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*[Names of parties/witnesses/places etc] in this [judgment] not to be published in any form without prior written authorisation of the Court*

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 73/2013**

**[2015] SCSC**

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**THE REPUBLIC**

versus

**ALI ABSHIR NUUR  
HASSAN TAHLIL AHMED  
FARAH ABDULLAHI ALI  
MOHAMED ABDULLAHI MOHAMED  
ABDISHAKUR YAHYE KHEYRE  
MOHAMED BASHIR MOHAMED  
HASSAN SIYAT FARAH  
ABDIQADAR ABDI SALAN  
ADAN ABDULLAHI BARISE**

Accused

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Heard: Between 26<sup>th</sup> November 2014 and the 17<sup>th</sup> February 2015  
Counsel: Mrs. Shenaz Muzaffer, Assistant Principal State Counsel for the Republic  
Mr. Nichol Gabriel Attorney at Law for all nine (9) accused persons  
Delivered: 13 March 2015

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**JUDGMENT**

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**Burhan J**

[1] The aforementioned accused stand charged as follows:-

**Count 1**

Piracy contrary to section 65(1) and (4) (a) of the Penal Code read with section 22 of the Penal Code.

The particulars of the offence are that ALI ABSHIR NUUR, HASSAN TAHLIL AHMED, FARAH ABDULLAHI ALI, MOHAMED ABDULLAHI MOHAMED, ABDISHAKUR YAHYE KHEYRE, MOHAMED BASHIR MOHAMED, HASSAN SIYAT FARAH, ABDIQADAR ABDI SALAN and ADAN ABDULLAHI BARISE on the 6<sup>th</sup> day of November 2013 on the high seas, with common intention, committed an act of piracy, by committing an illegal act of violence or detention, or an act of depredation, for private ends against another ship, namely the M/V Zhongji No.1.

**Count 2**

Piracy contrary to section 65 (1) and (4) (a) of the Penal Code read with section 22 of the Penal Code.

Particulars of offence are that, ALI ABSHIR NUUR, HASSAN TAHLIL AHMED, FARAH ABDULLAHI ALI, MOHAMED ABDULLAHI MOHAMED, ABDISHAKUR YAHYE KHEYRE, MOHAMED BASHIR MOHAMED, HASSAN SIYAT FARAH, ABDIQADAR ABDI SALAN and ADAN ABDULLAHI BARISE on the 09<sup>th</sup> day of November 2013 on the high seas, with common intention, committed an act of piracy, by committing an illegal act of violence or detention, or an act of depredation, for private ends against another ship, namely M/V Torm Kansas.

**Count 3**

Piracy contrary to section 65(1) and (4) (b) of the Penal Code read with section 22 of the Penal Code.

Particulars of offence are that ALI ABSHIR NUUR, HASSAN TAHLIL AHMED, FARAH ABDULLAHI ALI, MOHAMED ABDULLAHI MOHAMED, ABDISHAKUR YAHYE KHEYRE, MOHAMED BASHIR MOHAMED, HASSAN SIYAT FARAH, ABDIQADAR

ABDI SALAN and ADAN ABDULLAHI BARISE between the 06<sup>th</sup> day of November 2013 and the 10<sup>th</sup> day of November 2013 on the high seas, with common intention, committed an act of piracy, by voluntarily participating in the operation of a ship with knowledge of fact making it a pirate ship.

