

Tax Alert

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Court of Appeal's judgement that drilling rigs are not vessels under the Cabotage Act

The Court of Appeal (COA) sitting in Lagos delivered judgement on 24 June 2019 in the case of *Transocean Support Services Nigeria Limited & 3 Ors. ("the Appellants") and Nigerian Maritime Administration and Safety Agency & Minister of Transport ("the Respondents")* to the effect that drilling rigs are not vessels within the meaning of the Coastal and Inland Shipping (Cabotage) Act and are, therefore, not liable to 2% surcharge on payments under the drilling contracts.

The issues for determination were:

- a. whether "drilling rigs" fall within the definition of "vessel" under the Cabotage Act ("the Act"); and
- b. whether the Minister of Transport ("the Minister") acted *ultra vires* when he classified drilling rigs as vessel in the Cabotage Guidelines for which payments should be made in respect of the 2% surcharge under the Act.

In delivering the judgement, the COA held that:

- a drilling rig is not listed as a vessel that should be registered under the Cabotage Act, and is not used for transportation of goods or passengers from one point in Nigeria to the other;
- a drilling rig can only be classified as a vessel under the Cabotage Act if it is designed, used or capable of being used solely or partly for marine navigation for the carriage of persons or property on, through and under water;
- the Minister of Transport acted *ultra vires* by prescribing rigs as vessels and, therefore, liable to 2% surcharge without any basis in the Cabotage Act;
- the Minister's attempt to classify rigs as "Foreign Vessels" in the Cabotage Guidelines is not proper, as the Guidelines is a subsidiary legislation that cannot curtail, expand or deviate from the substantive statute.

The COA judgement closely followed the Federal High Court (FHC) decision of 14 June 2019, in the case of *Seadrill Mobile Units Nigeria Limited and Minister of Transport & 2 Ors.*, where the FHC had held that a "drill ship" was a vessel used solely for marine navigation, carriage of workers and operational equipment, and the storage and transportation of oil and gas products. However, the decision of the COA will take precedence over that of the FHC.

We will issue a detailed newsletter on this issue in due course.

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