

ACCEPTABILITY OF CLUB LETTERS IN NIGERIA.

The right to arrest vessels has traditionally been used by most claimants as an effective way of securing their claims in admiralty actions. The arrested vessel becomes the security in the hands of the court, which can be attached and sold in the event of judgement being awarded for the claimant. However, along with the right of arrest, arose a corresponding need to ensure that international trade was not unduly disrupted and also ameliorate the huge losses suffered by owners as a result of the arrest. Most maritime nations therefore developed the practice of releasing vessels on the provision of easily enforceable security by the owner or his agent.

The most common forms of security used in most jurisdictions are: cash, bank guarantees, insurance bonds and club letters. The extents to which each of these security documents are used will vary from one jurisdiction to another. However, of all the security documents, it would seem that the club letter is the least expensive and most easily procurable.

In Nigeria, club letters are known and used as security in three main instances: as pre – arrest security to prevent the arrest of a vessel, security for costs of an action and post arrest security to secure the release of an arrested vessel.

Pre – Arrest Security

Club letters are used in Nigeria as pre – arrest security to guarantee caveats filed in court. A caveat is an undertaking given by a ship owner referred to as the caveator or his solicitor, to appear in court in any action commenced against his vessel and to provide security to the action. It is an undertaking given to prevent the arrest of a vessel. The caveat is the consideration furnished to the court by a ship owner or his solicitor in return for the court refraining from ordering the arrest of the vessel.

Our admiralty rules provide that a caveat against the arrest of a ship or other property may be filed by the Registrar of the court if satisfied either because of an undertaking given by the caveator or a solicitor or for other sufficient reason, that the caveator will appear in any suit instituted against the vessel and provide bail. The rules further provide that the Registrar may also be satisfied by an undertaking provided by a P&I club belonging to the International Group or a bank or reputable insurance company in Nigeria, to satisfy any judgement that may be awarded for the amount specified in the caveat. Under the rules, a caveator is expected to pay the amount claimed into court or provide bail, within three days of service of the writ.

The issue that frequently arises is the ambit of the security a caveator is required to provide upon service of the writ. Is a club letter sufficient or does it need to be backed up by additional security in the form of cash or a bail bond?

In **Jammal Ventures (Nig.) Limited Vs The MV “Ndoni River & Ors (1996) FHCLR. 4 64**, the plaintiff claimed the sum of N3, 672,173.60 for damage to its goods carried on board the defendant’s vessel. There was in force a caveat against the arrest of the MV “Ndoni River” in the sum of N7.5million, which the Standard Club undertook to satisfy in the event of judgement being awarded against the vessel. After service of the writ, the defendants appeared in court and filed a club letter within the time frame stipulated in the rules. The plaintiff subsequently filed an application seeking orders to enforce the caveat and to compel the defendants to pay the amount

claimed into court or in the alternative, an order for the arrest of the vessel. The court stated that the forms of security provided under the rules were cash, bail bond, or undertaking of a P&I club, bank or insurance company and any one of these security was acceptable under the rules. Accordingly, the court held that the club letter provided by the Standard Club was sufficient and it was not necessary to order them to pay cash. The plaintiff's application was therefore dismissed.

In Nigeria, most claimants reject club letters and prefer a cash deposit, bank guarantee or insurance bond to be furnished as security by the caveator. However, the above case makes it quite clear that club letters are valid and acceptable as pre-arrest security by Nigerian courts irrespective of any objections the plaintiff may have.

Security for Costs

Nigerian admiralty rules provide that the court may order a plaintiff to provide security for costs in an action where a ship or other property is under arrest. The rules make it mandatory for the court to order security for cost, where the plaintiff's claim is over one million naira or has no assets within jurisdiction. The object of such order is to ensure that if the plaintiff's claim fails, the defendant will be able to recover his costs.

The forms of security required under the rules are the same as that of a caveat. As in the case of the pre – arrest security, the use of club letters as security for costs is valid and acceptable in Nigerian courts and is not subject to the whims and caprices of the defendant.

Post – Arrest Security.

Club letters are also used as security for the release of arrested vessels. The rules provide that the court may order the release of a ship under arrest on such terms as is just. This in essence means that the court is given wide discretionary powers on the type of security to be provided by an applicant seeking the release of a ship.

The most common forms of security accepted are bank guarantees, insurance bonds and club letters. Club letters are becoming increasingly popular in Nigeria but they have not attained the wide acceptability bank guarantees and insurance bonds have gained because most Nigerian claimants are either skeptical of or not familiar with the operations of P&I clubs.

In practice, although the rules give the court wide discretionary powers on the type of security to be provided, the court would usually order a release based on a security acceptable to the plaintiff, unless he is being manifestly unreasonable. Accordingly, if the plaintiff objects to a club letter, which most Nigerian claimants do, the court will in most cases refuse to order a release based on it.

In **Ebube V Gold Star Line Ltd, 4 Nigerian Shipping Cases 226**, the court refused to release the MV “Gold Hilla V 68” on the strength of a club letter because the plaintiff objected to it. The court held that although club letters are popular in Europe, in Nigeria, the discretion as to the type of security to be obtained for the release of an arrested ship is left to the claimant and the court. The defendant was therefore ordered to provide a bank guarantee.

There are also cases where club letters have been successfully used to secure the release of an arrested ship. In **Onwuegbu V the MV “Valdora” 4 Nigerian Shipping Cases 140**, the MV “Valdora” arrested by the plaintiff for injuries sustained on board, was released on the provision of a club letter. Also in **Tayasa Dredging & Construction Ltd V the MT “Silva” 4 Nigerian Shipping Cases 69**, a P&I club letter was accepted by the court for the release of the MT “Silva”. In both cases, the releases were effected with the consent of the plaintiffs’ and the approval of the court.

A practice, which has developed among maritime lawyers, is to get the plaintiff to consent to a release based on a club letter to be replaced with a bank guarantee within ten working days. This appears to be a compromise between ensuring the vessel is not unduly delayed, while at the same time taking into consideration the plaintiff’s reservations on a club letter. It must be stressed that this can only be done with the agreement of the plaintiff or his lawyer and is dependent on having a reasonable lawyer on the other side.

In conclusion, it must be stated that while club letters are gaining increased popularity as an acceptable mode of security, it’s use as a post arrest security is still severely handicapped as it is dependent to a large extent on the co-operation of the claimant and the court. In this regard, the need to sensitise importers, maritime lawyers and judges alike on the respectability and acceptability of club letters cannot be over-emphasised.

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