IN THE SUPREME COURT OF SEYCHELLES

(Admiralty Jurisdiction)

In Re:

Seychelles Court of Appeal Case No: 22 of 2006

Island Development Company Limited **Plaintiff**

Vs

The Owners and Charterers of the Vessel

"Global Natali" **1st Defendant**

Elpida Marine Company Limited ***2nd Defendant***

Civil Side No. 265 of 1997

Mr. Chang-Sam for the plaintiff
Mr. P. Boullé for the defendants

D. Karunakaran, J.

RULING

I will begin by saying that a court of law, be it appellate or trial, should steer the law towards the administration of justice, rather than the administration of the letter of the law. In that process, undoubtedly, its primary function amongst others, is to adjudicate and give finality to the litigation. However, such finality in my view, cannot and should not be given

mechanically by the Court just for the sake of a technical conclusion of the case. In each adjudication, the Court ought to ensure that all disputes including the latent ones pertaining to the cause or matter under adjudication, are as far as possible completely and effectively brought to a logical conclusion once and for all. The good sense of the Court, I believe, should always foresee the long term ramifications of its determination and adjudicate the cause so as to prevent or control the contingent delay that could possibly, proliferate in future, due to multiplicity of litigations on the same cause or matter. Needless to say, prevention of potential delays with judicial forseeability is always better than cure. Therefore, our Courts in Seychelles - like any other Court of such forseeability and sense would do - should adjudicate the disputes accordingly and prevent the chronic delays that have cancerously afflicted our justice delivery system. After all, the law is simply a means to an end; that is, justice. If the means in a particular case fails to yield the desired result due to procrastination- as it has happened in the instant case because of repeated appeals, remittals and retrials over a decade due to an incomprehensible misinterpretation of the judgment of the Court of Appeal by the trial court, ***vide Judgment of the Court of Appeal cited infra*** - we have to rethink, reinvent, reinterpret and sharpen those means in order to eradicate the judicial delay, the enemy of justice, as Lord Lane once remarked. Hence, the Courts should never hesitate, where circumstances so dictate, to adopt measures that are just and expedient to prevent the delays, procrastination and the resultant frustration in the due administration of justice. Now then, I would simply ask: Which is to be preferred the **"means"** or the **"end"**? Please, forgive me for my long-winded observation though *obiter* herein, I have to ventilate what I feel about the **"judicial delays"** for, the Court short-sighted by the letter of the law, at times, prefers the **"means"** over the **"ends"**. I will now turn to the facts of the case on hand.

About 15 years ago, a foreign vessel by name "Global Natali" caught fire whilst in the territorial waters of Seychelles and ended up as scrap. The wreckage has already

been sold to a scrap-merchant by a strange order the trial Court made whilst the matter was pending before the Court of Appeal for final determination. Probably - by now - the body of "Global Natali" might have gone into some incinerator for reincarnation. However, her ghost still haunts our Courts, resurrecting from time to time, in the form of repeated appeals, remittals, retrials, applications, motions, claims etc. Her resurrection, though not miraculous, seems to be a never-ending process. The ghost has again reappeared as she never loses her appeal. This has now necessitated the Court to revisit her grave for the skeleton of facts, one more time, for the purpose of this Ruling. I hope, at least this Ruling would put the ghost of "Natali" to finally rest in peace, on the other bank of the Styx, unless the finest and the shrewdest lawyers, who appear for the parties in this matter decide otherwise and cast another spell of appeal to invoke her apparition. Be that as it may, the Ruling herein relates to three matters, which arose consequent upon the Judgment of the Seychelles Court of Appeal, delivered on 25th April 2008 **in SCA No: 22 of 2006.** For the sake of convenience, I have consolidated them all for hearing and now for determination accordingly. In fact, the following are the three matters - hereinafter called the ***"matters of trinity'*** which this Court needs to address in the present Ruling:-

Matter No: 1

The compliance with the order made by the Court of Appeal:

In pursuance of the judgment of the Court of Appeal dated 25th April 2008, this Court ought to implement the order of the Court of Appeal, which are in essence that:-

(a) the plaintiff - IDC - remit to the Registry of the Supreme Court, the sum of US$300,000/- being the money it received from the purchaser of the wrecked vessel "Global Natali"

(b) any other person or organization having a legitimate and lawful claim

arising from this matter, in 1977, should submit to the said Registry a detailed invoice for services rendered and/or documents in support of expenses properly incurred; and

(c) Each party to bear its costs of this appeal.

