

C.C. 105/12

2012

R No. 25 IN

THE HIGH COURT OF SIERRA LEONE

COMMERCIAL AND ADMIRALTY DIVISION

ADMIRALTY ACTION IN REM AGAINST THE VESSEL M/V REDCAT

BETWEEN:

RIGA SHIPYARDS

- PLAINTIFF

AND

THE OWNERS AND/OR PERSONS INTERESTED

IN THE VESSEL M/V REDCAT

- DEFENDANTS

COUNSEL:

CENTUS MACAULEY ESQ for the Plaintiff

E PABS-GARNON ESQ for the Defendants

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF APPEAL

DECISION DELIVERED THE 13 DAY OF JULY,2012

1. 10 days ago, I made the following Orders: (1)The Defendants shall pay immediately to the Plaintiff, the total sum of Euros 218,344. Evidence of such payment shall be filed in this Court. The Defendants shall at the same time pay to the Plaintiff, Costs amounting to 12.5% of the principal amount claimed.On receipt of evidence of the payment of the said sum of Euros218,344 this Court shall Order the immediate release of the vessel. The Plaintiff shall also forthwith Discontinue the action herein. (2) If the Defendants fail to comply with Order (1) above, their Application dated 21 June,2012 stands dismissed, for the reasons stated above, with Costs to the Plaintiff, such Costs to be taxed if not agreed. (3) Liberty to Apply.
2. Rightly, I did not specify the time within which Order numbered one should be complied with by the Defendants because I had accepted the assurances given in the correspondence exhibited to Mr Pabs-Garnon's respective affidavits, and given by Mr Pabs-Garnon himself in Court, that the Defendants were willing and prepared to pay the principal sum owed

to the Plaintiffs, and that the sum claimed was available. The dispute between them lay in the quantum of Costs demanded by the Plaintiff. I therefore Ordered that the principal sum of Euros 218,344 be paid immediately. By immediately, I obviously meant as soon as the money could be transferred to the Plaintiff's account. I certainly did not mean, and I am sure Counsel did not take me to mean, 9 days. Mr Pabs-Garnon has tried to explain away the delay, by saying that there were difficulties in transferring the sum Ordered to be paid, from one jurisdiction to another. If that had really been the case, an Application for further directions, or a request for a further hearing would have been in order. As Mr Pabs-Garnon himself well knows, even in a case where I have reserved Judgment, I have held a hearing at the request of Counsel where an issue had arisen *ex improviso*, and had to be dealt with urgently. This is the sought of thing I would have expected Mr Pabs-Garnon to do under Liberty to Apply. He did not do this. Instead, he waited until a hearing was sought by the Plaintiff's Solicitors.

3. By Notice of Motion dated 9 July, 2012, the Plaintiff applied to this Court for, *inter alia*, an Order that a date be fixed for the payment of the judgment debt of Euros 218,344, and Costs in the sum of Euros 27,293, and for an Order that the Defendants do pay the Costs of the Plaintiff's Application dated 21 June, 2012, and the Costs of the Application herein. At the hearing, I told Mr Macauley, Counsel for the Plaintiff, I could not grant the second Order prayed for, to wit, that the application by way of notice of motion dated 21st June, 2012 be struck off with costs, because that application had been moved, and I had decided the same in the alternative: Either the Defendants complied with the first Order granted, or, in the alternative, their Application dated 21st June, 2012 would stand dismissed.
4. The Application is supported by the affidavit of Mr Macauley deposed and sworn to on 9 July, 2012. In his affidavit, Mr Macauley has raised what I consider to be a serious issue. He sent a text message, on a date not stated, to Mr Pabs-Garnon seeking to know whether Defendants would be complying with Order numbered 1 made on 3 July, 2012. There was no response from Mr Pabs-Garnon. On the date of the Judgment, Plaintiff's Solicitors addressed a letter to Defendants' Solicitors, exhibit CM5, requesting that the judgment debt be paid directly to the

Plaintiff's nominated Bank in Latvia, and that the Costs be paid to directly to them. There was no response to this. A reminder, exhibit CM6 was again sent by Plaintiff's Solicitors to Defendants' Solicitors on 6 July, 2012, and again, there was no response. As the correspondence concerned a Judgment and Order of this Court, and not just a mere claim brought by the Plaintiff, I should have thought that Defendants' Solicitors would have extended the usual courtesy to the Plaintiff's Solicitors by letting them know whether there was going to be compliance with that judgment and Order. Defendants' Solicitors maintained a wall of silence. Plaintiff's Solicitors therefore had to apply to this Court for redress pursuant to Liberty to Apply.

5. At yesterday's hearing, Mr Pabs-Garnon said that his Firm was awaiting instructions from their clients on the payment of the Costs Ordered by the Court. He suggested that a variation of the Costs Order downwards, say, to Euros 15,000, might be more acceptable to, and digestible by his clients. Coming from a lawyer of Mr Pabs-Garnon's calibre and experience, this suggestion does not appear inappropriate for the Court's consideration. But when I reflect back on one of the facts disclosed in the affidavit evidence, and reiterated in my judgment, namely that the sums due the Plaintiff had been paid over to Signor Medici, but that he had diverted the same, and that this same gentleman, instead of applying the monies paid to him for the proper purpose, had diverted the same, and had gone on to describe the Plaintiff's claim for Costs variously as 'blackmail' and 'Mafia', it seems to me that the Defendants are determined to disobey the Order of this Court. The deafening silence from Defendants' Solicitors after receipt of the two letters from Plaintiff's Solicitors, is another indication that the Defendants are determined to bend the Court to their will. I do not believe any Court will exercise its discretion in favour of any litigant who, or, which displays such insouciance, truculence, disregard for its processes.
6. The Plaintiff did, in its writ of summons demand interest at the rate of 40%, but I have not Ordered any interest to be paid on that portion of the judgment debt which had fallen due before 3 July, 2012. The Plaintiff's have therefore had to forego that part of their claim. Interest is usually awarded on judgment debts.

7. At yesterday's hearing also, Mr Pabs-Garnon produced for the Court's inspection, for the first time, a document indicating that the sum of Euros 218,344 had been transferred to the Plaintiff's nominated account. Nothing was said about Costs, save for the plea made by Mr Pabs-Garnon referred to above.

8. In coming to the conclusion I have reached, I have to take into consideration that part of the Judgment has been satisfied. It is the latter portion which the Defendants are defiantly refusing to satisfy. I shall therefore now fix a time within which that portion should be satisfied, and shall for that purpose, make an 'Unless Order'.

9. It is therefore Ordered as follows: "UNLESS within the next 48 hours the Defendants pay, or make arrangement to pay the Plaintiff or its Solicitors, the total sum of Euros 27,293 being Costs assessed by this Court on 3 July, 2012, the Defendants' Application dated 21st June, 2012 is ^{is} dismissed with effect ^{from} Monday 16 July, 2012." The Defendants shall pay the Costs of this Application, such Costs assessed at Le1,500,000..

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10. liberty to Apph. being on Monday 16th July, 2012

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THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL