each mortgage is recorded in the register and registered mortgages have priority over unregistered mortgages;
- i. in rem action for possession or ownership of a ship;
- j. in rem action in relation to a dispute between co-owners, possession or use of a ship;
- k. in rem action in relation to loss or damage to cargo carried on a ship;
- l. lien in rem action in relation to damage received by a ship;
- m. in rem action in relation to a dispute arising out of contracts for carriage of goods or use of a ship; and
- n. in personam action.

This is a welcome addition to the AJPR 2023 and will serve as a panacea to the issue of competing claims over an arrested ship or other property.

17. Release of a ship or other property upon provision of undertaking, guarantee or bond

The AJPR 2023 has enlarged the provision for the release from arrest of a ship or other property. An interested person may apply for the release of the ship or other property and the Court can release the arrested ship or property upon being satisfied of the provision of an undertaking, guarantee, or bond by (i) a protection and indemnity club that is a member of the International Group of Protection and Indemnity Clubs, or (ii) a bank, as defined in the Banks and Other Financial Institutions Act, engaged in banking activities in Nigeria, or (iii) a reputable insurance company registered under the Insurance Act and operating in Nigeria.⁴⁰

18. Removal of Aviation Rules

In the AJPR 2023, there is a deliberate omission of the rules concerning aviation which were contained in the AJPR 2011. Under the AJPR 2011, aviation matters were generally treated as admiralty matters. However, by Order 22 Rule 2 of the AJPR 2023, "aircraft" has been defined to mean "waterborne aircraft". The implication of this being to exclude "non-waterborne aircraft" from the admiralty jurisdiction of the FHC. This specific exclusion indicates a separation of aviation matters from the Admiralty Division's purview.

19. Specific description of an intervener

The AJPR 2023 has also given a concise description of an intervener. Under the AJPR 2011, there was no clear interpretation of who an intervener is and should be. However, the AJPR 2023 in Order 22 Rule 2 gives a precise definition of an intervener to mean: "in relation to a proceeding or to a ship or other property under arrest... any person not named in the writ of summons in an admiralty action in rem who is interested in the res under arrest or in the fund at the Admiralty Registry and includes mortgagees, trustees in bankruptcy, underwriters who have accepted abandonment, charterers,

⁴⁰ Order 10 Rule 5(1)(b), AJPR 2023

persons who have possessory liens or competing maritime liens and generally persons who are plaintiffs in other actions in rem against the same property.” It is hoped that this will reduce or even completely eradicate the practice of meddlesome interlopers mischievously applying to join an *in rem* suit as interveners thereby congesting and complicating the action.

20. **Reduced timeframe within which to apply for sale of a ship or property for failure to provide security**

Under the AJPR 2011, where the owner of a ship or other property under arrest fails to provide security for its release thereof for a period of not less than six (6) months from the date of the arrest, the Court, on the application of the party who secured the arrest or other interested party, may order the sale of the ship or other property.⁴¹ However, under the AJPR 2023, such application may be made by the arrestor or other interested party where no security is provided for the release of the ship or other property for a period of **not less than sixty (60) days** from the date of the arrest.⁴² The purpose of this is to reduce the costs and expenses incurred by the arrestor(s) in maintaining an arrested ship or other property for which no security is provided for its release. The AJPR 2023 further provides that the proceeds from such sale are to be distributed in accordance with its provisions.⁴³

Conclusion

The AJPR 2023 is poised to usher in a new era in admiralty practice and procedure in Nigeria. Its adoption of flexible hearing procedure and digitization of the filing system is particularly commendable and a most welcome development toward keeping admiralty practice in the FHC at pace with the rest of the world. We commend the Nigerian Maritime Law Association for spearheading this important reform in our procedural law. It is hoped that the application of these new rules will restore confidence in Nigeria’s admiralty practice and encourage both local and foreign shipping stakeholders to resort more to the FHC, as opposed to adopting foreign jurisdiction clauses, for the resolution of maritime disputes.

⁴¹ See Order 9 Rule 6(2), AJPR 2011

⁴² Order 9 Rule 6(3), AJPR 2023

⁴³ Order 9 Rule 7, Order 17, AJPR 2023

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