

# **“ARREST AND DETENTION OF VESSEL AND CREW IN NIGERIA , UNDER THE CABOTAGE ACT ”**

**BY**

**ORITSEMATOSAN EDODO-EMORE,  
O.EDODO,THORPE& ASSOCIATES**

## **1.0 Difference between arrest of ship and detention of ship**

- 1.1 It is important to start by saying that there is a clear distinction between “arrest of a vessel” and “ detention of a vessel” . Arrest of a vessel most often arises out of breach of contractual obligations by the ship owner, the charterer or anyone who has an interest in the ship.A dissatisfied cargo owner,whose goods have been shortlanded, or damaged,may arrest a vessel in order to force a ship owner or her managers to answer his claim.Thus an arrest of a vessel always involves an order of a court of competent jurisdiction.In Nigeria, that would be an order of the Federal High Court.
- 1.2 Detention of a vessel on the other hand arises out of a violation of statutory obligations of either Port State or Flag State Control. This results in an administrative order for the detention of the vessel until such a time as she fulfils the obligations required by the Port State or Flag state control.Such a detention order may be effected without an order of court,whereas an arrest must be by court order.
- 1.3 Vessel detention rather than vessel arrest is a common feature of Nigeria’s Coastal and Inland Shipping [Cabotage Act ]2003 .

## **Statutory Obligations of Vessels trading in Nigeria’s Coastal Waters**

- 2.1 The Coastal and Inland Shipping [Cabotage] Act 2003 has four cardinal requirements which it expects all vessels trading in Nigeria’s coastal and inland waterways to satisfy. Such vessels must be ,
  - ✚ wholly and beneficially owned by Nigerian citizens or by companies wholly and beneficially owned by Nigerian citizens [or companies where Nigerians own at least 60% of the shares] S.23(1)(a)&(c),
  - ✚ exclusively manned by officers and crew of Nigerian citizenship-S23(1)(e)
  - ✚ built in Nigeria.-S.3
  - ✚ registered in Nigeria-S.3
- 2.2 If any of these requirements are not satisfied then the operators of the vessels must apply to the Minister of Transportation for relevant waivers under Sections 9,10, and 11 of the Cabotage Act , to enable the vessels trade within Nigeria’s coastal waters, its territorial and inland waters,its islands and its Exclusive Economic Zone. Failure to meet any of these

requirements or to obtain the relevant waivers or licences or permits would be grounds for the vessels to be detained under the Cabotage Act.

### **Detention of vessel for contravention of Cabotage Act.- S.31**

3.1 In order to enforce compliance with the terms of the Coastal and Inland Shipping [Cabotage] Act 2003, enforcement officers from the Nigerian Maritime Administration and Safety Agency [NIMASA] are authorized to stop and board a vessel, detain her and her officers and with a search warrant, search the vessel and seize any thing that may be required as evidence of contravention of the Act- S.31(1). The section provides that:

“Where an enforcement officer believes on reasonable grounds that a vessel has contravened the provisions of this Act, the enforcement officer may stop and board the vessel, detain the vessel or its officers or both, and with a warrant search the vessel and seize anything found in or on the vessel that the enforcement officer believes on reasonable grounds shall afford evidence with respect to any contravention of this Act.”

3.2 Thus S.31(1) gives an enforcement officer power to detain a vessel and her officers. It is interesting to note that whereas this section provides a power to detain a vessel, it does not specify how that detention should be effected. There is no mention of a detention order being issued either administratively or through the courts. The importance of this distinction becomes apparent shortly.

3.3 In practice, enforcement officers go on regular patrols to check the papers of vessels plying Nigeria's coastal waters. If they find vessels whose papers are not in accordance with the Cabotage Act they issue detention orders while awaiting compliance with the Act. In exercising their functions, enforcement officers make a clear distinction between an arrest of a vessel and detention of a vessel as illustrated below .