Matter No: 2

The motion dated 1st ***September 2008, filed by Mr. Boullé on behalf of the 2nd defendant claiming sale proceeds:-***

In this motion, the 2nd defendant namely, *"Elpida Marine Company Limited"* claims that since 12th February 1997 it has been, and is still the owner of the vessel "Global Natali" having purchased the same from its previous owner *West Coast Marine Limited*. At the time, that was on 12th August 1997, when the *action in rem for salvage claim* was brought against the said vessel, the previous owner had already sold the said vessel to the 2nd defendant. In the circumstances, Mr. Boullé contended that *action in rem* for salvage claim could not be brought against the said vessel then owned by the 2nd defendant, but only against the previous owner by way of an *action in personum*. Hence, he submitted that the 2nd defendant being the lawful owner of the rem - the wrecked vessel - he is entitled to receive its value that remains in the form of sale proceeds deposited with the Registrar of the Supreme Court. The plaintiff therefore, according to Mr. Boullé, has no salvage claim against the 2nd defendant. There is no other claim made by any other person to the said sum. For these reasons, Mr. Boullé urged this Court to make an order directing the Registry of the Supreme Court to

pay or release the said sum of US$300,000/- to his client, the 2nd defendant.

Matter No: 3

The Salvage Claim submitted by the plaintiff IDC dated 3rd **October 2008:-**

The IDC, the solver has submitted to the Supreme Court a claim application dated 3rd October 2008 enclosing thereto a detailed invoice for services rendered and other related documents in support of expenses it allegedly incurred in rendering salvage services for the said vessel. Its total salvage claim indeed, exceeds the sale proceeds of the wrecked vessel. The plaintiff (IDC) has submitted its claim against the said vessel presumably, in terms of the order made by the Court of Appeal in its Judgment dated 25th April 2008, which order reads thus:

> "***any other person*** *(underline mine) or organization having a legitimate and lawful claim arising from this matter, in 1997, should submit to the said Registry… … a detailed invoice for services rendered and/or documents in support of expenses properly incurred"*

At this juncture, it is important to revisit the background facts of the case, which indeed, being reproduced from my previous judgment in this matter, are these:-

The plaintiff Island Development Company, hereinafter called the "IDC" had brought an *action in rem* claiming USD 300,000 in respect of salvage services in connection with the vessel "Global Natali" against the defendant namely, the alleged Owners and Charterers of the said vessel. When the defendant left default, the learned Judge (A. R Perera, J.) gave judgment, on 27th

August 1997 in favour of the plaintiff. Subsequently, on 15th October 1997 "Elpida Marine Company Ltd", hereinafter called the "Elpida", describing itself as the owner of the said vessel "Global Natali" applied to the Court for an order to set aside the said judgment in default. The Supreme Court rejected this application on 18th of November 1997, and "Elpida" appealed against it to the Court of Appeal. Having heard the appeal, the Court of Appeal on 1st of April 1998 set aside the said default judgment and remitted the matter to the Supreme Court to "*determine the question of Elpida's standing to appear and file a defence out of time*." In fact, the Court of Appeal decided to remit the case for retrial in pursuance of an agreement the parties had reached before the Court of Appeal on the following terms:

1. *In the event that the Supreme Court determines the issue of ownership in favour of the plaintiff - Island Development Company - then the defendant the Owners and Charterers of the Vessel "Global Natali" shall be debarred from filing a defence on the merits in the case on appeal, and the appeal will stand dismissed.*

2. In the event that the Supreme Court determines the issue of ownership in favour of the defendant, then the defendant shall be at liberty to file defence and be entitled to be heard on the merits in the case on appeal in which case the judgment in the said case on appeal shall be ipso facto reversed in relation to the defendant's standing.

3. *For avoidance of doubt, it is declared that all parties shall be at liberty to appeal to the Seychelles Court of Appeal against the judgment of the Supreme Court on the issue of ownership remitted to the said court for determination.*

The above agreement was, by consent of parties made the judgment of the

Court of Appeal.

