

SOUTH AFRICA / JUDGMENT

Asahi and Another v Manzo and Others (A121/2012, A122/2012, A126/2012, A127/2012) [2014] ZAKZDHC 52 (15 October 2014)

[2014] ZAKZDHC 52

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Rowan

CASE / FILE NUMBER

A121/2012, A122/2012, A126/2012, A127/2012

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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION, DURBAN

(EXERCISING ITS ADMIRALTY JURISDICTION)

CASE NO: A121/2012

DATE: 15 OCTOBER 2014

In the matters between:

M/V "ASAHI"Applicant/Second Defendant

MV "SAETTA".....First Defendant

And

RAMIL MANZO & 6 OTHERS.....Respondents/Plaintiffs

CASE NO: A122/2012

M/V "ASAHI"Applicant/Second Defendant

M/V "BELITA".....First Defendant

ERNESTO UBAS & 13 OTHERS.....Respondents/Plaintiffs

CASE NO: A126/2012

M/V "ASAHI"Applicant/Second Defendant

M/V "BELITA".....First Defendant

GLENMORE REYNALDO.....Respondents/Plaintiffs

CASE NO: A127/2012

M/V “ASAHI”Applicant/Second Defendant

M/V "TAISETSU"First Defendant

RODELIO CUEVAS & 17 OTHERS.....Respondents/Plaintiffs

FINAL ORDER

DELIVERED ON 15 October 2014

1. The Court delivered its judgment in this matter on 12 September 2014 directing that the matter be referred for oral evidence. It granted a Provisional Order subject to representations by the respective parties as to the final terms of the Order. In so doing the Court stated as follows at paragraphs 82 – 84 of its judgment:
 82. The Court has taken cognisance of the respective arguments presented and chosen to adapt the Order granted by Booysen J in the Kardiga case (above) to suit the circumstances of the present application. In doing so the Court records that the order made below will constitute a Provisional Order. The reason for doing so is to give parties an opportunity to either agree or argue the terms of a final Order at the election of either Plaintiffs or the Defendant or both. The parties may well want to incorporate a provision regarding the taking of evidence on commission to avoid a separate application having to be made in this regard. They may want clearer directions with regard to discovery. The parties may wish to clearly state the relevant time at which the associations must be proved.
 83. The parties are accordingly given the opportunity to either agree the terms of a final Order or make further submissions, in writing, on or before 25 September 2014 as to the form such Order should take. The Court accordingly directs that in the event of one or both of the parties not providing the Registrar by 25 September 2014 with an agreed Order or submissions with supporting argument relating to the proposed content of what they contend to be an appropriate Order, the Provisional Order will become final.
 84. Although it is the Court's wish not to escalate the costs in this matter, the ramifications of the final Order made may have far reaching consequences. Should the parties therefore so desire, the Court is willing to have the matter set down for further argument as to the terms of a final Order.
2. The date on which the Provisional Order was to become final was extended from time to time by agreement between the parties and the Court.
3. Having received representations from the respective parties and having considered the content thereof the Court now makes a Final Order binding all four applications which has come before this Court, reading as follows:

Final Order

- (a) In terms of Rule 6(5)(g) of the Uniform Rules of this Court, the application is adjourned to a date to be arranged for the hearing of oral evidence on the question of whether, in terms of the provisions of sub-sections 3(6) and (7) of the Admiralty Jurisdiction Regulation Act 105 of 1983 as amended, the mv Asahi, was an associated ship with the mv Saetta and/or the mv Taisetsu and/or the mv Belita at the relevant time.
- (b) Leave is granted to the applicant and the respondents to subpoena any person to appear at the hearing when oral evidence is led who is able to give evidence upon the issues referenced to in paragraph (a) above.
- (c) The respondents are granted leave to apply to the Kwazulu-Natal High Court Local Division, Durban for appropriate relief:
 - (i) To compel the production of documents by any person; or -
 - (ii) To compel the giving of evidence by any person referred to in the application records, or otherwise;
 - (iii) To take evidence on commission to achieve the ends set forth in (i) and (ii) above.
- (d) The following persons shall in any event be available for examination and cross-examination:
 - (i) Georgios Kallimasias;
 - (ii) Alexandros Papalambrou;
 - (iii) Christina Liakakou;
 - (i) Anna-Christina Markou;
 - (ii) Alexander Vamvakus;
 - (iii) Damianos Monogioudis;
 - (iv) Michlas Potouras;
 - (v) Alejandro Palanca;
 - (vi) Edward Famadico;
 - (vii) Nikolaos Chandris.
- (e) The parties may agree that, or either party may show good cause on application why, one or more of the individuals set out in paragraph (d) shall not be called to testify.

- (f) In the event of either party wishing to lead the evidence of any person who has not deposed to an affidavit in this application, that party shall, not less than twenty one days prior to the hearing of the oral evidence, deliver to the other party a summary of the evidence of the witness so sought to be led.
- (g) The provisions of Rules 35, 36 and 37 of this court shall apply to the oral evidence hearing
- (h) The costs of the application are reserved for the decision of the court hearing the oral evidence.

ROWAN AJ

Date of hearing: 13 & 20 November 2013 (with Further Written Argument 29 November & 10 December 2013)

Further representations regarding terms of Order, September/October 2014

Date of Judgment: 12 September 2014

Date of Final Order: 15 October 2014

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