

# Maritime Case Alert

The Federal High Court Rules that a Dispute Has to Exist Between Parties to a Charterparty for a Matter To Be Referred To Arbitration – Suit No. FHC/L/CP/1083/2023. Petrolex Oil & Gas Limited v. Energy Link Infrastructre Limited

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## INTRODUCTION

On 11.11.2024, the Federal High Court, Lagos Judicial Division (**FHC**), ruled that a dispute must exist between parties to a charter party for a matter to be referred to arbitration (the **Ruling**). Olaniwun Ajayi LP (the **Firm**) represents the Plaintiff – Petrolex Oil & Gas Limited, in the suit, and the Ruling was pronounced in favour of the Plaintiff.

The Ruling underscores the true essence of incorporating an arbitration clause in contracts, which enables parties to a contract to refer real disputes arising from an underlying contract to the alternative dispute resolution mechanism of arbitration. In the succeeding subheadings, we shall highlight the suit's background and analyse the Federal High Court ruling in light of existing case law

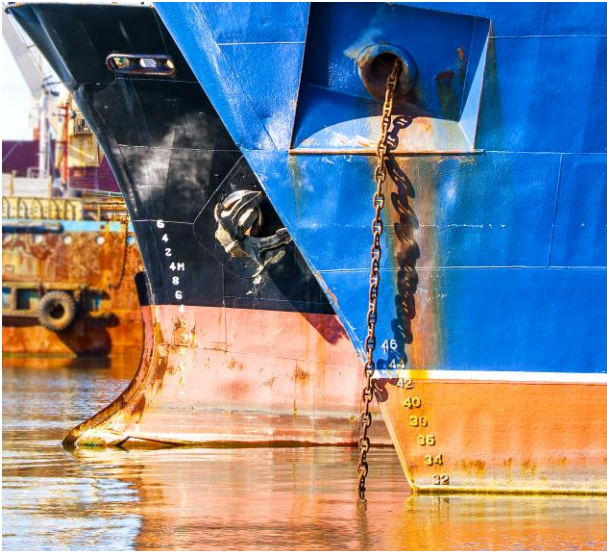
## FACTUAL MATRIX

Petrolex Oil & Gas Limited (the **Plaintiff**) entered a charterparty with Energy Link Infrastructure Limited (the **Defendant**) dated 01.06.2022 for the hire of eight (8) vessels owned by the Plaintiff (the **Vessels**) for crude transportation in Alakiri/Bonny Intersection, Rivers State (the **Charterparty**). The terms of Charterparty contemplated that the Defendant would pay the sum of USD\$ 3000 (Three Thousand United States Dollars) per day per Vessel as the cost of hire.

The Plaintiff delivered the Vessels to the Defendant and carried out its obligations under the Charterparty. However, the Defendant continuously breached its contractual obligations by its failure and neglect to timeously pay the accrued hire to the Plaintiff under the Charterparty. Following the breach of Defendant's obligations, on 11.10.2022, the Plaintiff informed the Defendant of its defaults under the Charterparty and notified the Defendant of its intention to exercise its rights under the Charterparty, including the suspension of performance, withdrawal of the Vessels and termination of the Charterparty (the **Default Notice**).

Despite the Default Notice, the Defendant continued to breach its contractual obligations under the Charterparty and failed to respond to the Default Notice. In view of this, the Plaintiff terminated the Charterparty in accordance with the Charterparty terms by a Termination Notice dated 11.10.2022 (the **Termination Notice**), demanded the accrued debt from the Defendant, and the evacuation of the Defendant's cargo on board the Vessels to enable the redelivery of the Vessels to the Plaintiff.

Furthermore, by two letters dated 22.11.2024 and 24.01.2023, the Plaintiff demanded for the release of the Vessels free of cargo from the Defendant (the **Demand Letters**). However, despite the receipt of the Demand Letters, the Defendant did not respond to them and further failed to release the Vessels.



Thereafter, the Plaintiff commenced a Writ of Summons action against the Defendant seeking, in the main, the sum of \$4,590,000 (Four Million, Five Hundred and Ninety Thousand United States Dollars) as the total cost of hire for each of the Vessels for the period the Defendant failed to redeliver the Vessels (the **Suit**). Upon service of the processes in the Suit on the Defendant, the Defendant filed a Motion on Notice seeking a stay of proceedings pending arbitration pursuant to the arbitration clause in Charterparty (the **Application**), The Application was opposed by the Plaintiff.

In opposing the Application, the Plaintiff contended that there was no dispute to be referred to arbitration. This was on the basis that the Defendant did not dispute the Default Notice, the Termination Notice, and the Demand Letters. The Plaintiff's submissions were based on the Supreme Court's decision in **Sakamori Construction (Nig) Ltd v. Lagos State Water Corporation** [2022] 5 NWLR (Pt. 1823) 90 at 395-396 paras D-H, in which the apex Court held that a matter can only be referred to arbitration where a dispute exists between the parties.

### ISSUE FOR DETERMINATION

The issue before the Federal High Court was whether the Defendant had disclosed sufficient grounds for the grant

of the Application for the stay of proceedings pending arbitration.

### THE RULING OF THE FEDERAL HIGH COURT

The FHC considered the arbitration clause in the Charterparty and its significance as an alternative means of dispute resolution and held that the parties can only resort to arbitration if there is a real dispute to be referred to arbitration.

The FHC agreed with the submissions of the Plaintiff and relied on the Sakamori case and **UBA Plc v Trident Consultant Ltd**<sup>1</sup> where the Supreme Court held that an arbitration clause is activated by the dispute between the parties to the arbitration agreement and it is the said dispute that should be submitted to arbitration.

The FHC found that the Defendant had admitted in its affidavit in support of the Application the obligation - under the Charterparty, to pay the Plaintiff for holding on to the Vessels beyond the redelivery date and that the Defendant failed to produce any documentary evidence to demonstrate that there existed a dispute over the debt owed to the Plaintiff under the Charterparty. On this basis, the FHC held that there was no dispute between the parties to warrant referring the parties to arbitration.

### COMMENTARY ON THE DECISION

The Ruling of the FHC is laudable because it underscores the salient principle established in the Sakamori case for the activation of an arbitration clause in contracts. The implication of the Ruling in the Petrolex case is that based on the principles established in the Sakamori case, defendants in maritime cases will err on the side of caution before filing applications for stay of proceedings pending arbitration as it is beyond cavil that an arbitration clause in a maritime contract can only be activated where a real dispute exists between parties to the maritime contract.

1. [2023] 14 NWLR (Pt 1903) 107 at 139 paras D-G

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