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**OIL & GAS | DISPUTES
LEGAL & REGULATORY
UPDATE 2026 | VOL. I**

WHEN IS A RIG NOT A VESSEL?

*Cabotage, Drilling Rigs and the
Supreme Court's Decision in Noble
Drilling (Nigeria) Ltd v. NIMASA &
Anor - Appeal No. SC/400/2014*



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The Question and the Answer

For more than a decade, one question has sat at the centre of Nigeria's offshore cabotage regime: when does a drilling rig become a "vessel" for the purposes of the Coastal and Inland Shipping (Cabotage) Act, 2003 (the Cabotage Act)?

The answer matters commercially as much as legally. Classification as a vessel under the Act triggers Nigerian registration requirements, ownership and manning thresholds, waiver applications for foreign operators, and an obligation to remit a surcharge of 2% of contract value into the Cabotage Vessel Financing Fund administered by the Nigerian Maritime Administration and Safety Agency (NIMASA).

In December 2025, the Supreme Court of Nigeria, in *Noble Drilling (Nigeria) Ltd v. NIMASA & Anor*, delivered the clearest answer yet under the current Act. On the facts before it, the Court held that the jack-up and semi-submersible rigs in issue, and the drilling operations conducted by them, did not constitute "vessels" or "coastal trade" within the meaning of the Cabotage Act.

The position, however, is not necessarily fixed for all time. Legislative proposals before the National Assembly may yet expand the statutory definition to capture drilling rigs and mobile offshore drilling units.

This article examines the statutory framework, the lower-court divergence, the Supreme Court's reasoning, and what the decision means for offshore operators in a regulatory landscape that may still evolve.



The Statutory Starting Point

The Cabotage Act was enacted to promote indigenous participation in domestic coastal shipping. It reserves cabotage trade to vessels that are:

- registered in Nigeria;
- wholly owned by Nigerian citizens;
- built in Nigeria; and
- wholly manned by Nigerian citizens,

subject to ministerial waivers where statutory conditions are satisfied.

Section 2 of the Cabotage Act defines “coastal trade - or “cabotage - principally as the carriage of goods or passengers by vessel within Nigerian waters, including carriage connected to the exploration or exploitation of natural resources.

Section 2 also adopts an expansive definition of “place above Nigerian waters - extending it to an offshore drilling unit and any anchor cable or rig pad used in connection therewith.

That breadth suggests why the controversy persisted, even though the Act’s separate definition of “vessel - remains anchored to marine navigation and carriage of persons and property.

Sections 42 and 43 establish the Cabotage Vessel Financing Fund and impose a 2% per cent surcharge on the value of contracts performed by vessels engaged in cabotage trade.



The Definitional Fault Line

The Cabotage Act contemplates vessels designed, used or capable of being used for marine navigation and for the carriage of persons or property on, through or under water.

Section 22(5) sets out categories of vessels eligible for registration, including passenger vessels, crew boats, barges, offshore service

vessels, tugs, anchor handling tugs and supply vessels, floating petroleum storage units, dredgers, tankers and carriers, and "any other craft or vessel used for carriage on, through or underwater of persons, property or any substance whatsoever - .

Drilling rigs were not expressly listed in section 22(5). That omission, when read together with the Act's emphasis on navigation and carriage, became central to the litigation that followed.

Guidelines, Delegation, and Statutory Limits

In 2007, the Federal Ministry of Transportation issued Guidelines on the implementation of the Cabotage Act (the **Guidelines**). The Guidelines sought, in practice, to effectively enlarge the scope of cabotage regulation by expressly including drilling rigs within the category of vessels subject to registration and surcharge requirements.

NIMASA, acting under delegated authority, consistently enforced this position, demanding waiver applications and the payment of the 2% surcharge by operators of offshore drilling units.

The core legal tension, therefore, was not merely operational, but constitutional and interpretative: whether delegated instruments could expand the statutory definition beyond the literal text enacted by the National Assembly.

Before the Supreme Court Ruling: A Split in Authorities

The Federal High Court produced conflicting and divergent decisions on the classification of drilling rigs under the Cabotage Act.



Seadrill and the Broader View

In earlier proceedings involving *Noble Drilling*,¹ the company challenged the application of the Cabotage Act to its rigs (jack-up and semi-submersible rigs), contending that such units were not “vessels - that their operations did not constitute cabotage, and that the Minister acted ultra vires in subjecting them to regulation under the Guidelines.

The Court adopted a strict textual and functional approach. It held that jack-up and semi-submersible rigs were not “vessels - within the meaning of the Act, reasoning that they were not designed, used, or capable of being used, for marine navigation for the carriage of persons or property.

The Federal High Court emphasised that the statutory definition required more than flotation or offshore deployment; navigational design and carriage function were central attributes of vessel status.

Drilling rigs, engineered for extraction rather than maritime transportation, fell outside that statutory conception.

