

# **IN THE SUPREME COURT OF SEYCHELLES**

**(ADMIRALTY JURISDICTION)**

**DEEA ABED NASHI & ORS**

**PLAINTIFFS**

**VERSUS**

**THE OWNERS OF THE VESSEL MV ALMANARA**

**(IMO NO. 6905109)**

**DEFENDANTS**

Civil Side No

167 of 2006

Mr. Elizabeth for the plaintiffs  
The defendant (In default of appearance)

## **JUDGMENT BY DEFAULT**

**Perera J**

A motion dated 12<sup>th</sup> June 2006 has been filed by the plaintiffs under Order 75 Rule 21(3) and Rule 21(4) of the Rules of the Supreme Court of the United Kingdom. Those Rules are applicable to this Court exercising Admiralty Jurisdiction by virtue of Section 7 of the Courts Act (Cap 52) and the Rules made thereunder. The vessel "Al Manara" was arrested on a warrant issued by this Court on 15<sup>th</sup> March 2006, at the instance of the Seychelles Ports Authority pursuing a claim for towage services in case no. C.S. 138 of 2006. The claim of the plaintiffs in this case, for wages was filed under Rule 1. (l) (n) of the said Rules on 6<sup>th</sup> April 2006. The writ together with the statement of claim was duly served on the res on 31<sup>st</sup> May 2006. The present plaintiffs have also filed the same claim in case no. C.S. 138 of 2006, mainly to protect their claim when determining priorities.

The vessel of "Al Manara" was towed to the Victoria Harbour by vessels belonging to the Seychelles Ports Authority on 9<sup>th</sup> February 2006. At that time, the crew on board consisted of the Captain Deea Abed Nashi, and 15

others who are the 2<sup>nd</sup> to 18<sup>th</sup> plaintiffs in the case. The 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs, who were Burmese Nationals, joined at the Port of “*El Ma’an*” in Somalia. The 5<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 12<sup>th</sup> to 16<sup>th</sup> plaintiffs who were Indian Nationals, were repatriated by the Indian High Commissioner in Seychelles in a Naval Vessel belonging to that country in April 2006. The 3<sup>rd</sup> and 4<sup>th</sup> plaintiffs who were Burmese Nationals, the 8<sup>th</sup> and 18<sup>th</sup> plaintiff who were Ethiopian Nationals, were all repatriated to their respective countries in May 2006 by the International Transport Workers Federation (ITF) based in London. Those repatriations were done with the consent and approval of the Captain of the vessel. Thus presently there are only four members of the crew, namely the 2<sup>nd</sup> plaintiff, a Russian National, the 7<sup>th</sup> plaintiff who is a Ukrainian National, the 11<sup>th</sup> plaintiff a Sudanese National, and the Captain, the 1<sup>st</sup> plaintiff, who is an Iraqi National.

The defendant, the owners of the vessel “*Al Manara*” failed to acknowledge service of the writ within 14 days of service. As was held in **The Nautik** (1895) P. 121,

*“Service of a writ in rem upon property within the jurisdiction of the Court is notice to all persons interested in the property of the claim indorsed upon the writ ..... to confer jurisdiction it is not necessary that the property, the subject matter of the suit, should be actually in the possession of the Court, or under the arrest of the Court; it is enough that it should .....” be within the lawful control of the State under the Authority of which the Court sits”*

Clause 3 of the contracts of the crew provides that –

*“The second party shall not claim salary outside the territorial waters of U.A.E. for reasons of location of company headquarters in Dubai and non existence of branches abroad”*

As the substance of the obligation, that is, the essential validity of the contract in the present circumstances is governed by the “*proper law*”, which is the admiralty law applicable to Seychelles, this Court has jurisdiction to entertain the present claims of the crew.

