

African Maritime Carriers Ltd v Owner of the Vessel "Lissom"
(2003) SLR 25

Karen DOMINGUE for the Plaintiff
Bernard GEORGES for the Defendant

Ruling delivered on 3 December 2003 by:

PERERA J: The Plaintiff, as charterer of the Defendant's vessel "Lissom" under a charter party dated 12 November 2001 filed an action in rem on 31 May 2002, claiming a sum of US dollars 193, 448 said to be the value of Plaintiffs bunkers remaining on board the vessel at the premature termination of the charter, and losses suffered by reason of the Defendant's alleged failure to settle the Plaintiffs claim. Upon a praecipe for a warrant of arrest filed by the Plaintiff, this Court issued a warrant of arrest on the said vessel, which was lying within the territorial waters of Seychelles. That warrant was duly executed 3 June 2002. However upon a bank guarantee from Barclays Bank (Seychelles) Ltd being furnished by the owners of MV "Homer" to be the present owners of the same vessel earlier named "Lissom", which was arrested, this Court made order on 7 June 2002 releasing the vessel from arrest.

The Defendant, in their statement of defence avers that it purchased the vessel "with everything belonging to her on board and on shore" and thus has the bunkers claimed by the Plaintiff. It is further averred that if the Plaintiff is the previous owner of the vessel to which the claim must be addressed. In a counterclaim attached to the statement of defence, the Defendant claims a sum of US dollars 218,319 from the Plaintiff as loss and damages alleged to be used by reason of the vessel being arrested.

The present ruling arises from a motion filed by the Plaintiff to strike out the counterclaim on three grounds, namely that –

1. The counterclaim does not fall within the admiralty jurisdiction of this Court.
2. The counterclaim is a civil suit and hence should have been instituted by a plaint and dealt with under the provisions of the Code of Civil Procedure.
3. The counterclaim does not disclose a reasonable cause of action.

It is not in dispute that the Admiralty jurisdiction is vested in the Court by Section 7 of the Courts Act (Cap 52). It provides that –

- (1) The Supreme Court shall have the Admiralty Jurisdiction of the High Court of England as stated in Section 1 of the Administration of Justice Act

1956 of the United Kingdom Parliament.

(2) Subject to Subsection (3), the Act shall have force and effect in Seychelles.

Subsection (3) relates to the Rule making power of the Chief Justice to modify and adapt the U.K. Act to an extent as may appear to him to be necessary. The Rule making power to regulate practice and procedure is granted to the Chief Justice under Section 16(1) of the Courts Act (Cap 52).

The Chief Justice, in exercising his powers under Section 7(3) framed the Admiralty jurisdiction Rules, 1976, by S.I. 60 of 1976. Rule 2 thereof provided that only sections 1, 3, 4, 6, 7 and 8 of the Administration of Justice Act, 1956 (UK), subject to modifications in column I of the Schedule, shall have force and effect in Seychelles. Section 2 and 5 of that Act were expressly omitted. The questions or claims that could be adjudicated under the Admiralty jurisdiction of the Supreme Court of Seychelles are set out in Rule 1(1) (a) to (r) of the said Rules, "together with any other jurisdiction which either was vested in the High Court of Admiralty in England immediately before the date of commencement of the Supreme Court of Judicature Act, 1873" (that is 1 November 1875), or is conferred by or under an Act which came into operation on or after that date on the High Court of Justice in England as being a Court with Admiralty jurisdiction and any other jurisdiction connected with ships or aircraft vested in the High Court of Justice in England apart from this Section which is for the time being assigned by Rules of Court to the Probate, Divorce and Admiralty Division.

The Admiralty Jurisdiction is therefore wider than in respect of the specific claims set out in Rule 1(1) (a) to (r).

The additional jurisdiction vested in the Supreme Court exercising admiralty jurisdiction by Rule 1(1) of the Admiralty Jurisdiction Rules empowers the Court to exercise the jurisdiction vested in the High Court of England immediately before 1 November 1875. *Halsbury* (Vol 1(1) Para 415) states that a Defendant in an action *in rem* may set up a counterclaim in personam. The authorities cited are *The Clutha* (1876) 45 LJP 108 and *The Newbattle* (1885) 10 PO 33. In the latter case involving a collision between two vessels "Louise Marie" and "The Newbattle", the Defendant, owners of "New Battle" furnished security for damages, and filed a counter claim. They also sought security for damages from the Plaintiff (owners of "Louis Marie"). It was contended by the Plaintiff that the Defendant's pleading was a counter claim and not a "cross cause" to which Section 34 of the Admiralty Act 1861 which provided for the furnishing of security, applied. The Court of Appeal held that in the circumstances of that case, the counterclaim was equivalent to a "cross action", and that it was both within the letter and spirit of Section 34 to require the Plaintiff in the main action in rem to furnish security for damages.

Although the Defendant in the present action has not claimed security for damages in the counterclaim based in personam yet the *Newbattle* (supra) is authority for the

proposition that a counterclaim can be made in personam in respect of any matter arising against the Plaintiff in the main action in rem. *The Cheapside* (1904) PD 339 is also authority for allowing a counterclaim in a matter in personam to be made to a claim in rem.

Section 7 of the Courts Act empowers this Court to exercise the same Admiralty Jurisdiction as is now vested in the High Court of England. The proceedings in that Court are governed by Order 75 of the Rules of the Supreme Court. Or. 75/1/1 states that that order does not provide a complete code for admiralty proceedings, but has to be read in conjunction with the other Supreme Court Rules. The Sub Rule further states that for example, "pleadings in admiralty actions are governed by Or. 18 as modified by Rules 18 and 20 of Or. 75". Rule 18 relates to the filing of "Preliminary Acts" and Rule 20 to special pleadings in collision actions.