By contrast, in the later *Seadrill* decision², where the plaintiff challenged the detention of its rig, a drill ship, contending that the same is not a “vessel - and its operation does not constitute cabotage, the Federal High Court adopted a broader and more expansive construction. It held that certain

¹ *Suit No: FHC/L/CS/78/2008 – Noble Drilling (Nigeria) Limited v. NIMASA & The Minister of Transportation (Unreported).*

² *Suit No: FHC/L/CS/607/2016 – Seadrill Mobile Units Nigeria Ltd v. The Honourable Minister for Transportation & Ors (Unreported).*



offshore drilling units, particularly drill ships, could qualify as vessels and that offshore drilling operations could constitute coastal trade.

The Federal High Court reasoned that such units operated in water, were capable of movement, and carried personnel, equipment and extraction facilities. On that basis, it concluded that they could fall within statutory definition.

The divergence was not merely procedural; it reflected competing interpretative philosophies. One approach prioritised navigational design and transportation purpose. The other placed greater emphasis on offshore functionality and operational context.

Differences in rig typology - stationary jack-ups and semi-submersibles as against certain mobile drill ships - further complicated the analysis and contributed to doctrinal fragmentation.

There had also been an earlier appellate decision in the *Noble Drilling* litigation - *Nigeria Maritime Administration & Safety Agency & Anor v Noble Drilling Nigeria Ltd* (CA/L/864/2009, 5 December 2013; (2013) LPELR-22029(CA)) - but that appeal was resolved on procedural grounds concerning the issuance and service of originating process, rather than on a definitive construction of "vessel - under the Cabotage Act."³

³ *Nigeria Maritime Administration & Safety Agency & Anor v Noble Drilling Nigeria Ltd*, CA/L/864/2009, decided by the Court of Appeal on 5th December 2013. Also indexed as (2013)



Transocean and the Return to Text

In 2019, the Court of Appeal in ***Transocean Support Services (Nig.) Ltd & Ors v. NIMASA & Anor***⁴ revisited the issue and provided the first clear, merits-based appellate construction of the statute.

The plaintiffs/appellants had challenged as *ultra vires*, the Minister's inclusion of drilling rigs within the category of vessels regulated under the Guidelines, and the issuance of 2% surcharge demand notices on their rigs.

The Court of Appeal held that drilling rigs did not fall within the statutory definition of vessels under the Cabotage Act. The Court reaffirmed that the definition of vessel under the Cabotage Act is anchored in navigational design and carriage function.

A vessel must be designed or must genuinely be capable of marine navigation and used for the carriage of persons or property on water. The mere fact that a structure operates offshore, floats, or accommodates personnel does not suffice. Extraction and drilling activities are conceptually distinct from marine transportation.

Importantly, the Court of Appeal also addressed the status of the Guidelines. It held that, to the extent the Minister had prescribed drilling rigs as vessels absent statutory support, such enlargement was *ultra vires*. Delegated

LPELR-22029(CA), (2013) *JELR* 35427 (CA), and *3PLR/2017/230 (CA)*. The appeal arose from the Federal High Court matter Suit No. *FHC/L/CS/78/2008*, commenced by originating summons on 24th January 2008.

⁴ (2019) *LPELR-48163(CA)*.



instruments could not extend the reach of the Cabotage Act beyond the boundaries established by the legislature

By virtue of judicial hierarchy and the doctrine of stare decisis, *Transocean* became the prevailing merits authority on the issue. Until the Supreme Court spoke, it represented the authoritative appellate position on the substantive classification question.

The Question Before the Supreme Court

Although *Transocean* restored interpretative discipline and reasserted the primacy of statutory text, the controversy did not abate. The Federal High Court's earlier divergence, the continued administrative enforcement posture of NIMASA, and the pending appeal in the *Noble Drilling* matter ensured that the issue remained unsettled at the highest level.

For industry participants, the position was legally clearer but not yet institutionally conclusive. While the Court of Appeal's decision represented binding authority, the prospect of Supreme Court review left open the possibility of doctrinal recalibration.

The central question persisted: whether the statutory conception of "vessel - under the Cabotage Act could, as a matter of law, encompass drilling rigs - and if so, under what conditions.



It was against this background of conflicting first-instance approaches, appellate clarification and sustained regulatory insistence that the Supreme Court was called upon to pronounce definitively on the matter.

The resulting judgment in ***Noble Drilling (Nig.) Ltd v. NIMASA & Anor*** did not merely resolve a dispute between the parties. It settled a question that had occupied regulators, offshore operators and the lower courts for over a decade.

What followed was a definitive pronouncement by the apex court on the present statutory text that provides the controlling construction under the current Act.

What *Noble Drilling* Decided

On 12th December 2025, the Supreme Court delivered its unanimous judgment in *Noble Drilling (Nig.) Ltd v. NIMASA & Anor*,⁵ providing the controlling judicial construction of the Act as presently framed. The Court did not merely dispose of the parties' dispute or affirm an appellate outcome; it articulated, with precision, the governing principles for determining whether a drilling unit falls within the statutory meaning of "vessel - under the Cabotage Act.