#### **EVIDENCE OF THE PROSECUTION.**

[2] It is borne out from the evidence of Commander Henrik Holck Rasmussen who was commander of HDMS Esbern- Snare a Danish flexible support war ship and Lieutenant Commander Jes Bjerg that on the 8<sup>th</sup> of November 2013, their warship was deployed on patrol in the Indian Ocean and the Gulf of Aden on anti piracy operations. Witness Commander Rasmussen stated that on the 6<sup>th</sup> of November 2013 the Esbern-Snare was informed at 06.14 local time (03.14 Zulu time) that the M/V Zhongji 1 was under attack from a skiff. The location of the vessel Zhongji 1 was given as 05 degrees 40 minutes South and 46 degrees 59 minutes East. According to their calculations he stated, they were more than a day from the vessel. He further stated that on the 9<sup>th</sup> of November 2013, a further distress call was received from M/V Torm Kansas at 17.01 hrs local time which was 14.01 Zulu time. The location of the vessel Torm Kansas was given as 7 degrees and 20 minutes South and 48 degrees 37 minutes East. On deploying a search of the area, in which the ship senses, radar, electro optics and helicopters were deployed, they came across a whaler and a skiff by means of their infra red cameras and ship's radar.

[3] Commander Rasmussen had ordered their ship to be darkened as it was night and if the persons on the whaler were unaware of their presence, they would have the tactical advantage. He had continued observation of the whaler and skiff with their equipment and observed no activity aboard the skiff but activity aboard the whaler. Then they had observed a trawler pass by and observed more activity on the whaler and observed two or more persons enter the skiff from the whaler which was being towed by the whaler and set off in the direction of the trawler. He had immediately decided to start up Esbern Snare and go in the direction of the trawler and to keep their warship between the skiff and the trawler. He stated that as morning was breaking and he was travelling at 20 knots the ship was visible both to the trawler and the skiff. The skiff suddenly turned back and

went back in the direction of the whaler. As the surprise element was lost, they had decided to board the whaler and skiff. The position the skiff and whaler when boarded was 7 degrees 13.9 minutes South 48 degrees 36.8 minutes East. Eventually they had taken all nine persons who were aboard the whaler on board the Esbern Snare and the whaler and the skiff into their custody.

[4] Lieutenant Morten Hinkdjaer stated he was the tactical coordinator on board the helicopter on board the Esbern Snare. Referring to document P2 witness stated that the red outline on the document indicated the effective search area done between the 7<sup>th</sup> of November 2013 and the 9<sup>th</sup> November 2013. He stated that on document P2 the precise position of attack on the vessels Zhongji1 and Torm Kansas are indicated. He stated that on detecting the whaler and skiff he was given instructions at around 05.35 hrs local time to take off and observe the whaler and skiff and detect whether there were dangers for the boarding team in the rib (rigid inflatable boat) also referred to as rhib (rigid hulled inflatable boat). From the cameras aboard the helicopter they were able to photograph and record footage of the boarding. He produced the photographs P3 to court.

[5] Jesper Maigaard of the Danish Military police testified to the boarding of the whaler after the naval team had boarded and secured the whaler and skiff and the persons aboard. He stated that there were 6 others with him. He was in charge of the crime scene investigation team. He had commenced the crime scene investigation but was interrupted due to bad weather. He was assisted by two other crime investigation scene officers Kenneth Penderson and Martin Nielson. Witness Maigaard produced the photographs taken by them of the crime scene as P5. From his evidence it is apparent that there were fuel for the engine in a barrel, rocks and a place to cook, a barrel containing drinking water, several yellow canisters containing fuel on the whaler. No fishing gear was found on the whaler and no freezers to store fish or fishing nets. They had found a radio and a navigation GPS (Global Positioning System) device aboard the whaler which was produced as an exhibit P14. The locations of where all the items taken into custody from the whaler had been found were photographed. They had also located three anchors of different sizes and found a black plastic bag and some hand written notes marked P9 which were found by Mr. Penderson. All exhibits taken into custody were locked in a special locker on board the Esbern Snare and the key was with Mr. Penderson. They had

also photographed the whaler and the skiff including the engine of the skiff. Witness identified from the photographs the various items taken into custody. He stated that when one person gets aboard a ship, he could use the anchor to facilitate the boarding of the ship by others. Thereafter two witnesses whose names were not made public referred to as X and Y, described how the whaler was boarded and secured. Documents in Somali language were found aboard the whaler and were produced marked as P 9.