Order 15(r2) provides for the filing of counterclaims. Rule 2 - (1) is as follows:

Subject to Rule 5(2), a Defendant in any action who alleges that he has a claim or is entitled to any relief or remedy against a Plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so, he must add the counterclaim to his defence.

In the United Kingdom, the Admiralty Court is part of the Queen's Bench Division. It has jurisdiction in all causes and matters assigned to it by the Supreme Court Act, 1981 to that Court, which involve the exercise of the High Court's Admiralty Jurisdiction. As stated in Or. 75 r. 1/6, an Admiralty action in personam is like an action in tort or contract in the Queen's Bench Division. But it differs from such an action, in that, it is subject to the Rules of Order 75 which modify those applicable to an ordinary Queen's Bench Division action. The ordinary Civil Jurisdiction of the Supreme Court of Seychelles and its Admiralty Jurisdiction are similarly distinct. By virtue of Section 7(3) of the Courts Act the Admiralty Jurisdiction Rules 1976 set out the questions and claims that fall within the jurisdiction and provides the mode of execution of such jurisdiction.

The contention of Learned Counsel for the Plaintiff is not that counterclaims in general, cannot be brought in actions in rem, but that the present counterclaim filed by the Defendant does not fall within any of the claims and questions set out in Rule 1, Sub Rules (a) to (r) of the said Admiralty Jurisdiction Rules 1976. I would then first consider the nature of the present counterclaim.

It is contended by Learned Counsel for the Plaintiff that the counterclaim filed by the Defendant is based on "faute" under Article 1382 of the Civil Code. She submitted that the loss and damage claimed consequent to the arrest of the vessel, is in effect based on an alleged abuse of process of Court. Learned Counsel for the Defendant, and the counterclaimant, however differs, and submits that it is an extension of the defence to the statement of claim. The basis of the defence and the supporting affidavit is that, the

however contends that the saving of cases "where other provision is made in law", maintains the distinction between the two jurisdictions and that hence, the counterclaim, which she contends is based in delict, does not fall within the provisions of the Admiralty Rules 1976, and hence ought to be brought under the provisions of the Code of Civil Procedure.

Section 6 of the Courts Ordinance Act (Cap 43 of the Wylie Edition) provided that:

The Supreme Court is hereby declared in pursuance of the Colonial Admiralty Act 1890, to be a Court of Admiralty and shall, as heretofore, be a Colonial Court of Admiralty within the meaning of the Act, and its Admiralty Jurisdiction shall continue to be defined in the Admiralty Jurisdiction (Seychelles) order in Council 1961.

The Admiralty Jurisdiction (Seychelles) Order in Council was repealed by the Seychelles Independence Order 1976. Section 6 of the Courts Ordinance of Seychelles was amended by Ordinance No. 13 of 1976 on 22nd June 1976 and came into operation on 29th June 1976. The new provision now appears as Section 7 of that Act in the 1991 Edition of the Laws of Seychelles. As the Admiralty Jurisdiction (Seychelles) Order in Council 1961 was also repealed, the Supreme Court was vested with the Admiralty Jurisdiction of the High Court of England as stated in Section 1 of the Administration of Justice Act 1956. The Admiralty Rules, 1976 were made by the Chief Justice pursuant to Section 6 of the Courts Act on 17 July 1976. Since the new Section 7 came into operation on 29 June 1976, the Rules, though stated as having been made under Section 6 of the Courts Ordinance, were in effect made under the new Section 7(3) of the Courts Act.

The consequential amendment to Section 22 of the Code of Civil Procedure in the 1991 Edition arose from the repealing of the Admiralty Jurisdiction (Seychelles) Order in Council 1961 and the Supreme Court ceasing to be a Court of Admiralty under the provisions of the Colonial Admiralty Act, 1890. The new Jurisdiction in the Supreme Court in respect of Admiralty matters was provided in Section 7 of the Courts Act. There was no specific repeal of Section 22 of the Code of Civil Procedure (Wylie Edition) which distinguished the ordinary Civil Jurisdiction of the Supreme Court from the Jurisdiction in respect of the Colonial Court of Admiralty. The 1991 Edition of the law of Seychelles carries Section 22 as amended by the Statute Law Revision Commissioner under the powers vested in him to omit, repeal or revoked obsolete provisions. The words "where other provision is made by law" appeared in the Wylie Edition of Section 22 and continues to appear in the 1991 Edition. It is therefore not a novel provision. With the omission of the words "save such as are required to be brought before the Colonial Court of Admiralty", the words "save in cases where other provision is made by law" would mean what it states, and does not include Admiralty jurisdiction. The jurisdiction of the Supreme Court is now provided in Article 125 of the Constitution. Sub Article (d) thereof provides for "such other original, appellate and other jurisdiction as may be conferred on it by or under an Act". The Supreme Court exercises its Admiralty jurisdiction by virtue of Section 7 of the Courts Act and the

Admiralty Rules 1976. In the absence of Rules as to counterclaims therein, Cr. 15 r.2 of the RSC Rules (U.K.) would apply, pursuant to Section 17 of the Courts Act. There is therefore no necessity for a counterclaim in an action in rem, whether it falls within the questions and claims set out in Rule 1(1) (a) to (r) or otherwise, to be instituted as a separate Civil suit under the provisions of the Code of Civil Procedure, so long as such counterclaim is based on "any matter, (whenever and however arising) in an action brought by the Plaintiff, under the Admiralty Jurisdiction of the Supreme Court.

Hence the present counterclaim falls within the Admiralty Jurisdiction of this Court. It also discloses a reasonable cause of action.

In the circumstances, the motion is dismissed.

Record: Civil Side No 117 of 2002