

SOUTH AFRICA / JUDGMENT

Brady-Hamilton Stevedoring Company and Others v Motor Vessel "Kalantiao" and Others (29/89) [1989] ZASCA 29 (29 March 1989)

[1989] ZASCA 29

COURT

Supreme Court of Appeal

BEFORE

CORBETT, HOEXTER, E M GROSSKOPF, MILNE,
NICHOLAS

CASE / FILE NUMBER

29/89

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IN THE SUPREME COURT OF SOUTH AFRICA (APPELLATE DIVISION)

In the matter between:

BRADY-HAMILTON STEVEDORING COMPANY

CRESCENT WHARF AND WAREHOUSE

COMPANY

STEVEDORING SERVICES OF AMERICA

INCORPORATED Appellants

and

THE MOTOR VESSEL "KALANTIAO"

HER OWNERS, AND OTHER PARTIES

INTERESTED IN HER Respondents

CORAM: CORBETT, HOEXTER, E M GROSSKOPF, MILNE JJA, et NICHOLAS AJA.

DATES OF HEARING: 7 and 8 November 1988

DATE OF JUDGMENT: 29 March 1989

JUDGMENT CORBETT JA:

This is an appeal against a judgment of Leon J delivered in the Durban and Coast Local Division, in which he, at the instance of the owners (respondent), set aside a warrant for the arrest of the motor vessel

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Kalantiao ("the vessel") in an action in rem instituted by the appellants. Subsequent to the arrest of the vessel security was furnished and the vessel was allowed to sail. Leon J also granted, at the instance of respondent, an order for the release of the security. (The judgment of Leon J has been reported, see *Brady Hamilton Stevedore Co and Others v M V Kalantiao* 1987 (4) SA 250 (D).)

The appellants' claims relate to stevedoring services performed for the vessel at various ports in the United States of America in pursuance of a written contract entered into in the United States on 11 March 1985. It was common cause between the parties in the Court a quo that the proper law of the contract was the Federal Law of the United States; that in terms of that law the appellants enjoyed maritime liens in respect of their claims; and that if the events upon which the appellants' claims were founded had taken

3 place within the jurisdiction of the Court a quo the appellants would not have enjoyed maritime liens according to the law to be applied in terms of sec 6 of the Admiralty Jurisdiction Regulation Act 105 of 1983.

The essential issue, viz. whether in these circumstances our law recognized the foreign maritime liens, was the same as that which arose in the matters of *Transol Bunker BV v Motor Vessel "Andrico Unity" Her Owners and Any Parties Interested in Her* and *Grecian Mar SRL v Motor Vessel "Andrico Unity" Her Owners and any Parties Interested in Her* ("The Andrico Unity case"), which came on appeal to this Court at the same time. For the reasons stated in the judgment in The Andrico Unity case the matters were heard together and the conclusion was reached that in circumstances such as these our law does not recognize the foreign maritime lien. It follows that the appeal in this matter

4 must be dismissed with costs. As in the judgment in The Andrico Unity case, I record also in this judgment, for the benefit of the taxing master, that the Court sat for two full days in the combined hearing of the appeals in The Andrico Unity case and the appeal in the present matter and that in my estimation half that time should be attributed to The Andrico Unity case and half to the appeal in the present matter.

The appeal is dismissed with costs.

M M CORBETT

HOEXTER JA) NICHOLAS AJA)

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Prepared on 14 October 2026 · Esheria