[6] Mr. Kenneth Penderson stated he was the crime scene coordinator for the Military police working aboard the Esbern Snare. He stated after the whaler and skiff had been secured, he had boarded the whaler with other crime scene investigators and conducted investigations. The GPS device he recovered from the whaler was produced as exhibit P14. The said GPS was handed over by witness Penderson to Claus Anderson for the purpose of extracting data. The data was extracted in his presence and the GPS device was handed back to him. Mobile phones recovered were also produced as exhibits P17 (a) P18 (a) taken into custody from the ninth suspect and P19 (a). He stated all exhibits taken from the whaler were kept in his possession under lock and key and were handed over to the Seychelles police by him. He also stated that all the nine accused taken into custody from the whaler and kept aboard the Esbern Snare were eventually handed over to the Seychelles police. He identified them as the same accused in court. The photographs, recordings and other documents pertaining to the arrest and investigations done by them were handed over to the Seychelles police and subsequently produced in court. Though the skiff was produced the whaler had taken water and sunk but photographs of the whaler were produced in court. All items they had found aboard the whaler were recorded in the report marked P21. He too stated anchors could be used as grappling hooks to which a rope or a ladder could be attached to board a vessel.

[7] Martin Povlsen gave evidence that he was a military police officer in charge of registration of the accused. He gave evidence of how each accused was taken from the whaler, photographed and witness produced all photographs of the nine accused taken aboard the Esbern Snare from the whaler as P25 to P 33. Documents pertaining to the particulars of each of the suspects were produced as P34 to P42. Witness Martin Nielsen also gave evidence to the fact that he was a military police officer who had assisted the others. He produced a bundle of photographs P 44 and P45 taken by him and stated the

photographs showed the whaler, skiff, engine of the skiff and the items found aboard the whaler. Witness Jesper Henriksen stated he had extracted data from the mobile phones taken into custody. He had extracted certain images from the memory cards taken into custody from the 5<sup>th</sup> and 9<sup>th</sup> suspect. He produced his information report as P46. He admitted that the images on report P46 did not show any images of the suspects.

[8] Captain Sreenarayan Orongil stated he was the Master in charge of the vessel Zhongji 1. He described the attack by suspected pirates on the vessel on the 6<sup>th</sup> of November 2013. He stated his vessel was a chemical tanker which had loaded its cargo from Yanbu Saudi Arabia and was proceeding to Beira in Mozambique to unload its cargo. He stated that there were 23 persons and three security personnel aboard namely David O'Neil, Mark Williams and Daniel Parker. He produced his report in respect of the attack as P 47. The attack had occurred at around 6.30 in the morning local time which was 3 hrs ahead of Zulu time. It is apparent from his report that at the time of attack the location of the Zhongji 1 had been 5 degrees 40 S and 46.59 E which was the high seas. They had sent a distress signal to UK MTO which is an organization based in Dubai monitoring the activities of piracy and informed his office about the attack. He stated the skiff looked white in colour on the sea and they were able to successfully repel the attack. Witness David O' Neil team leader of the security aboard the Zhongji1 described the attack and the fact that warning shots were fired and there was an exchange of fire between his team and those on the skiff but no damage was done to the Zhongji1 and they were successful in repulsing the attack. Witness Mark William too testified to the details of the attack on the Zhongji 1.

[9] SI Omblime in his evidence affirmed the fact that that he had met Mr. Kenneth Penderson when he arrived in the Seychelles with the nine accused and the exhibits relevant to this case. He had signed on the exhibit log book that he had received all the exhibits contained therein and the said logbook was produced as P50. He stated the ticks in the log book were placed by him to affirm receipt of same. He confirmed the fact the GPS P14 was handed over to him. The reference number of the GPS which was A-2/1.1 was produced by him as P51. He referred and confirmed the reference numbers given to the skiff, skiff engine on skiff and the mobile phones. The skiff had been taken to the jetty of the CID headquarters and placed there. He had placed all the other exhibits in the exhibit

store and the key was kept with him. During the course of trial all parties viewed the skiff which was placed in the jetty at CID headquarters which was depicted in photograph P 45. Though witnesses Kenneth Penderson and witness Robin Omblime were cross examined there was no break in the chain of evidence of the items recovered from the whaler and skiff and produced in court. Kenneth Penderson states having recovered the said GPS, he had given it to Claus Anderson for analysis and been with him while it was analysed and thereafter kept it in his custody until it was handed over to the Seychelles authorities.

