

SOUTH AFRICA / JUDGMENT

Man Energy Solutions Middle East LCC v MV "GCL Yamuna" and Another (A62/2023) [2024] ZAKZDHC 99 (5 December 2024)

[2024] ZAKZDHC 99

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Gwagwa

CASE / FILE NUMBER

A62/2023

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IN

THE HIGH

COURT OF SOUTH AFRICA

KWAZULU-NATAL

LOCAL

DIVISION,

DURBAN

(Exercising

its Admiralty Jurisdiction)

CASE

NO: A62/2023

Name

of ship: MV

"GCL

YAMUNA"

In

the matter between: MAN
 ENERGY
 SOLUTIONS
 MIDDLE
 EAST LCC
 APPLICANT
 And
 MV
 "GCL YAMUNA"
 RESPONDENT
 UMANG
 SHIPPING SERVICES LIMITED
 PLAINTIFF
 in Reconvention

JUDGEMENT

GWAGWA AJ

The following order is granted:

1. The relief set out in the notice of motion in paras 1 and 2 are granted.

INTRODUCTION

- [1] The applicant is CHRISTIAN SIEVERT, the General Manager of MAN Energy Solutions Middle East LLC FZE, being a proprietary limited company duly registered and incorporated in accordance with provisions or in terms of Dubai laws, with its registered business address at Fujairah Freezone, Plot G[...] and G[...], Phase 2, Box 9[...], Fujairah, United Arab Emirates.
- [2] Whereas, the respondent is MV "GCL YAMUNA" a bulk carrier flagged in Singapore of 62,271 gross tons with IMO number: 9[...]. The registered owner of the Defendant is Comsea S1 International Ship Private Limited ("Comsea S1"), a single vessel owning company that, to the best of Plaintiffs knowledge, is incorporated in terms of laws of Singapore with its registered office at 1[...] M[...] B[...], #30-03, Marina Bay Financial Centre, Singapore. Comsea S1 is a special purpose vehicle set up by the owner of the Defendant, Umang Shipping Services Limited ("Umang"), for the sole purpose of acting as its nominal registered owner.

NATURE OF THE CASE

- [4] This is an application wherein the Applicant sought to amend its amended summons and particulars of claim in the main action in accordance with its notice of amendment dated 7 February 2014.

- [5] Precisely, what is sought by the applicant is to amend summons and particulars of claim in the main action by deleting the description of the cited plaintiff, namely, MAN Energy Solutions Middle East LCC and the substitution thereof by MAN Energy Solutions Middle East LCC (FZE) (hereinafter, referred to as the applicant).
- [6] In essence, all what the applicant seeks is to add the suffix "FZE" to the name cited by the Plaintiff in the summons and particulars of claim arising from the agreement.
- [7] The applicant submits that the mis-description or misnomer of the cited plaintiff was an obvious bona fide error and therefore the substitution by applicant is the correct option, which can cause no harm or prejudice to the Respondent.
- [8] The Respondent, who is represented by Michael Sinclair Tucker, an Admitted Attorney of the High Court of South Africa and practice as such as a director of Edward Nathan Sonnenbergs Inc. ("ENS") of 3[...] L[...] L[...] Street, Foreshore, Cape Town, has opposed the application for amendment of the summons and particulars of claim.
- [9] The main crux of the opposition cited by the Respondent is that Mr Sievert in his affidavit has cited the Plaintiff as an existing legal entity registered in the United Arab Emirates. Furthermore, the ex-facie, the original summons, the company which the Plaintiff commenced the action in rem and secured the arrest of the MV "GCL YAMUNA" was MAN Energy Solutions Middle East LCC.
- [10] Therefore, the main argument by the respondent is that the applicant has now brought an application on a different company or legal entity. On the face value the main company is MAN Energy Solutions Middle East LCC, now the applicant intends to add the suffix "FZE", which the applicant seeks to be cited as Plaintiff in the main action, which is different from the original summons and particulars of claim.

ISSUE TO BE DECIDED BY THE COURT

- [11] The main issue that must be decided by the court is whether the Notice of Amendment in terms of Rule 28, which intends to regulate the amendment of pleadings and documents in respect of which the parties' procedural rights in proceedings may be affected, is applicable or not.
- [12] On the face value, this is basically an application to amend or add the word suffix "FZE" to the name cited in the summons and particulars of claim, namely, MAN Energy Solutions Middle East LCC, the amended name will now read as follows: MAN Energy Solutions Middle East LCC FZE. The Applicant submits that the respondent will suffer no prejudice as a result of the change of name.

THE LAW

- [13] Rule 28, which regulates the Amendment of pleadings and documents, stipulates that:

- (1) Any party desiring to amend a pleading or document other than a sworn statement, filed in connection with any proceedings, shall notify all other parties of his intention to amend and shall furnish particulars of the amendment.[1]
- [14] In *Varachia v Enver* NO the court referred to the case of *Moolman v Estate Moolman*, where it was held that "the practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fide or unless such amendment would cause an injustice to the other side which cannot be compensated by costs, or in other words unless the parties cannot be put back for the purposes of justice in the same position they were when pleading which it is sought to be amend was filed.[2]
- [15] In *Cross v Ferreira* (1950 (3) SA 443 (C) 447) it was held that the primary object of allowing an amendment was to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice might be done.[3]
- [16] In the case of *Tecmed v Nissho Iwai*, where the court had to decide whether allowing the substitution would cause prejudice to the other party, the defendants submitted that they have been bona fide, that the prejudice (if any), complained of by the plaintiff, is not of the kind considered sufficient to refuse leave to amend.[4]

The court held that prejudice would be cured by means of a costs order and granted the defendants leave to amend their plea.