On 4<sup>th</sup> July 2006, one Saeed J Bahar filed a motion and affidavit through Mr. D. Lucas Attorney at Law, averring *inter alia* that he is the owner of the vessel “*Al Manara*,” and that he was informed of the present case by the Captain only on 3<sup>rd</sup> July 2006 upon his arrival in Seychelles. He also averred that –

*“In any event I was unable to come to Seychelles earlier due to the fact that I had filed a suit in Dubai against a third party in connection with the ship “Al Manara” and had to remain in Dubai for the preparation and conduct of the said*

*suit*".

That averment contradicted the other averment that he became aware of this case only after he arrived in Seychelles on 3<sup>rd</sup> July 2006.

Mr Bahar, appeared in Court on 4<sup>th</sup> July 2006 with Mr. D. Lucas Attorney at Law, and was given time till 25<sup>th</sup> July 2006 to support the motion to set aside the order fixing the case for *ex parte* hearing. On that day, Mr Bahar was present once more in Court, but Mr Lucas withdrew his appearance in favour of Miss D. Zatte Attorney at Law. With the permission of Court, Mr Bahar addressed Court and stated that he had all the contracts of the crew and that according to a clause therein, wages were payable in Dubai. He further stated that the Captain had not explained to him why he travelled South from Somalia instead of travelling North to Dubai. Although the Captain had informed him that it was done to safeguard the crew from piracy, the US Naval vessel that went to their assistance, did not tell him that there were threats from Pirates. The motion to set aside the order fixing the case for entering judgment by default was then adjourned for hearing on 4<sup>th</sup> August 2006. On that day, Mr Bahar sent a fax message to the Registrar of this Court informing that his lawyer was unable to appear for him, and moved for an adjournment. However, Miss Zatte appeared in Court that day and stated that Mr Bahar had not given her any instructions and hence moved to withdraw her appearance. That application was granted. Thereupon, Mr Elizabeth Counsel for the Plaintiffs moved that proceedings for entering judgment by default be commenced in terms of the motion, as Mr Bahar had failed to prosecute his motion dated 4<sup>th</sup> July 2006 despite being given ample opportunity to do so. The Court thereupon fixed the *ex parte* hearing for 14<sup>th</sup> August 2006 at 9.00 a.m. Mr Bahar, who had telephoned the Registry regarding the outcome of his request made by fax, was informed of the hearing on 14<sup>th</sup> August 2006. On that day Mr Bahar sent another fax asking for a further adjournment for 30 days on the ground that he was unable to travel from Dubai to take steps to defend, due to reasons beyond his control. Counsel for the plaintiffs objected to any further adjournments, and accordingly, the evidence of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs was taken at the *ex parte* hearing for entering judgment by default.

Mr Deea Abed Nashi, the 1<sup>st</sup> plaintiff testified that he became the Captain of the vessel "Al Manara" as per contract dated 27<sup>th</sup> September 2005 (P5) entered with Batra Al Kahur Co, represented by the owner Mr Saheed Jabbar Bahar. The owner Mr Bahar, was a signatory to that contract. The agreed salary was US D – 2000 per month. He was in Basrah, Iraq at the time of signing the contract. He travelled from Basrah to Dubai by "East and West Airlines" Flight 501 on 3<sup>rd</sup> October 2005 (P18). He was then issued with an air ticket by Mudan Airlines on the instructions of the owner, for travel by Flight 961 from Dubai to Bossago (Somalia) on 3<sup>rd</sup> October 2006 at 12.00 hrs. (P19). At Bossago Port, the vessel "Al Manara" was on 4<sup>th</sup> October 2005, handed over to the 1<sup>st</sup> plaintiff by Captain Abdalla El Hassan, who was then in charge, upon instructions by the owner, Mr Bahar. (P4). On a consideration of

those documents, the Court is satisfied that the 1<sup>st</sup> plaintiff was the lawful Captain of the said vessel from 4<sup>th</sup> October 2005.

As regards the circumstances in which the vessel came to Seychelles, Captain Nashi testified that when he took charge, the vessel was empty. However the owner had arranged a cargo of 95,967 bags of charcoal to be loaded on board for carriage to Ajman Port in the United Arab Emirates from Port of Braua in Somalia.

