

CASE DIGEST

ADMIRALTY: ACTION FOR WRONGFUL ARREST; ONLY THE OWNER/ DEMISE/CHARTERER HAVE LEGAL CAPACITY.

OAN OVERSEAS AGENCY NIGERIA LTD. v. BROMVEN ENERGY TRADING LTD. & 2 ORS.

SUPREME COURT OF NIGERIA

(PETER-ODILI; EKO; GARBA; SAULAWA; ABUBAKAR, JJ.SC)

By an admiralty action, Oan Overseas Agency Nigeria Ltd. (Appellant) claimed against Bromven Energy Trading Ltd. & 2 Ors. (Respondents) at the Federal High Court, the sum of US\$1,986,939.97 as an outstanding debt against the 1st Respondent for port and cargo dues and ships charges and agency fees, as well as interest on the said sum. The Appellant also by a motion ex-parte, requested an Order for the arrest/detention of the Vessel MT "Ocean Success" and the Cargo of 15,300 MT of premium Motor Spirit (PMS) on board the Vessel MT "Ocean Success" which in the reasonable contemplation of the Appellant were the only known assets of the 1st Respondent, of which the trial Court granted pending the provision of a bank guarantee from a reputable Bank in Nigeria to secure the claim of the Appellant. Flowing from this, the 1st Respondent filed an application for the release of the MT "Ocean Success" and Cargo of 15,300 MT of Premium Motor Spirit on board the vessel which was detained by Order of the trial Court, and also provided a bank guarantee from Ecobank of Nigeria Plc. to secure the claim of the appellant, and on this basis, both the vessel, MT "Ocean Success" and Cargo of Premium Motor Spirit (PMS) were released from arrest. The 1st Respondent subsequently filed a statement of defence and counterclaimed for the sum of US\$400,000.00 being charter costs for the 5 days for which the ship was arrested at the rate of US\$80,000.00 per day; US\$9,500.00 being the cost of issuing Bank Guarantee and interest of 18% being Central Bank of Nigeria official rate on the said sum, and post-judgment interests on the sums claimed. At the conclusion of trial, the trial Court granted the claims of the Appellant and dismissed the 1st Respondent's counterclaim.

Dissatisfied, the 1st Respondent appealed to the Court of Appeal, which allowed the appeal in part by upholding the Appellant's claim at the trial Court. Further aggrieved, the Appellants appealed to the Supreme Court. One of the issues for determination is *Having regard to the facts of the case and the evidence showing undoubtedly that the vessel in question was wrongfully arrested, whether the lower court was right in awarding the sum of USD\$400,000.00 in favour of the 1st respondent being daily, the charter cost.*

Learned Counsel for the Appellant argued that the court below fell into error in awarding the US\$400,000.00 in favour of the 1st respondent when it was found as a fact that the 1st Respondent was not the owner of the arrested vessel. That the law is that only owners of a ship or demise charterers can sue and be sued for loss or damages arising from the use of the ship or for wrongful arrest and/or detention of the ship. He further stated that the award of US\$400,000.00 in favour of the 1st respondent as daily cost ought to be set aside since no evidence was proffered in support of the award.

Learned Counsel for the 1st Respondent contended that the arrest and detention of the vessel was wrongful and utterly baseless in law. That the Appellant has failed to establish the ownership of the vessel by the 1st Respondent to justify the arrest and detention of the vessel and thus, has become liable for the costs incurred in the release of the vessel. He further submitted that other persons than the ship owner can sue for damages in respect of loss incurred for the action of a third party on the ship.

In deciding the appeal, the Supreme Court of Nigeria held that:

It is clear that the Court of Appeal fell into error in awarding US\$400,000.00 in favour of the 1st respondent when it was found as fact that the 1st respondent was not the owner of the arrested vessel. This is because if it is the case that the 1st respondent was neither owner nor charterer of the arrested vessel, the question this court ought to ask is whether the 1st respondent has the legal capacity in the circumstance to maintain an action for the alleged wrongful arrest. This is because **it is the law that only a demise charterer or the owner of an arrested vessel that possesses the requisite legal capacity to maintain an action for wrongful arrest.** It is trite that the 1st respondent cannot assume a right nor can the Court of Appeal clothe it with a right which it does not legally possess. The law is that only owners of a ship or demise charterers can sue and be sued for loss or damage arising from the use of the ship or for wrongful arrest and/or detention of the ship. See *Eastwind Transport (Nig.) Ltd. v. Comet Merchant Bank Limited* (1995-1997) Vol. 4 NSC (Nigerian Shipping Cases) pages 85. The case put forward is that the 1st Respondent is neither the owner nor charterer of the arrested vessel and so any purported damage or loss suffered by the respondent was voluntary and self-induced and underserving of relief from this court. See *R.C.C. (Nig.) Ltd. v. R.P.C. Ltd.* (2005) 10 NWLR (Pt. 934) 615 at 638.

Issue resolved in favour of the Appellant.

Sylva Ogwemoh, SAN, and Mudi Ishaka Dikko, SAN with M. M. Zakari, Esq., Wahab Dako, Esq., and Dr Solomon Lenlanye, Esq., for the Appellants.

N. K. Oragwu, Esq., with G. Ogwu, Esq., and A. Liman, Esq., for the 1st Respondent.
2nd and 3rd Respondent absent.

This summary is fully reported at (2022) 6 CLRN

www.clrndirect.com

info@clrndirect.com