

IN THE SUPREME COURT OF SEYCHELLES

THE SEYCHELLES PORT AUTHORITY PLAINTIFF

VERSUS

**THE OWNER(S) OF THE VESSEL M.V “ALMANARA”
DEFENDANT**

Civil Side No 138 of 2006

Miss F. Laporte for the Plaintiff
The defendants (in default of Appearance)

JUDGMENT BY DEFAULT

Perera J

Upon a praecipe for warrant of arrest together with a writ of summons with a statement of claim indorsed, filed by the plaintiff, this Court, on 10th March 2006, made order arresting the vessel MV. “*Al Manara*” lying within the territorial waters of Seychelles. The vessel was duly arrested the same day.

Subsequently on 15th March 2006, the statement of claim was amended with the leave of Court, and it was once again duly served on the vessel on the same day.

The claims of the plaintiffs arise from towage services rendered to the vessel “*Almanara*” by vessels belonging to them, on 10th February 2006. The said vessel

was towed to Port Victoria on 11th February 2006

The defendants, owners of the vessel failed to acknowledge service of the writ within 14 days of service. As was held in the *Nautik* (1898) P. 21.-

“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, subject matter of the suit should be actually in the possession of the Court, or under arrest of Court; it is enough that it should be within the lawful control of the State under the authority of which the Court sits”.

The writ in rem has been duly served and the defendants have defaulted appearance. Consequently the plaintiff has moved for judgment by default under Order 75 Rule 21(3) and Rule 21(4) of the R.S.C Rules, of the U.K, applicable in Seychelles under Section 7 of the Courts Act (Cap 52) and the Rules made thereunder.

The claims of the plaintiff are based on Rules 1(l) (n) and (L) of the Admiralty Jurisdiction Rules of Seychelles (Cap 52).

(1) **The claim under Sub Rule (n) for towage.**

Capt Daniel Hoareau, the Harbour Master testified that on 8th February 2006 a message was received from Cable & Wireless (Sey) Ltd, that the Captain of “*Al Manara*” was seeking towage services. (P1). Tug boat “*Alouette*” left

Port Victoria on 9th February and reached the stricken vessel on 10th February 2006. Before towing commenced, the Captain of “*Al Manara*” entered into a contract with the Seychelles Ports Authority (P2). According to Clause 32 of that contract the towage charge was US dollars 1200 per hour. The time to be counted from the time the tug left Port Victoria, and returned with tow safely moored and anchored. Hence the claim for 63½ hours at the rate of US dollars 1200 per hour is US dollars 76,200. This amount is awarded.

(2) The claim for unpaid Port dues.

In terms of the Harbour (*Port and Harbour dues*) Regulations, 2002 (S.I. 20 of 2002) Schedule 1, tariff item 1.2, the Port dues are 10 cents per gross ton for the first 24 hours, and 15 cents per gross ton for each subsequent period of 24 hours. The gross tonnage of the vessel “*Al Manara*” is 3053 tons. Hence the unpaid Port dues up to 31st July 2006 is US dollars 14,246.69 and continuing. This amount is according awarded.

(3) The claim for hire of motor boats.

Capt. Hoareau produced a series of “*launch hire forms*” (*exhibit P10*) recording every occasion a motor boat was used by the Captain and crew of the vessel to come ashore. The invoices amount to Sey. R. 211,833.35 equivalent to US dollars 38,515.15 up to 31st July 2006 and continuing. This amount is awarded.

(4) The claim for supply of gas oil

Capt. Hoareau produced invoices for the supply of a total of 48,546 litres of

gas oil at Rs. 5.48 per litre, which amounted to Sey. Rs. 260,552.08, equivalent to US dollars 47,373.11. This amount is awarded.

(6) Supply of Food

Capt. Hoareau also produced receipts in proof of purchase of several items of food for the crew, marked exhibits P12 and P13 amounting to Sey. Rs. 20,345.95, which is equivalent to US dollars 3,699.26. This amount is awarded.

(7) Supply of Spares

A receipt from "*Adesho Marine*" dated 21.4.2006 (P14) was produced in proof of purchasing 30 clips for Sey. Rs. 1278. Capt. Hoareau testified that they were required to repair certain water pipes on board the vessel. The equivalent claim of US dollars 232.36 is awarded.

(8) Hire of Plaintiff's Vehicles

This claim is based on payment vouchers P3 and P4 for the use of a vehicle belonging to the Seychelles Ports Authority on two trips, at the rate of Rs. 5.70 per km as provided in P.S.O 200, costing Sey. R. 778.29 which is equivalent to US dollars 141.51. This amount is also awarded.

(9) Medical Expenses

This claim is based on medical services rendered to the Captain and members of the crew in April and May 2006, as per the vouchers issued by the Ministry of Health (P16), which amounts to US dollars 409.97. This amount is awarded.

(10) Overtime of Driver

This claim is based on vouchers marked P3 and P4 for payment of overtime to driver who transported the Captain and crew in the Seychelles Port Authority vehicle. The overtime rate of Rs.16.65 per hour amounts to the equivalent of US dollars 40.87. This claim is allowed.

Accordingly judgment is entered in favour of the plaintiff, against the owners of the vessel "*Al Manara*" now lying in the territorial waters of Seychelles, in a total sum of US dollars 180,858.92 together with interest and costs. The vessel shall accordingly be appraised and sold, and the proceeds of sale be brought to Court pending the determination of priorities arising from the claim for wages in case no. 167 of 2006.

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A.R. PERERA

JUDGE

Dated this 21st day August 2006