

**LIABILITY TO PAY PILOTAGE DUES:
A REVIEW OF THE DECISION IN NOBLE
DRILLING (NIG) LTD V. NIGERIAN PORTS
AUTHORITY (2021) LPELR-52535(CA)**



INTRODUCTION

Nigeria has designated pilotage districts which ships cannot navigate unless with a licensed pilot. Section **42(1) of the Nigerian Ports Authority Act** (NPA Act) provides that ***“A ship ... shall, while navigating in a pilotage district in which pilotage is compulsory, be under the pilotage of (a) an Authority pilot; or (b) a licensed pilot of the district, for the purpose of entering, leaving or making use of the port in the district.”*** Section 41 of the same Act confers on the Minister of Transportation the powers to establish a pilotage district in any port; in the approach to any port; in the territorial waters of Nigeria; or in the exclusive economic zone of Nigeria. The rationale for compulsory pilotage appears to be based on national security concerns and the protection of life and properties in the ports and harbours. A licensed pilot knows all the local effects that may endanger the safety of navigation and collaborates between the port authorities, vessel traffic services, tugs, and mooring teams. The owners or master of a ship navigating the compulsory pilotage district is expected to engage the services of a licensed pilot and pay the appropriate pilotage dues.

The case under review examines circumstances that gives rise to the payment of pilotage dues and the party responsible the payment.

BRIEF FACTS

The Appellant, an offshore drilling company, imported two rigs into Nigeria from Cameroon. The two rigs were brought into Calabar Port as cargoes, via different vessels. The Appellant claimed that since the rigs were brought in as cargoes, the Appellant was not liable to pay pilotage dues as pilotage dues is the responsibility of the owners or masters of the carrying vessels. The Appellant further claimed that the carrying vessels did not pass through any compulsory pilotage district nor did it utilise the services of any licensed pilots in the carriage of the rigs. Despite these, the Respondent imposed compulsory pilotage dues totaling \$782,943.07 on the Appellant. The Appellant protested against the charges. When the Appellant did not pay, the Respondent instructed its managers and agents to stop rendering port services to the Appellant. As a result of the stoppage of port services, the Appellant was forced to pay the assessed pilotage dues. Subsequent to making the payment, the Appellant commenced this law suit at the Federal High Court seeking, among other reliefs, a declaration that the imposition of compulsory pilotage dues on the Appellant by the Respondent with respect to the two rigs which were brought into Nigeria as cargoes is unwarranted, unjustifiable, unlawful and unconstitutional. The Federal High Court dismissed the claim and dissatisfied with the decision appealed to the Court of Appeal. One of the issues for determination before the Court of Appeal was whether the Appellant was liable to the pilotage due





BASIS OF THE COURT'S DECISION

In arriving at its decision, the Court of Appeal considered and relied on the provisions of **Sections 63(2)(a) and (b) of the NPA Act** which provides that: ***“The following persons shall be liable to pay pilotage dues and rates charged on a ship under section 62 of the NPA Act:***

(a) The Master or owner of the vessel;

(b) In the case of pilotage inward, every consignee or agent who has paid or made himself liable to pay any dues on account of the ship in its ports of arrival or discharge.”

For clarity, the pith of the Appellant’s case is that the two rigs were carried, via a vessel, as cargoes from Cameroon to Nigeria, and that the Appellant was the consignee of the rigs. This brings it within the ambit of the provision of **section 63(2)(b) of the NPA Act** which also imposes the obligation to pay pilotage dues on the consignee of the cargo. The Appellant as the consignee was liable to pilotage dues. According to the Court of Appeal, there was concrete evidence that the vessel that towed the rigs to the Appellant’s offshore location navigated through the compulsory pilotage districts established under the **Compulsory Pilotage Districts (Establishment) Order, 1996**. The Court of Appeal further held that by the Appellant’s own showing, through its witnesses, the towing vessel made use of the compulsory pilotage districts without any authority or licensed pilot as required by **section 42 of the NPA Act**.

The Court of Appeal also referred to **sections 42(2) of the NPA Act** as well as **section 25 of the Admiralty Jurisdiction Act** and held that the Appellant was liable to pay the pilotage dues. **Section 42(2) of the NPA Act** provides that ***“A ship being moved within a port which is or forms part of a pilotage district, shall be deemed to be a ship navigating in a pilotage district....”*** The Court relied on **section 25 of the Admiralty Jurisdiction Act** which defines a ship to include ***“a drilling rig”*** to hold that the rigs imported by the Appellant qualifies as a ship and under **sections 42(2) of the NPA Act**, the owner or master of a ship being moved within the pilotage district is liable to pay pilotage dues as such a ship is deemed to be navigating in a pilotage district

COMMENTARY

The owner or master of a ship navigating in a compulsory pilotage district is under obligation to engage the services of a licensed pilot. Apart from the owner or master of the ship, the consignee is also liable to pay pilotage dues. The case under review clarifies the position that a rig is a ship and that the owner of the rig being towed in a pilotage district is liable to pay pilotage dues as a rig being towed is deemed to be navigating in the pilotage district.

Section 100(1) of the NPA Act penalises the navigation of a ship in a compulsory pilotage district without a licensed pilot. The section provides that ***“If a ship enters, leaves or changes its berth in a pilotage district in which pilotage has been made compulsory under this Act, without being in charge of a pilot authorised to pilot the ship, the pilotage dues which would have been paid if an Authority pilot had been employed, shall nevertheless be paid together with a penalty of N10,000.”***

Accordingly, ship owners, charterers, consignees and masters of ships and other industry stakeholders are to ensure that their ships comply with the compulsory pilotage laws to avoid payment of penalty.

For further enquiries, please contact:



OLA ALOKOLARO

ola.alokolaro@advocaat-law.com



LAZARUS KALU

lazarus.kalu@advocaat-law.com



MARIAH AKAGU

mariah.akagu@advocaat-law.com