[10] Officer Chantal Leon stated that all nine accused in this case were handed over to her by Kenneth Penderson. She had informed them of their constitutional rights and placed them under arrest after telling them they were being arrested for the offence of Piracy. Thereafter with the aid of a Somali interpreter she had proceeded to record their statements over a period of time and had prior to doing so explained their constitutional rights and cautioned each and every one of them. Sub Inspector Barra had been present as witness during the interviews together with the Somali interpreter. The statements of all nine accused were produced as P52 to P60. There was no challenge from the defence in regard to the voluntariness of the statements. It is apparent that the ages of many of the accused have been given as minors but after forensic examination it was revealed that only the 1<sup>st</sup> accused was a minor and all the other 8 accused were not minors a fact accepted by the defence. Officer Jeremy Barra thereafter affirmed the fact that he had witnessed the taking of the said statements by WPC Chantal Leon and affirmed that all formalities in explaining their constitutional rights and cautioning them had been complied with.

[11] Thereafter the evidence of witnesses Karna Bandlamudi the Captain of the vessel Torm Kansas was recorded under section 11 ( C ) of the Evidence Act by way of video link. He gave evidence setting out the details of the attack on the Torm Kansas. He stated the Torm Kansas at the time of attack was 07 degrees 19.8 minutes South and 48 degrees 36.7 minutes East. He described the details of the attack and the fact that the attack was unsuccessful as the persons on the skiff were unable to board the vessel Torm Kansas as they were repulsed by the security on board the vessel. They too had brought notice of the attack to the UK MTO and he stated the attack had occurred around 17.30 hrs local

time which was three hours ahead of Zulu time on the 9<sup>th</sup> of November 2013. Witness Stuart Reynolds and Steve Pockley too testified to the fact that they were security personnel on board the Torm Kansas and corroborated the evidence of Captain Karna Bandlamudi in respect of the attack by persons in a skiff on the vessel Torm Kansas on the said date and there was an exchange of fire between the security personnel and the persons on the skiff who had automatic weapons. The prosecution also led the evidence of witness Claus Anderson which will be dealt with later.

[12] Thereafter the prosecution closed its case.

### **THE DEFENCE**

[13] In defence all nine accused made unsworn statements from the dock.

[14] The 1<sup>st</sup> accused stated he was from Somali origin and had a boat called the Volvo which got lost on the sea and he was detained by Denmark and prosecuted but as there was no case, they were released and promised compensation. He had not received any compensation up to date and he had been told he would be taken back to his country in two months. The 2<sup>nd</sup> accused too stated he was from Ego and was a fisherman and he had one boat with him and got another boat in the sea and got lost due to a storm. He too stated he was taken into custody by the Danish warship but was released and promised compensation. Thereafter they were brought to the Seychelles. The 3<sup>rd</sup> accused too stated he was from Somali origin and a fisherman and had a boat called the Volvo which was on the sea and was detained by a Denmark warship and they were sued. As there was no case they were released and promised compensation. He stated further he had not received up to date any compensation and had not been released. The 4<sup>th</sup> accused stated he too was from Ego and he was a fisherman and was in the boat and was drifting in the sea due to storms, when they were taken into custody by the Danish warship. They were sued onboard the ship but as there was no evidence they were released. He too was promised compensation but was not paid and brought to the Seychelles. The 5<sup>th</sup> accused too stated that he was from Somali origin and all nine of them were in the Volvo. He stated they had engine problem and were drifting when they got caught to storms and after a few days were stopped by a Danish warship detained onboard and were sued. There was no evidence so they were released. They were promised compensation and were



