

CASE DIGEST



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ADMIRALTY: SHIP ARREST; CAVEAT AGAINST SHIP RELEASE; DOES A PERSON WHO FILES A CAVEAT FOR THE RELEASE OF A SHIP HAVE TO BE A PARTY TO THE ACTION?

MT. ORYX TRADER & Anor. v. WRIST SHIPPING SUPPLY

COURT OF APPEAL (NIGERIA)

(DONGBAN-MENSEM; OGBUINYA; UMAR, JJ.CA)

Case Digest: The Topic

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Background Facts

By an Originating Summons filed at the Federal High Court (lower court), Lagos Division, Mt. Oryx Trader & Arial Marine Company (the Appellants) sought an Order that the arrest of the Applicants' vessel - Mt. Oryx Trader by Wrist Shipping Supply (the Respondent) Caveator against the release of the vessel is wrongful, by the Respondent not being a party to the action, and other certain reliefs against the Respondent. The Originating Summons was supported by a 5 Paragraph Affidavit deposed to by one Olaniyi Sodeinde, Esq., as well as Exhibits attached. The Respondent responded by filing a counter Affidavit duly deposed to by, as well as Exhibits attached. Upon the adoption of the various Written Addresses by Parties, the lower court delivered judgment and held that the law is clear that a person who is not a Party to a suit can file a caveat against the release of a vessel which the Respondent validly did. The lower Court then dismissed the claim of the Appellant.

The Appellant on appeal to the Court of Appeal, against the decision of the Lower Court raised certain issues for determination, one of which is:

Whether the Respondent is liable to the Appellants for the wrongful arrest of the MT. Oryx Trader Vessel.

Arguments

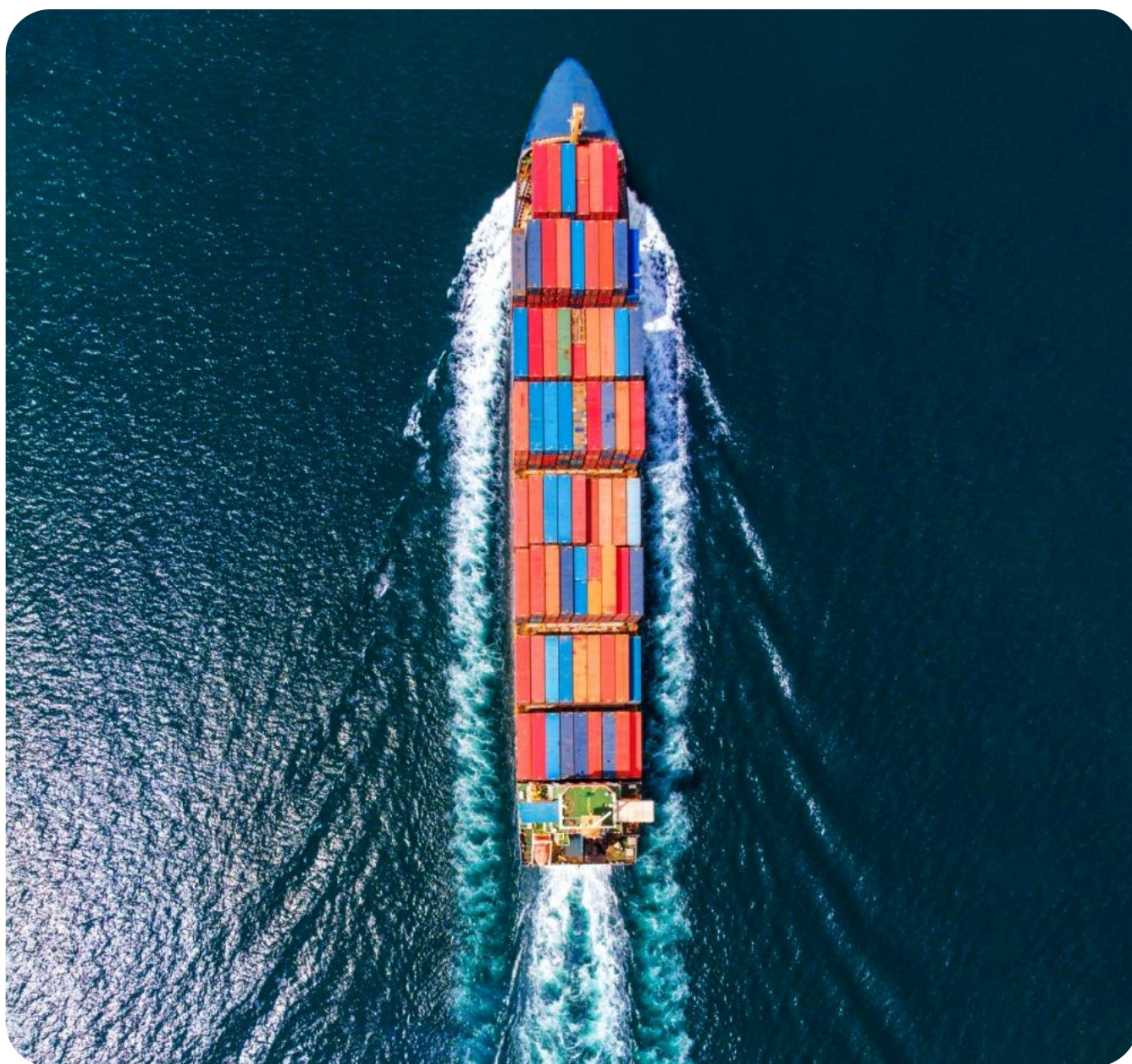
The Appellants' learned Counsel argued that the Respondent who was not a Party in the suit has no legal right to file a caveat against the release of the 1st Appellant, which is a vessel, by which caveat the Respondent wrongfully arrested the 1st Appellant from 29 March 2020 to 09 July 2011. That the Respondent is liable to pay damages to the Appellants because the Respondent gave an undertaking to indemnify the Appellants and the Appellants suffered loss of the charter fees for the hire of the 1st Appellant within that period. Counsel further submitted that instead of obtaining a warrant of arrest of the 1st Appellant as provided by the Admiralty Jurisdiction Procedure Rules, 2011, the Respondent filed a caveat against the release of the 1st Appellant in a suit it was not a Party to.