3.4 Sometime ago, I was processing cabotage applications when I received a distress call informing me that our client's pipe laying and construction vessel had been “arrested” . I immediately related the message to the head of the enforcement unit at NIMASA who told me that our client's vessel was not “arrested” but was “detained”. The vessel was given a NIMASA “**Enforcement Officer(s) boarding form**” with the endorsement “**vessels not to sail until cleared by NIMASA**”. On showing evidence that the vessel's application for registration to participate in the cabotage trade was being processed at NIMASA, the vessel was released by issuing a “**Notice of Release**” .

### **Detention of vessel for offences committed by vessel, or in respect of vessel-S.32**

4.1. Additionally, if an enforcement officer believes that a vessel or its operators have committed some offence under the Cabotage Act, the enforcement officer has a right to issue a detention order against the vessel without order of court. But such detention order must be registered in court as soon as possible.- The section 32 of the Cabotage Act provides that:

- (1) Where an enforcement officer believes on reasonable grounds that an offence under this Act has been committed by or in respect of a vessel, the enforcement officer may without a court order by reasons of exigent circumstance make a detention order in respect of the ship.
- (2) A detention order made under subsection (1) shall as soon as it is practicable be registered in court.

It is interesting to note that the detention order made under s.32(1) is in respect of the vessel only and not in respect of the officers. Additionally the detention order made under S.32 must be registered in court while no reference is made to court as regards the detention order made under Section .31.

- 4.2 Perhaps reference to registration of a detention order in court as prescribed under S.32 arises because a detention order under S.32 should be made when an enforcement officer believes that an offence has been committed by the vessel itself or in respect of the vessel. The offences under the cabotage legislation are of strict liability, commanding punitive fines and forfeiture of the vessel. The offences and consequences of contravention of the Cabotage Act are listed in sections 35-40 in Part VII of the Act. Perhaps it is the gravity of the offences and the fines that creates the need to register a S. 32 detention order in court.

### **Common reasons for detention of vessels**

- 5.1 In practice , NIMASA detains vessels for the following reasons:

- ✚ Failure to show evidence of registration licence to participate in Cabotage trade (foreign vessels)-S.23(d)
- ✚ Failure to show evidence of waivers [payment receipts] S.9-12
- ✚ Non payment of 2% cabotage surcharge-S43

These presumably are S. 31 detentions which do not require registration in court.

- 6.1 **Similarities and Differences between a S.31 and S.32 Detention Orders**

- ✚ Detention orders under both sections may be made without an order of court.
- ✚ But a detention order made under S.32 must be registered at the Federal High Court at the earliest opportunity.
- ✚ A detention order made under S.31 need not be registered in court
- ✚ A detention order made under S.31 can be issued against the vessel and its officers [crew]
- ✚ But a detention order made under S.32 can only be issued against the vessel .
- ✚ Detention orders made under S.31 relate to contravention of the Cabotage Act and a notice of release would be issued after the terms of the Act are complied with.
- ✚ But detention orders under S.32 relate to offences committed by the vessel itself, and
- ✚ Detention orders under S.32 also relate to offences committed in respect of the vessel, presumably by its owners, managers, charterers, operators etc.

### **DETENTION OF CREW**

- 5.0 **The Right to detain crew**

Generally , the right to detain the crew of a vessel arises because an offence has been committed by the crew or within the jurisdiction of the Flag State or Port State Control. Some times the crew may be detained by the Public Authorities when there has been a maritime accident and the Authorities are trying to establish liability. In practice, an enforcement officer of NIMASA has the power under section 31 to detain the crew of a vessel if he believes that such persons have contravened the Cabotage Act. In detaining the crew, the enforcement officer would be mindful

guidelines on the fair treatment of seafarers adopted by the IMO legal Committee and the ILO governing body in 2006.

The guidelines seek to do the following:

- ✚ Acknowledge the peculiarity of the work of seafarers and classifies them as “special category of workers”
- ✚ Acknowledge that seafarers need special protection because their work takes them to different jurisdictions
- ✚ Notes that special protection is especially important when seafarers deal with Public Authorities who are investigating the accident and might want to detain the crew
- ✚ If seafarers are detained such detention should be as brief as possible

\*\*\*\*This day articles-Detention of vessel & crew in  
Nigeria under the Cabotage Act.