brought to the Seychelles but had not received any up to date. The 6<sup>th</sup> accused too admitted he was from Somali origin and a fisherman and together with the others was on a boat when heavy rains and storms took them to the high seas where they were detained by a Danish warship and prosecuted but as there was no evidence were released and brought to the Seychelles. They were promised compensation but were not paid up to date. The seventh accused too stated he was a fisherman from Ego and there were nine of them out fishing when they were caught by a storm and thereafter detained by a Danish warship. He stated they were employed by Tophiet Company. He stated they were prosecuted aboard the warship but as there was no evidence were released. They were promised compensation. The 8<sup>th</sup> accused too stated he was a fisherman and was on a boat caught by rains and storms and were detained by a Denmark warship. They were released and promised compensation and were to be taken to Somali but were brought to Seychelles. The 9<sup>th</sup> accused too stated he was a fisherman from Ego who had a boat by the name of Volvo. They were caught in heavy rains and storms and were lost and caught by a Danish warship. They were told there is no case or evidence against them. They were told they would be released and compensation would be given to them. While they were waiting for the money and their release they were brought to the Seychelles. Up to today he had been waiting for his release and for his compensation. Thereafter the defence closed its case and submissions were tendered by both the prosecution and the defence.

### **ANALYSIS OF THE EVIDENCE**

- [15] It is apparent on an analysis of all the unsworn statements of the accused, the following facts have been admitted by the accused that is, that they were all travelling together on a boat called Volvo and they admit they were taken into custody when they were in it by a Danish warship. It is therefore apparent from their unsworn statements in court that all

the accused were part of the same team working on the Volvo which the Danish forces refer to as the whaler, at the time of being apprehended by the naval officers of Esbern Snare.

[16] Further it is clear according to their own statements they were all voluntarily participating in the operation of the Volvo referred to by the navy personnel as a whaler. It is to be noted that none of the accused in their unsworn statements have stated that they had not been voluntary participating as a group or that they were forced to work aboard the Volvo or whaler by the others in the group. Even in their statements under caution admitted without contest indicate that they are of Somali origin and left as a group from Somali on board the Volvo. It is therefore apparent that all the nine accused were jointly participating together in the operation and running of the whaler with the attached skiff, an essential element to be proved as set out in the case ***Mohamed Hassan Ali versus The Republic SCA 22 of 2012.***

[17] The question to next decide is whether the whaler also referred to as Volvo was being run as a fishing vessel as claimed by the accused or were the nine accused voluntarily participating in the operation of a ship (whaler) with knowledge of fact making it a pirate ship as set out in Count 3.

[18] It is in evidence that at the time of arrest there was no fishing equipment or deep freeze on board the whaler to indicate that the accused were genuine fisherman and it is in evidence that at the time of arrest a skiff with a powerful outboard engine was being towed by the whaler. Just prior to the arrest it was observed by Commander Rasmussen of the Esbern Snare, the skiff being boarded by persons from the whaler and the skiff heading in the direction of a trawler which was passing by. However on the warship converging on the scene, the skiff had promptly changed course and headed back to the whaler. It was boarded soon thereafter by navy personnel from the Esbern Snare and the nine occupants taken into custody. It is also in evidence that a GPS device found aboard the whaler on analysis by Claus Anderson indicated readings of close proximity to vessels Zhongji 1 and Torm Kansas at the time of the attacks.

[19] The elements the prosecution has to prove is that the whaler was being operated as a pirate ship by the inmates aboard. Firstly witnesses of the two attacks describe the attack