In subsequent proceedings in relation to ownership, the Supreme Court (Perera, J.) ruled that "Elpida" had no *locus standi,* but on appeal, the Court of Appeal on 13th April 2000 set aside that judgment and held that Elpida had been the owner of the vessel "Global Natali" since the 12th February 1997. That decision of the Court of Appeal had in effect brought into operation clause 2 of the above-quoted agreement reached by the parties, which was indeed, made a judgment of the Court of Appeal on 1st April 1998. Pursuant to that judgment, the decision of the Supreme Court dated 18th of November 1997 rejecting the application of Elpida - to set aside the judgment in default - was ipso facto, reversed. However, the Supreme Court (A. R. Perera, J.) proceeded to make an order for the sale of the wrecked vessel by taking an unusual view, which surprised the Court of Appeal. Be that as it may. The relevant part of the judgment of the Court of Appeal delivered on 19th December 2002 in this matter reads thus:

> "Surprisingly enough the learned judge of the Supreme Court (A. R. Perera, J.) took the view that '*the effect of the Court of Appeal judgment of 13th April 2000 was that ipso facto only order of this Court (that is the Supreme Court) refusing the application of Elpida to set aside the default judgment was reversed, not the default judgment itself*' and went on '*to confirm the default judgment*', namely the judgment that was delivered in the absence of Elpida. We have said enough to show that this was plainly wrong. The respondent (Island Development Company Limited) had agreed to reopen the case once the issue of ownership was determined in favour of Elpida. The learned Judge (Perera J.) has misconstrued the judgment which was reached by agreement of the parties before the Court

of Appeal on 1st April 1998. That judgment enjoined on him to proceed to hear the merits of the case and to adjudicate thereon. This he has failed to do. We have no alternative but to quash his decision '*to confirm the default judgment'.*

...Consequently, we remit the matter to the trial Court for a new trial in the light of this judgment. We understand that the vessel has already been sold. The consequences of that sale are to be canvassed in the course of the new trial."

In the light of these background facts, this Court heard the case *de novo* as directed by the Court of Appeal. After a full hearing of the case on the merits *inters parte*, this Court 29th September 2006, entered judgment for the plaintiff (IDC) and against the defendant therein - the Owners and Charterers of the Vessel "Global Natali", who were then represented by learned Counsel Mr. Boullé. The operative part of the said Judgment reads thus:

"Having diligently analyzed all the facts and the circumstances above, I find the IDC's claim for salvage is well founded, bona fide and the amount claimed is appropriate and reasonable. Hence, acting in terms of O 75 r.1 and 2 of the Supreme Court Rules (UK), which are applicable to the case on hand, I enter judgment for the plaintiff "Island Development Company Limited", the salvor of the vessel "Global Natali" in the sum of US$300, 000.00 (United States Dollars Three hundred thousand) against the defendant. Admittedly, in pursuance of the Court order dated 27*th of August 1997, the plaintiff has already sold the vessel and recovered this sum from the sale proceeds amounting to US$300, 000.00. Hence, this Court hereby confirm and validate the said sale of the vessel "Global Natalie" and accordingly, authorize the plaintiff to set off the said sum against the debt payable by the defendant by virtue of the*

judgment entered hereof. Having regard to all the circumstances of the case, I make no order as to costs"

Again, the defendant namely, the Owners and Charterers of the Vessel "Global Natali" being dissatisfied with the above judgment, appealed against it to the Court of Appeal. Having heard the appeal, the Court Appeal in its Judgment dated 25th April 2008, confirmed the judgment of this Court on the issue of ***liability*** and ***quantum*** in respect of the plaintiff's salvage claim. In the same breath the Court of Appeal, having preferred the "means" to the "end", remitted the case to this Court with specific direction to implement its order rehearsed supra. In pursuance of this order, I now proceed to examine the said ***"matters of trinity"*** and deal with each of its component *in seriatim* accordingly.

Component No: 1

In pursuance and in execution of the first part of the Appellate Court's order dated 25th April 2008, this Court directed the plaintiff - IDC - to remit to the Registry of the Supreme Court, the sum of US$300,000/- being the money it had received from the purchaser of the wrecked vessel "Global Natali". Accordingly, the IDC has already remitted the said sum of US$300,000/- to the Registry of the Supreme Court.