The vessel commenced the voyage on 12<sup>th</sup> December 2005, with a crew of 16 members. He informed the owner that there was insufficient fuel to travel to the U.A.E. He then instructed him to proceed to "Elma'an" Port in Somalia itself, where a tanker would supply the necessary fuel for the journey. However when he arrived there on 30<sup>th</sup> December 2005, there was no such tanker. He purchased provisions as per receipts (P12), (P13) on 4<sup>th</sup> January 2006, and 48,180 litres of diesel oil on 3<sup>rd</sup> January 2006 (P14) at "Elma'an" Port. Two Somali gunmen, namely Noor Omar Diraa and Yusuf Roble Afrah were added to the crew by the Agent of the vessel. Capt. Nashi further testified that the distance to U.A.E was about 2400 nautical miles, and that hence the 40 tons purchased at "Elma'an" was still insufficient for the journey which would take 20-22 days. The provisions were also insufficient. He informed the owner, but to no avail. Instead, the two hired gunmen threatened to kill him and the crew, and forced him to proceed to UAE, along the coast of Somalia. The vessel left "Elma'an" Port on 18<sup>th</sup> January 2006. However as there was the danger of being attacked by Pirates, he decided to enter the Indian Ocean and go to Mombassa, but the engine failed. He contacted a US Naval vessel in the area. They arrived and supplied food and fresh water. The two gunmen were arrested and locked in a cabin. The Naval Commander one Captain Don, contacted the owner Mr Bahar about the condition of the vessel. But as no assistance was forthcoming, he was advised by Capt. Don to abandon the vessel. However, he did not do so. The current drifted the vessel 43 nautical miles towards the Amirantes Group of Islands of Seychelles. He contacted the Seychelles Coast Guard by radio. He informed the owner of the vessel about his latest position, and he was told "*when they come to tow the vessel, say you have no money, and if they want to tow, let them do it.*" However the Seychelles authorities wanted him to sign a contract, and hence he signed as Agent of the owner.

The vessel "Al Manara" was towed to the Victoria Harbour on 9<sup>th</sup> February 2006.

### **The claims for wages**

Order 75 Rule 21(7) provides that In an Admiralty Action in rem, judgment in default may only be obtained upon a motion for judgment, and will not be given unless the plaintiff is able to satisfy the Court that his claim is well founded and that he is therefore entitled to judgment. In this respect, this Court has to consider a letter dated 7<sup>th</sup> March 2006 sent by ITF to the Agent of the vessel regarding "*crew unpaid wages and repatriation*". The ITF

calculated the wages claim of the crew until end of February 2006 substantially on the same basis as the claims in the statement of claim filed in the case.

According to the evidence of Mr Albert Napier, of the Apostolate De La Mer, the Indian Crew was repatriated in April 2006, and the rest of the crew, save the four presently on board, in May 2006. As was held in the "British Trade" (1924) Pro. D. 104 and the "Tracoma City" (1991) Lloyd's Rep. 330 (C.A.), in order to qualify for "wages" and so to be able to recover under Admiralty Jurisdiction, the sums claimed must have been earned in respect of work done on board the vessel, although not necessarily at sea or in duties connected with it eventhough not carried out on board. Hence, I shall limit the claims of those members of the crew who were repatriated, up to the date of repatriation. I shall also not allow the claim for "overtime" of any of the claimants, as it is not an item that is included in a seaman's contract, although "emoluments" are included. The awards are therefore as follows-

- (1) 1<sup>st</sup> Plaintiff – **Deea Abed Nashi** (Captain )  
salary at USD 2000 per month  
from 3<sup>rd</sup> October 2005 to August 2006 = USD 22,000
  
- (2) 2<sup>nd</sup> Plaintiff – **Litvineko Olegi** (Chief Engineer)  
salary at USD 1500 per month  
from 1<sup>st</sup> September 2005 to August 2006 = USD 18,000
  