not by a whaler but by a fast moving skiff. The fact that a skiff was found tied to the whaler, depicts the fact that the whaler and the skiff were together being used by the inmates aboard whaler. The fact that the fuel canisters and provisions were aboard the whaler indicate that the whaler was used to store the fuel that was necessary to start the 60 hp engine on the skiff and indicates, it was the persons aboard the whaler who were fuelling and operating the skiff. Further the GPS device found on board the whaler has recorded paths in close proximity to the ships attacked which in the absence of any plausible explanation indicates that the whaler too was close to the ships Zhongji1 and Torm Kansas at the time of attacks. According to the accused themselves from the time they left they were together on the whaler or Volvo as referred to by them. According to the evidence of Commander Rasmussen he had observed from the Esbern Snare, persons aboard the whaler get onto the skiff and move fast in the direction of a passing trawler before he intervened resulting in the skiff going back to the whaler and persons reboarding the whaler. This too clearly indicates the persons arrested from the whaler were using the skiff which was found tied to the whaler. In the light of all this evidence, I cannot accept the contention of the accused that they had quite conveniently found a skiff floating in the ocean and had set out so far to sea with no navigation equipment. It is to be noted that the accused Abdullahi Salat in P52 states they had got the skiff in the sea and on it there was a black item when questioned about the GPS

[20] The presence of documents onboard the whaler marked P9 containing military style phrases in regard to disciplinary action of personnel aboard, involving shooting and high fines are not phrases in agreements applicable to normal fisherman. All this taken together the proximity of the skiff to the whaler being tied by a rope, the GPS aboard the whaler showing co ordinates close to reported piracy attacks, the presence of “Somali fishermen” without fishing gear and deep freezers when so far at sea and the suspicious activities witnessed by the Commander of Esbern Snare together with the large quantities of fuel being stored onboard the whaler, clearly indicate that the whaler was voluntarily and knowingly being used by the inmates aboard as a mother ship for purpose of piracy. None of the above facts support the claim of the nine accused that they were fisherman.

[21] The evidence in regard to all the above facts though subject to cross examination no material contradictions or omissions were noted. In fact several admissions were made by

the accused themselves in their statements under caution and in their unsworn statements and the evidence of the prosecution at times stood unchallenged and corroborated by video and documentary evidence. I therefore proceed to accept the evidence of the prosecution and am satisfied that all the aforementioned items of direct and circumstantial evidence read together, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of the guilty of the accused. I am also satisfied that there exists no other co existing circumstances which would weaken or destroy the inference of guilt. I am satisfied therefore all the elements of the charge contained in Count three have been proved beyond reasonable doubt.

[22] I will now proceed to consider the evidence led by the prosecution to establish counts 1 and 2.

[23] When one analyses the evidence of Mr. Claus Anderson an expert on GPS device data analysis, his evidence is that a waypoint is a point one can program into the GPS as a position you need to go to or a point one has passed and programmed into the GPS as a position one wants to return to. He stated a route is a path taken by several waypoints minimum of two. He further stated trackpoints are those points which are recorded automatically inside the GPS when it is turned on. He stated such automatically generated track points will tell you where the GPS has been at the given time. Witness further stated that when one programs a waypoint on a GPS it would record the co ordinates for you. He further stated waypoints are done manually while track points are recorded automatically when the GPS device is switched on by satellites. He stated there were 27 way points recorded on the GPS device P14 and described the location of them. He further stated that there were 2047 track points which is automatically generated. He stated according to the GPS device P14 a make from Garmin company the time stamp generated automatically is always in Zulu time. He said one could plot the course of the GPS device after entering the co ordinates set out in the track points. He further stated a GPS will store only 2047 points so each time a new one is added thereafter the older one gets deleted. He stated MOB means Man Over Board. When the MOB button is pressed the position will be immediately registered so the ship could always turn back and come to that position. He stated the MOB button on this GPS had been pressed creating an

MOB way point on the 5<sup>th</sup> of November 2013 at 22.47 hrs. He stated the time stamp for the way point according to his investigations was not accurate and according to his analysis 6 hours behind Zulu time. Therefore the correct time stamp should have been 0447 Zulu time. He had got the details of the Zhongji path on the day of the attack and plotted its coordinates as well. He observed after plotting and comparing the MOB coordinates on the GPS device and the coordinates of the path of the Zhongji, that the GPS device and the Zhongji were separated by only 1.4 nautical miles showing they were close to each other around the time of attack. He stated that the reason why the MOB was pressed was to save the location as for future information of the fact that this particular location was a major shipping lane.