Besides, in execution of the second part of the said order, this Court directed the Registrar of the Supreme Court to put up a notice on the Notice Board of the Registry informing the public that **any other person or organization** having a legitimate and lawful claim arising from this matter, in 1997, should submit to the said Registry within two months from the date thereof i. e 17th July 2008, a detailed invoice for services rendered and/or documents in support of expenses properly incurred. Despite such notice, no other person or organization (save IDC) has submitted within the stipulated period any application for salvage claim with the Registrar of the Supreme

Court.

In my considered view, the meaning of the expression *"any other person or organization"* used by the Court of Appeal in its order, should be gathered taking into account the entire circumstances and the context in which it has been used. Obviously, in its judgment the Court of Appeal has already upheld the finding of the trial court on the issue of ***liability*** and ***quantum*** in favour of the Plaintiff- IDC's salvage claim. Hence, any attempt to reopen the Pandora's Box of IDC's salvage claim for a second determination by submitting another claim to the Registry of the Supreme Court, is à mon avis, not only otiose but also such attempt would cast another spell of appeal inviting the ghost back to haunt our Courts. In any event, such an attempt is barred by ***res judicata*** since the claim has already been judicially determined by a final judgment of a Court of competent jurisdiction. In the circumstances, I find that the expression *"any other person or organization"* used by the Court of Appeal in its order, in its natural and ordinary sense means that "any person or organization" other than the plaintiff namely (IDC), having a legitimate and lawful claim arising from this matter, in 1977, should submit their salvage claim to the Registry with a detailed invoice for services rendered and/or documents in support of expenses properly incurred. Hence, I find that no other person or organization is entitled to any sum from the sale proceeds since no one has submitted any invoice or document for salvage claim with the Registrar of the Supreme Court despite public notice as directed by the Court of Appeal.

Component No: 2

The Court of Appeal has remitted this matter undoubtedly, giving a specific and limited direction or mandate to this court that is, only to deal with salvage claim if any, filed by any person or organization - other than the IDC - who provided services to the distressed Natali. The IDC

cannot now institute or file a fresh claim since its claim has already been judicially and finally adjudicated by the competent Court. Hence, the jurisdiction of this Court in this ambit of remittal is very limited, in that it should consider only salvage-claims filed by any other person or organization having a legitimate claim arising particularly, from the matter, in 1997 as specified in the said order of the apex court. The matter, which the Court of Appeal has referred to in its order is clearly "the incident of fire", which occurred on board vessel "Global Natali" (cause of action) and the consequent salvage claim filed by IDC in 1997. Hence, I find this Court has no authority or jurisdiction to go beyond its mandate to reopen any other contentious issues or to consider any other claim filed by anyone in this matter of remittal, whether such claim involves owners of the vessel or ownership over the sale proceeds. This Court has mandate in the instant proceeding, to consider the claim to the sale proceeds at this stage, if and only if, it satisfies the following two conditions:-

(1) *The claimant therein should have been a service provider, who rendered services to the distressed vessel Global Natali; and*

(2) Such services should relate to or have been rendered in respect of the distress due to fire, which broke out onboard the vessel Global Natali in 1994.

In the motion dated 1st September 2008, filed by Mr. Boullé on behalf of the 2nd defendant *"Elpida Marine Company Limited"* it is claimed that since *"Elpida"* being the lawful owner of the rem - the wrecked vessel - it is entitled to receive the value of the rem that remains in the form of sale proceeds deposited with the Registrar of the Supreme Court. With due respect to the views of Mr. Boullé, learned counsel for "Elpida", any claim based on ownership of the wrecked vessel cannot be equated to a salvage-claim that is based on services rendered to the vessel. Strictly speaking, the owner of the vessel is a debtor, whereas a solver who rendered services to the distressed vessel is a creditor in the eye of law. In any

event, the claim made by “Elpida” based on ownership of the vessel in this respect does not satisfy any of the two conditions (mentioned-supra) so as to enable the court to entertain the claim. Hence, I find that this Court has no authority or jurisdiction to go beyond its mandate in this matter of remittal, to reopen any issue based on ownership of the vessel or ownership over the sale proceeds. Therefore, I conclude that the motion filed by “Elpida” claiming the sum of US$300,000/- in its capacity as owner of the vessel is misconceived and so not maintainable in this proceeding. Hence, I decline to grant this motion.

