

Federal High Court Orders Security for Costs under the New Admiralty Jurisdiction Procedure Rules, 2023

OALP Maritime Practice Newsletter

On 06.10.2025, in *Suit No. FHC/L/CS/1347/2017 – Virgin Forest Energy Limited v. MT Josephine & Triber Energy Limited*, the Federal High Court, Lagos Judicial Division (**FHC**) delivered a ruling granting an application for security for costs. The Court found that the Applicants satisfied the requisite conditions justifying the exercise of its judicial discretion under Order 13 Rule 1 of the Admiralty Jurisdiction Procedure Rules 2023 (**AJPR 2023 or the Rules**).

Olaniwun Ajayi LP (**OALP**) successfully represented the Defendants/Applicants, MT Josephine and Triber Energy Limited, in a landmark application for security for costs; which was determined in their favour. This ruling stands as one of the earliest and most significant judicial interpretations of the AJPR 2023 on such applications in admiralty proceedings.

In the following sections, we provide an overview of the case background and a detailed analysis of the Federal High Court's reasoning, situating it within the broader context of existing case law and the evolving maritime litigation landscape.

FACTUAL MATRIX

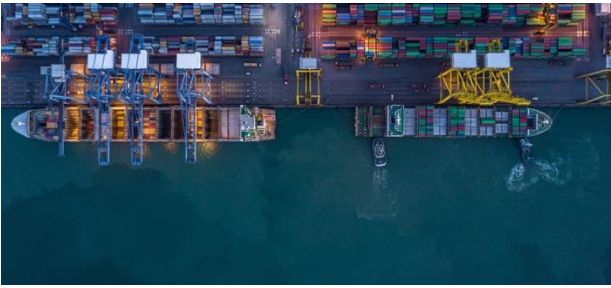
The Plaintiff/Respondent (**Respondent**), *Virgin Forest Energy Limited*, commenced the suit by a Writ of Summons dated 06.09.2017 against the Applicants in relation to a Charterparty dated 19.06.2017. The Respondent's claim, arising from the alleged breach of the Charterparty, amounts to USD550,000 (Five Hundred and Fifty Thousand United States Dollars) and ₦5,961,164.40 (Five Million, Nine Hundred and Sixty-One Thousand, One Hundred and Sixty-Four Naira).

Pursuant to a Motion Ex-parte dated 06.09.2017, the Respondent applied to the FHC for the arrest of the vessel *MT Josephine*, pending the provision of a bank guarantee in the sum of USD 715,000 (Seven Hundred and Fifteen Thousand United States Dollars) or its Naira equivalent. Following consideration of the application, the Court granted an order of arrest on 08.09.2017, and *MT Josephine* was subsequently arrested on 13.10.2017.

In compliance with the Court's order, the Applicants furnished an Unconditional Bank Guarantee issued by one of Nigeria's leading commercial bank in the sum of USD500,000 (Five Hundred Thousand United States Dollars) on 14.06.2018, securing the vessel's release.

Subsequently, the Applicants filed a Statement of Defence and Amended Counter-Claim dated 13.03.2019, seeking USD1,579,680 (One Million, Five Hundred and Seventy-Nine Thousand, Six Hundred and Eighty United States Dollars) and ₦6,610,500 (Six Million, Six Hundred and Ten Thousand, Five Hundred Naira) in damages. The Applicants contended that the continued subsistence of the Bank Guarantee imposed a significant financial burden, constraining their operational liquidity and access to credit facilities.

By a Motion on Notice dated 21.11.2024, the Applicants sought an order for security for costs under Order 13 Rule 1 of the AJPR 2023. Relying on the Respondent's audited financial statements for 2021, 2022, and 2023, the Applicants argued that the Respondent's net assets had steadily declined, with



the 2023 figure falling below the value of their Counter-Claim. The Applicants contended that this raised a legitimate

apprehension that the Respondent might be unable to satisfy any adverse order as to costs. They therefore urged the Court to exercise its discretion under Order 13 Rule 1(2) of the AJPR 2023, which empowers the Court to order security for costs where a plaintiff's claim exceeds ₦10,000,000 or its foreign currency equivalent, and to further order that, failing the Respondent's compliance within the prescribed period, the USD500,000 bank guarantee earlier furnished by the Applicants to secure the Plaintiff's claim be discharged and released to them.