Analysis

of evidence.

- [17] It is the main contention of the Applicant that, it sought to amend its name from Man Energy Solutions Middle East LLC and be substituted therefore by the name Man Energy Solutions Middle East LLC FZE. The suffix being added is "FZE". It is further argued by the Applicant Counsel Fitzgerald SC that, the correct description of the Plaintiff is correctly described in the stamp of Man Energy Solutions Middle East LLC FZE as stated in the Applicants heads of argument. It is further argued that what appears from the annexures FAZ, FA4, FARS and FAR6 in respect of the action that Man Diesel and Turbo Middle LLC FZE, which is the party to the agreement changed its name to Man Energy Solutions Middle East LLC FZE being referred to in these proceedings as the Applicant.
- [18] Counsel for the applicant Advocate Fitzgerald further argued that the respondent will not suffer any prejudice with regards to such substitution of change of name. Such assertion appears on page 10 paragraph 24 of applicants founding affidavit. The main amendment appears on page 20 of the applicant's founding affidavit. The respondent answering affidavit neither cited any issue about prejudice either.
- [19] Counsel for the respondent advocate Wragge argued that FZE is a separate company compared to the holding company namely MAN ENERGY SOLUTIONS MIDDLE EAST LCC. The main concern being the arrest of the vessel, which was arrested by Man Energy

Solutions Middle East LLC, against the second respondent referred to herein as, "GLC Yamuna ". The arrest occurred on 23 November 2023. The resultant arrest prompted the second respondent to raise a sum of USD 1 517 667.30 which was in the form of an undertaking. The aforesaid security was to secure the release of the vessel.

- [20] It is further argued by respondents Advocate Wragge that, the applicant "MAN ENERGY SOLUTIONS MIDDLE EAST LCC" which arrested the vessel and had commenced an action in rem, remains the rightful name that can enforce any judgement against the respondent. It is therefore necessary to satisfy the requirements set out in section 3(4)(b) of the Admiralty Act, should the vessel be one which is described in section 3 (6) of the Admiralty Act. It is argued that the second respondent was released on the strength of a contractual undertaking given to Man LLC. However, if the name changed to MAN FZE therefore, the latter company would not have any right to enforce the Judgement against the second defendant.
- [21] The main borne of contention argued between applicants and respondents Counsel is the amendment of the plaintiff s name. It must be noted that Applicant sought to add the suffix "FZE" to its name, whereas the original name was MAN SOLUTIONS MIDDLE EAST LCC to be substituted with "MAN ENERGY SOLUTIONS MIDDLE EAST LCC FZE".
- [22] The applicant, using its former name (MAN ENERGY SOLUTIONS MIDDLE EAST LCC) also arrested the second respondent GCL YAMUNA which eventually made an undertaking of USD 1517667.30. The argument of Respondent Counsel who argued that should the name change, they will have to argue and defend an action which is a nullity whereof MAN FZE will not be able to enforce any Judgement that may be obtained against the respondent.
- [23] Applicants Counsel Fitzgerald SC argued that there will not be any prejudice that will be suffered by the respondent, should the amendment be confirmed by the court.
- [24] However, the main concern by Advocate Wragge was that the name will result in an unenforceable of the judgment that may be obtained against the respondent
- [25] It is further noted that answering affidavit by the respondent did not allege any prejudice to be suffered should such amendment sort by the Applicant be considered to be granted by this court. Strangely such prejudice is only mentioned in the respondents Heads of Argument. In the absence of such tangible prejudice alleged by the respondent in its answering affidavit, the balance favors the Applicant. The court is of the view that the application for amendment was made in good faith by the Applicant.
- [26] The court has considered the arguments of the applicant's Advocate Fitzgerald and agrees with his submissions that amendment is made bona fide by the Applicant .
- [27] The court further agrees with the principles of the quoted case laws in paragraph 14, 15 and 16 respectively.

[28] The issue of prejudice was not alleged in the respondent answering affidavit, therefore Counsel's submission of prejudice as stated in the Heads of argument does not persuade me to favor respondent Counsel.

[29] I am therefore persuaded with the arguments submitted by Advocate Fitzgerald that amendment will not cause any prejudice to the respondent .

[30] Therefore, the court is inclined to grant the orders as per the notice of Motion.

1. The relief set out in the notice of motion in paras 1 and 2 are granted.

DATE OF HEARING: 22 August 2024.

DATE OF DELIVERY: 05 December 2024

APPEARENCES

FOR THE APPLICANT - ADV FITZGERALD INSTRUCTED BY BOWMAN GILFILLAN INC.

FOR THE RESPONDENT - ADV WRAGGE INSTRUCTED BY EDWARD NATHAN SONNENBERGS INC.

[1] ACT 59 OF 1959

[2] Varachia v Enver NO (28658/2008) [2023] ZAGPJHC 878 at 14.

[3] Cross v Ferreira (1950 (3) SA 443 (C) 447)

[4] Tecmed v Nissho 2011(1) SA 35 (SCA) at para 14.

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Prepared on 12 October 2026 · Esheria