Besides, I gave a serious thought to the contention of Mr. Boullé that *action in rem* for salvage claim could not be brought against the said vessel then owned by the 2nd defendant namely, *“Elpida Marine Company Limited”,* but only against the previous owner “*West Coast Marine Limited”* by way of an *action in personum*. I agree with his contention as it is the position of law under the Admiralty Jurisdiction Rules Part! – 3 (4) of SI 60 of 1976 Cap.52 However, the defendant should have raised it as a preliminary issue, when the *action in rem* for salvage claim or proceeding was originally instituted and continued against his client. Obviously, raising a point of law of this nature at this stage of the proceeding, cannot hold water in this particular case, as his client is ***estopped by conduct*** from denying not merely the state of affairs established by the judgment of this Court dated 29th September 2006 that the owners of the said vessel has been adjudged liable to IDC in the sum of US$300,000/- , but also the ground upon which that judgment was based namely, the IDC rendered salvage services for the said vessel. Whoever had been the Owners and Charterers of the said vessel whether *“West Coast Marine Limited” or “Elpida Marine Company Limited”* before, during or after the institution of the proceedings the fact remains that defendants who were contesting the IDC’s action for salvage claim, throughout the proceedings, maintained their *legal status* as Owners and Charterers of the vessel until the delivery of the said judgment and even on subsequent appeals. It is therefore, too late for the defendant/s or anyone claiming through them for that matter, to deny their status at the execution stage, that is, after the judgment in rem has been entered against them. They are now estopped, since it is a ***judgment in rem***, which is conclusive as against all persons of the existence of the state of things, which it actually effects, when the existence of that state is in issue or relevant to the issue *vide per Lord Goddard C. J* ***in Hollington v, Hewthorn & Company Limited*** [1943] K. B 587, at p. 596.

Component No: 3

As regards the Salvage Claim submitted by the plaintiff IDC dated 3rd October 2008 in this matter, I have already found supra that reopening of IDC's salvage claim for a second determination by this Court is not only redundant and otiose but also ***res judicata*** since the claim has already been judicially determined by a final judgment of a Court of competent jurisdiction. Hence, I find that the salvage claim filed by the IDC is not maintainable either in law or on facts.

Having said that, in due compliance with the directions given by the Court of Appeal in this matter on remittal and for the reasons stated hereinbefore, I make the following declarations and orders:

(i) *The IDC has duly complied with the order made by the Court of Appeal in its judgment dated 25th April 2008, by remitting the sum US$ 300,000/-to the Registry of the Supreme Court.*

(ii) *No other person or organization having a legitimate and lawful claim arising from this matter, in 1997 has submitted to the said Registry any invoice for services rendered and / or documents in support of expenses incurred.*

(iii) *This Court has no authority to go beyond the frame of remittal and direction of the Court of Appeal, in order to consider the claim based on ownership, made by the owners of the vessel to the money remains in the hands of the said Registry. Hence, the motion filed by the 2nd defendant "Elpida Marine Company Limited" dated 1st September 2008 is untenable in law and so dismissed accordingly.*

(iv) *The salvage claim submitted by the plaintiff IDC dated 3rd October 2008 in this matter, is also dismissed due to* ***res judicata*** *and redundancy.*

(v) *In pursuance of the judgment of this Court dated 29th September 2006, wherein the Owners and Charterers of the vessel "Global Natali" has been adjudged liable to IDC in the sum of US$ 300,000/- towards salvage claim, I hereby order the Registrar of the Supreme Court to release or arrange for the payment of the sum US$ 300,000/- to IDC forthwith, which sum was remitted to the Registry of the Supreme Court by IDC in terms of an order made by this Court on 17th July 2008 in this matter: and*

(vi) *Each party to bear its own costs of the instant proceedings as well as of the appeal, which gave rise to these proceedings.*

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D. Karunakaran

Judge

Dated this 6th day of May 2009