The Supreme Court began by emphasising that classification under the Cabotage Act must be derived from statutory text and structural design, not

⁵ *Appeal No: SC/400/2014 (Unreported)*

commercial nomenclature or regulatory practice. Courts, it cautioned, must not be distracted by labels. A structure described in industry parlance as a “rig - may, depending on its characteristics, be a ship; conversely, a unit styled as a mobile offshore drilling unit may, in statutory contemplation, be no more than an industrial installation. The inquiry, the Court held, is one of substance.⁶

⁶ At page 70 of the Lead Judgement delivered by Hon. Justice Tijjani Abubakar, JSC.

The Cumulative Three-Part Test

The Supreme Court articulated a cumulative test for determining whether a structure qualifies as a vessel under the Cabotage Act:

- the structure must, in substance, be a vessel;
- it must be designed or genuinely capable of marine navigation; and
- it must be used for the carriage of persons or property on, through or under water.¹

These requirements are conjunctive, not alternative. Flotation capabilities alone are insufficient. Offshore deployment does not equate to navigation. Nor does the accommodation of personnel during drilling operations, without more, amount to carriage within the statutory - navigational - sense. Mobility incidental to deployment does not, without more, equate to design for marine transportation. The burden rests on the party asserting vessel status to establish these characteristics through technical evidence.

Why jack-ups and semi-submersibles fall outside the purview of the Cabotage Act
Applying this framework to the rigs before it, the Supreme Court held that the jack-up and semi-submersible drilling units in issue were engineered for extraction, not maritime transportation. They were not designed for marine navigation and were not used for carriage of persons or goods. Accordingly, they did not constitute vessels under the Cabotage Act, and their operations did not amount to cabotage.

In so holding, the Supreme Court substantially endorsed the earlier strict textual approach, reaffirmed the centrality of navigational design and carriage function, restored the statutory boundary of "vessel", and provided the definitive interpretative guidance that had eluded the lower courts.

At the same time, the Supreme Court made clear that a drilling unit genuinely designed as a navigable ship capable of transporting persons or goods may qualify as a vessel notwithstanding its drilling functions. Each case must turn on its technical specifications and factual matrix.¹

What the Decision Changed?

The Supreme Court's clarification does not operate in abstraction. It carries immediate operational, contractual and regulatory consequences for offshore participants in Nigeria's oil and gas sector:

- Classification can no longer be approached as a categorical industry assumption. Whether a drilling unit falls within the Cabotage Act is now a technical inquiry grounded in structural design and operational function. Operators must assess each unit against the cumulative statutory criteria articulated by the Court. Engineering specifications, propulsion capability, navigational configuration and documented functional use will assume evidentiary significance in any regulatory engagement.
- The decision reshapes compliance posture. For jack-up and semi-submersible rigs engineered for stationary extraction, the immediate exposure to cabotage registration requirements, waiver applications and the 2 per cent surcharge is removed under the current statutory construction. However, for drilling units that may plausibly satisfy navigational and carriage thresholds - particularly drill ships configured as self-propelled maritime vessels - the analysis remains fact-sensitive and cannot be presumed.
- The judgment recalibrates regulatory leverage. While NIMASA retains its statutory enforcement mandate, the Supreme Court has clarified the limits within which that mandate may be exercised. Assertions of vessel status must now be grounded in demonstrable compliance with the statutory definition. Administrative insistence unsupported by navigational design and carriage function cannot withstand judicial scrutiny.
- Contractual risk allocation requires renewed attention. Change-of-law clauses, surcharge pass-through mechanisms and compliance representations in drilling contracts must now be evaluated against the clarified judicial position. The removal of blanket regulatory uncertainty reduces exposure in certain scenarios, but the possibility of fact-specific classification - and prospective legislative reform - necessitates continued diligence in drafting and negotiation.
 - The decision strengthens predictability in Nigeria's offshore regulatory environment. For international contractors and financiers, clarity on the boundary between industrial extraction and maritime transportation reduces jurisdictional ambiguity and enhances transactional certainty. At the same time, however, the prospect of statutory amendment underscores that the regulatory framework remains dynamic.



The Boundary. For Now.

The Supreme Court's decision in *Noble Drilling* marks the clearest judicial statement yet on the meaning of "vessel" in the Cabotage Act. Under the Act as it presently stands, classification depends on substance, navigational design and carriage function, not on nomenclature, offshore location or administrative practice.

The judgment therefore confirms two linked propositions. First, extraction is not transportation: jack-up and semi-submersible rigs engineered for stationary drilling do not, without more, fall within the cabotage regime. Secondly, delegated instruments cannot enlarge the statutory definition beyond what the National Assembly enacted.

That said, the decision is not a universal exemption for every drilling unit. A structure genuinely configured as a navigable ship capable of carrying persons or goods may still satisfy the statutory test, so classification remains rig-specific and evidence-led.

The immediate position is therefore one of judicial clarity, but not legislative immutability. Amendment efforts before the National Assembly may yet redraw the statutory line. Unless and until that occurs, the Supreme Court's construction governs the present boundary of Nigeria's cabotage regime.

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