- (3) 3<sup>rd</sup> Plaintiff – **Cho Lwinthein** (1<sup>st</sup> Engineer)  
salary at USD 1100 per month  
from 4<sup>th</sup> September 2005 to may 2006 = USD 9,900
  
- (4) 4<sup>th</sup> Plaintiff – **Khine Lin Mungi** (2<sup>nd</sup> Engineer)  
salary at USD 900 per month  
from 4<sup>th</sup> September 2005 to May 2006 = USD 8,100
  
- (5) 5<sup>th</sup> Plaintiff – **Gurmeet Singh** (2<sup>nd</sup> Engineer)  
salary at USD 600 per month  
from 1<sup>st</sup> September 2005 to April 2006 = USD 4,800
  
- (6) 6<sup>th</sup> Plaintiff – **Anil Kumar Pandey** (3<sup>rd</sup> Engineer)  
salary at USD 450 per month

- from 1<sup>st</sup> September 2005 to April 2006 = USD 3,600
- (7) 7<sup>th</sup> Plaintiff – **Turnyak Igior** (Electrical Engineer)  
salary at USD 800 per month  
from 15<sup>th</sup> September 2005 to August 2006 = USD 8,800
- (8) 8<sup>th</sup> Plaintiff – **Ahmed Abu Ahmed** – (4<sup>th</sup> Engineer)  
salary at USD 400 perm month  
from 9<sup>th</sup> October 2005 to May 2006 = USD 4,400
- (9) 9<sup>th</sup> Plaintiff – **Balwan Singh** (Cook)  
salary at USD 350 per month  
from 1<sup>st</sup> August 2005 to April 2006 = USD 3,150
- (10) 10<sup>th</sup> Plaintiff – **Binay Kumar** (fitter)  
salary at USD 300 per month  
from 1<sup>st</sup> September 2005 to April 2006 = USD 2,400
- (11) 11<sup>th</sup> Plaintiff – **Nagi Hassan Nassar** (Botswain)  
salary at USD 450 per month  
from 2<sup>nd</sup> September 2005 to May 2006 = USD 4,050
- (12) 12<sup>th</sup> Plaintiff – **Dhiraj Kumar Tiwri** (Able Seaman)  
salary at USD 300 per month  
from 1<sup>st</sup> August 2005 to April 2006 = USD 2,700
- (13) 13<sup>th</sup> Plaintiff – **Satyajit Rai** (Able Seaman)  
salary at USD 300 per month  
from 1<sup>st</sup> August 2005 to April 2006 = USD 2,700
- (14) 14<sup>th</sup> Plaintiff – **Vinay Anil Phale** (Able Seaman)

- salary at USD 300 per month  
 from 1<sup>st</sup> August to April 2006 = USD 2,700
- (15) 15<sup>th</sup> Plaintiff – **Yogesh Bhawsa** (Able seaman)  
 salary at USD 300 per month  
 from 1<sup>st</sup> August 2005 to April 2006 = USD 2,700
- (16) 16<sup>th</sup> Plaintiff – **Mahaveer Singh** (Oiler)  
 salary at USD 350 per month  
 from 1<sup>st</sup> September 2005 to April 2006 = USD 2,800
- (17) 17<sup>th</sup> Plaintiff – **Sandeep Singh** (Oiler)  
 salary at USD 350 per month  
 from 1<sup>st</sup> September 2005 to April 2006 = USD 2,800
- (18) 18<sup>th</sup> Plaintiff – **Jembaru Woloe** (Cook)  
 salary at USD 250 per month  
 from 29<sup>th</sup> October 2005 to May 2006 = USD 2,800
- Total**      **USD107,600**

Judgment is accordingly entered in favour of the plaintiffs, against the owners of the vessel "Al Manara" now lying in the territorial waters of Seychelles, in a total sum of USD 107,600. The vessel shall accordingly be appraised and sold and the proceeds of sale be brought into Court pending the determination of priorities arising from the towage and allied claims made in case no. CS 138 of 2006.

A.R. PERERA

.....  
**JUDGE**

Dated this 18<sup>th</sup> day of August 2006