[24] Witness Anderson also referred to the route of the trackpoints of the GPS device and when compared with the trackpoints he had drawn of the route of the vessel Zhongji 1, he had observed according to his expertise, the GPS device had crossed directly over the path taken by the vessel Zhongji 1 and then had turned back into the path of the Zhongji 1 again. Further the time the GPS device was used was around the time the attack on the Zhongji 1 took place which was between 03.00 hrs and 04.45 hrs Zulu time. The distance between the GPS device and the Zhongji 1 according to his calculations would have been about 0.91 nautical miles and 0.12 nautical miles which according to witness was a negligible distance.

[25] Witness Claus Anderson further stated that similarly on the analysis of the data on the GPS device he observed that the trackpoints taken at the time the GPS was being used indicated that on the 9<sup>th</sup> of November 2013, it was 4.95 nautical miles from the vessel Torm Kansas two hours before the time of attack and around 3.86 nautical miles from the location of the attack Torm Kansas after the time of attack which could be considered as close proximity in regard to distances calculated at sea. Here too the trackpoints of the route taken by the GPS device (found on the whaler on which all the nine accused were), directly intercepts the trackpoints of the route taken by the Torm Kansas. The aforementioned evidence clearly indicates that the GPS device found on the whaler on which all nine accused were, was in close proximity to the vessels Zhongji 1 and Torm Kansas around the dates and time the vessels were attacked.

[26] The evidence of witnesses Captain Karna Bandlamudi, Stuart Reynolds and Steve Pockley clearly indicate the fact that the vessel Torm Kansas was attacked by persons aboard a skiff who were attempting to board their vessel. The attack had occurred on the 9<sup>th</sup> of November 2013 at around 17.30 hrs local time and the location of the vessel at time of attack was 07 degrees 19.8 minutes South and 48 degrees 36.7 minutes East. He described the details of the attack and the fact that the attack was unsuccessful as the persons on the skiff were unable to board the vessel Torm Kansas as they were repulsed by the security on board the vessel. In describing the attack witnesses stated the persons in the skiff had been armed with automatic weapons and a exchange of fire had occurred.

[27] Captain Sreenarayan Orongil stated he was the master in charge of the vessel Zhongji 1. He described the attack by suspected pirates on the vessel on the 6<sup>th</sup> of November 2013. The attack had occurred at around 6.30 in the evening and lasted about 15 minutes. The location of the Zhongji at the time of attack was given as 5 degrees 40' S and 46 degrees 59' E. It is evident from the evidence of Claus Anderson that the location of the Zhongji attack could be described as the high seas while the Torm Kansas had been in the Seychelles EEZ at the time of its attack. The eyewitness accounts indicate that there was violence used in the attack on both ships as shots were fired by the persons in the skiff. Therefore though the attack was not successful to the extent of a successful boarding, this evidence establishes that illegal acts of violence were committed on the vessel. It is apparent from the evidence that the persons on the skiff were acting for their own private financial gains as the skiff and its occupants were not flying a flag of any nation. Therefore it follows they were not acting out of public or political ends. It could be inferred therefore the skiff was a private vessel and the attack according to eye witness accounts carried out by the crew aboard the vessel and it is evident the attacks were carried out against other vessels namely the vessels Zhongji and Torm Kansas.

[28] While it is apparent that from the evidence of Captain Sreenarayan Orongil and the expert Claus Anderson that the vessel Zhongji 1 was on the high seas at the time of attack witness Claus Anderson states that the co ordinates of vessel Torm Kansas given by Captain Karna Bandlamudi indicate that the vessel was in the EEZ (Exclusive Economic Zone) of the Seychelles. Section 65 (4) (a) (i) refers to acts of piracy directed on the high seas while section 65 (4) (a) (ii) refers to acts of piracy “*directed against a ship ..... in a*