ISSUE FOR DETERMINATION

The issue before the FHC was whether the Applicants are entitled to the reliefs sought before the Honourable Court.

RULING OF THE COURT

Upon a careful review of the parties' submissions, the FHC found merit in the Applicants application and accordingly granted it. The Court held that the Applicants had adduced cogent and credible evidence justifying the exercise of its discretion to order security for costs under the AJPR 2023.

Significantly, the Court reaffirmed the settled principle that documentary evidence is the best proof of its contents, as a document **"speaks for itself."** Accordingly, the counter-depositions in the Respondent's counter-affidavit and the oral arguments advanced during the hearing of the application were insufficient to displace the audited financial statements tendered by the Applicants, which provided a more credible and objective reflection of the Respondent's financial position.

The Court observed that the Respondent's claim of financial solvency imposed upon it a legal burden of proof, which must be discharged on a balance of probabilities. The Respondent, however, failed to substantiate its assertions with credible or documentary evidence and was consequently held not to have discharged that burden.

Having found merit in the application, the Court granted the reliefs sought and ordered as follows:

- 1 The Respondent shall, within seven (7) days of the Order, provide security for costs; in the form of a Bank Guarantee from a Tier-1 Nigerian bank; in a sum equivalent to the value of the Applicants Counter-Claim; and
- 2 Where the Plaintiff fails to provide the required security within the stipulated period, the Bank Guarantee dated 14.06.2018, previously furnished by the Applicants to secure the Plaintiff's claim, shall stand released immediately and be returned to the Defendants by the Admiralty Marshal of the Court.

COMMENTARY ON THE DECISION

This decision marks a significant milestone in Nigerian maritime jurisprudence, standing as one of the earliest and most authoritative judicial applications of the AJPR 2023 on security for costs. It offers much-needed clarity on how the FHC will exercise its discretion under Order 13, particularly in cases where a claim or counterclaim exceeds ₦10 million (or its foreign currency equivalent) as provided in the Rules.

In reaching its decision, the Court drew on established authorities such as **M.V.S. Araz v. LPG Shipping S.A.** [1996] 6 NWLR (Pt. 457) 720 at 735 and **MV Sealion (Ex Antibes) v. Assurance Foreningen Skuld (Gjensiding)** [2019] LPELR-47399 (SC) 12. These precedents affirm that an applicant for security for costs must present credible and persuasive evidence to justify the Court's discretion.

The Court accepted the Applicants' documentary evidence demonstrating the Plaintiff's declining financial position, finding sufficient grounds to protect the Defendants from potential loss should the Plaintiff fail to satisfy any subsequent costs order. It reiterated the principle that documents speak for themselves, holding that the Respondent's counter-affidavit and oral arguments could not outweigh the audited financial statements presented. In the absence of credible proof of solvency, the Respondent had not discharged its evidential burden.

Equity also played a central role in the Court's reasoning. Noting that the Defendants had already furnished an unconditional bank guarantee to secure the release of the vessel, the Court held that fairness required corresponding protection for the Defendants' costs. It therefore ordered that if the Plaintiff failed to provide the required security within seven days, the Defendants' bank guarantee; standing in place of the vessel; should be immediately released.

In conclusion, the ruling provides definitive interpretive guidance on the operation of Order 13 of the AJPR 2023, reflecting the Court's balanced and pragmatic approach to maritime litigation. It underscores the FHC's commitment to ensuring that parties are shielded from undue financial risk while preserving the right of a successful litigant to recover its costs in full.

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