

FEDERAL HIGH COURT RULES
ON THE VALUE OF SECURITY FOR
THE RELEASE OF ARRESTED VESSEL
IN AN ACTION *IN REM*

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MARITIME UPDATE

FEDERAL HIGH COURT CONFIRMS THAT THE VALUE OF SECURITY TO BE FURNISHED FOR THE RELEASE OF A VESSEL ARRESTED IN AN ACTION *IN REM*, IS THE VALUE OF THE CLAIM OR THE VALUE OF THE VESSEL, WHICHEVER IS LESS, IN ACCORDANCE WITH ORDER 10 RULE 5(1)(A) AND (B) OF THE ADMIRALTY JURISDICTION PROCEDURE RULES (AJPR) 2011

Overview

In a significant ruling by Justice I. L. Ojukwu, of the Uyo Judicial Division of the Federal High Court of Nigeria, recently delivered in **Suit No *FHC/UY/CS/43/2016 Mobil Nigeria Producing Unlimited v The Monarch & Ors***, the Court held that the security to be furnished by the owner of an arrested vessel for the release of the vessel, is security as to the value of the Plaintiff's claim or the value of the ship, whichever is less.

Background

Mobil Producing Nigeria Unlimited ("Mobil") instituted an action *in rem* against the Defendants via a Writ of Summons filed on 25 May 2016 wherein Mobil alleged that the 1st Defendant rig, "The Monarch", owned and operated by the 2nd and 3rd Defendants, respectively, had damaged its subsea live 24" oil pipeline from Ubit SSM to Qua Iboe Terminal and two other pipelines offshore Ibeno Local Government Area, Akwa Ibom State, resulting in an oil spill within the vicinity and the concomitant shut in of oil production by Mobil. Mobil by the Writ claimed, *inter alia*, USD500m (Five Hundred Million United States Dollars) as general damages for the alleged damage to its pipelines. By a Motion Ex parte also dated and filed on 25 May 2016, Mobil sought and obtained an order of arrest of the rig, and also an order for the security to be provided by the owners for her release to be a sufficient, unconditional and acceptable bank guarantee issued by First Bank Nigeria Ltd or Zenith Bank Plc to secure and satisfy the reliefs sought in the suit.

The Application of the Defendants

Upon the arrest of the Monarch, the owners of the Monarch, represented by Mr Oluseye Opassanya, SAN, of Olaniwun Ajayi LP, made an application to the Court for a variation of the order of arrest and for an order of valuation of the vessel. The application was premised on the ground that Order 10 Rule 5(1)(a) and (b) of the AJPR 2011 provides that the value of security to be provided by the owner of a



vessel that is under arrest in an action *in rem* is security as to the value of the Plaintiff's claim or the value of the arrested vessel, whichever is less.

In opposition to the application, Mobil argued that by the decision of the English Court in **The Moschanty** (1971) 1 Lloyd's Rep 37, which was followed by the Nigerian Court of Appeal in the cases of **MV Da Qing Shang v PAC Ltd** [1991] 8 NWLR (Pt 209) 354; **The Owners of MV "S Araz" v LPG Shipping SA (The S Araz No 2)** 6 NSC 149, 162; **Finunion Ltd v MV Briz** [1997] 10 NWLR (Pt 523) 95, 105 and **The Lupex** 5 NSC 182, 196, the value of security to be provided for the release of an arrested vessel is sufficient security to cover the amount of its claim with interest and cost on the basis of its reasonably arguable best case.

The Court's Ruling

In its ruling, the Court held that it has the discretion to vary an ex parte order of arrest of a vessel and that by the provision of Order 10 Rule 5 (1)(a) and (b) AJPR 2011 the value of security to be provided by the owners of the Monarch for her release is security as to the value of Mobil's claim or the value of the Monarch, whichever is less. Consequently, the Court varied the order of arrest of the Monarch to conform to the provisions of Order 10 Rule 5 (1)(a) and (b) AJPR 2011 and ordered the valuation of the Monarch by a renowned ship valuer.

Comment

The ruling of the Court has significant implications on Nigerian admiralty practice and is the first time a Nigerian court has construed the provisions of Order 10 Rule 5(1) AJPR 2011 with respect to the value of security to be furnished for the release of a ship or other property that is under arrest. The ruling of the Court is apposite and reiterates the law as espoused by the Supreme Court in the **Anchor Ltd v The Owners of the Ship Eleni** [1956] 1 NSC 42, 43 and **Rhein Mass Und See GMBH v Rivway Lines Ltd** [1998] 5 NWLR (Pt 549) 265, 277 to the effect that that the value of security to be posted for the release of an arrested vessel is as to the value of the claim or as to the value of the ship, where the value of the vessel is less than the claim.

The utility of the ruling is that it brings Nigerian admiralty law in consonance with internationally accepted notion and principles on the value of security to be provided for the release of an arrested vessel in an action *in rem* and will in no small measure assist in curbing the exaggeration of claims by Claimants in order to demand and obtain excessive security from ship owners. The Court clearly affirmed that the limit of the value of security a Claimant can obtain for the release of an arrested ship is the value of the ship and nothing more.