Responding to the Appellant counsel's assertions, learned Counsel to the Respondent submits that

there is a clear distinction between a caveat against the release of a vessel and the arrest of the vessel and that a caveat does not operate to interfere with the vessel or its owners but only entitles the caveator to be put on notice where an attempt is being made for the disposal or discharge of the vessel, unlike an arrest which restrains the vessel from moving and/ or operating. That while a caveat may be determined by a withdrawal or the expiration of the caveat, an arrest order can only be determined by a specific order of a Court discharging the vessel from arrest. Counsel

further submits that the Respondent did not procure the arrest of the 1st Appellant and is therefore not liable to the Appellants for damages resulting from the wrongful arrest of the 1st Appellant.

Respondent counsel further submitted that in the unlikely event that the Court decides that the caveat procured by the Respondent amounts to an arrest of the 1st Appellant, the Appellants are still not entitled to any damages as the said arrest is yet to be declared wrongful by any Court of competent jurisdiction to



Decision Of The Court

In resolving this issue, the Court of Appeal held that:

The law is unequivocal that where a ship or any other property is under arrest in a proceeding, a person may, on providing an undertaking in damages, file in the Court a caveat against the release from arrest of the ship or property in lieu of obtaining a further arrest of that ship or other property... Nowhere in the above-cited laws does it stipulate that the person filing for the caveat against the arrest or release of the ship must be a Party in the suit, it simply states that a person may file a caveat against the arrest or the release of the ship which is under arrest. The person is expected, however, to take further steps to join the suit or institute a separate action against the ship.

Issue resolved in favour of the Respondents.

P. Amaran, Esq.; V. Sodeinde, Esq. for the Appellants

Adedoyin A. Funmi, Esq.; Ngochukwu Eze, Esq., and Chidebere Ironuru, Esq., for the Respondent

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