*place outside the jurisdiction of any State.”* The law of any coastal state would apply to where its territorial limits exist and along the coast its territorial law would extend to the territorial or internal waters of the State. Therefore on that basis as the EEZ comes after the territorial waters, the territorial law of the coastal state would not apply and seize to have jurisdiction. Therefore on this basis, acts of piracy as defined in section 65 (4) (a) committed in the EEZ would be an act of piracy as contemplated in section 65 (4) (a) (ii) i.e. in a place outside the jurisdiction of any State and punishable under our law. **Also refer case of The Republic v Mohamed Ahmed Dahir and Ors Cr No 51 of 2009** which held – *“the law of the coastal State does not apply in the EEZ, and it does not have general enforcement rights. Other than as regards resources, EEZ’s are counted as the high seas”*.

[29] The evidence in regard to all the above facts though subject to cross examination no material contradictions or omissions were noted. In fact several admissions were made by the accused themselves in their statements under caution and in their unsworn statements and the evidence of the prosecution at times stood unchallenged and corroborated by video and documentary evidence. I therefore proceed to accept the evidence of the prosecution and am satisfied that all the aforementioned items of direct and circumstantial evidence read together, the inculpatory facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis other than that of the guilty of the accused. I am also satisfied that there exists no other co existing circumstances which would weaken or destroy the inference of guilt. I am satisfied therefore all the elements in charges 1 and 2 have been proved beyond reasonable doubt.

[30] The main defence of the accused as stated in their unsworn statement from the dock is that they were released from Denmark and compensation awarded to them. It is learned counsel for the prosecution’s contention that the accused were not tried in the Danish courts and thereafter acquitted. The prosecution in Denmark was abandoned and the accused were informed that the prosecution would not be done under Danish law. Learned counsel for the prosecution further submitted as the capture was done by a Danish vessel the capturing State had the right to prosecute if they wished to. If they wished not to an approach is made to a regional State. Learned counsel submitted that

this has been the case in every piracy prosecution in the Seychelles. It is apparent that this involves the concept of universal jurisdiction as discussed in the case of *The Republic v Abdi Ali & Ors SC Criminal Side 14 of 2010*. In matters of universal jurisdiction the fact that a country does not wish to hear the case and releases the suspects without acquitting them does not prevent the accused being tried in a country that is willing to hear the case and has the necessary laws in place to do so. The award of compensation for procedural irregularity does not affect the jurisdiction of another country to hear and determine the issue that have not been adjudicated on, in this instant case the offences relating to piracy.

[31] It was learned counsel for the defence contention that no one had identified any of the accused doing any acts of violence and that no weapons or ammunition had been found on them at the time of arrest. It is apparent from the evidence of the Commander of the Rasmussen that the skiff had reached the whaler before the warship had got there and as the persons aboard the skiff and whaler had seen the warship, by the time the boarding by naval officers took place the accused on board the whaler had ample time to dispose of anything.. Although no identification of the accused by any of the persons aboard the vessels Zhongji 1 and Torm Kansas have been made, the circumstantial evidence in respect of the GPS device found on board given by witness Claus Anderson after analysing same, read with the whole of the other evidence led by the prosecution in this case, is sufficient evidence to draw an inference that it was nine accused who were instrumental in committing the said attacks. In regard to the identification of the skiff, the skiff which was taken into custody tied to the whaler has been produced in court as borne out by the chain of evidence. The evidence of the prosecution is not based on direct evidence in regard to the identification of the accused or the skiff but by circumstantial evidence. Finally when one considers the unsworn statements of all nine accused and the evidence of the Danish military police officers, this court is satisfied beyond reasonable doubt, the nine accused in court are the same accused who were taken from the whaler by the Danish naval forces of Esbern Snare on the 10<sup>th</sup> of November 2013.

[32] For the all aforementioned reasons I proceed to reject the defence and proceed to find all the nine accused guilty on all three counts and proceed to convict all nine accused of same.



Signed, dated and delivered at Ile du Port on 13 March 2015

M Burhan  
**Judge of the Supreme Court**