



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ADMIRALTY CLAIM NO. 2 OF 2011**

**PACIFIC GULF SHIPPING COMPANY LTD.....CLAIMANT**

**VERSUS**

**1. THE OWNERS OF THE MOTOR VESSEL “ELEANOR D”**

**2. COSCOL (HK) INVESTMENT & DEV. CO. LTD**

**3. TRUIMPH CARRIER LTD, THE TIME**

**CHATERES OF THE MOTOR VESSEL “ELEANOR D” ....DEFENDANT**

**R U L I N G**

**Introductory background**

1. Having instituted this suit by a claim for the delivery of some backers or their value and damages for detention and conversion, the claimant equally sought and obtained a warrant of arrest and the vessel was thus under arrest from the 6<sup>th</sup> to 17<sup>th</sup> May 2011. The vessel was released from arrest by consent of the parties upon an undertaking and the dispute referred to arbitration before a tribunal in London. The undertaking was to the effect partly that the defendants would buy the bankers then remaining on board at US Dollars 441,383.80 and pay additional port charges and costs in the sum of US Dollars 32,500 to the claimant. On costs, the undertaking made it clear that the 2<sup>nd</sup> defendant would be made to pay the claimant on any application the defendant may make to set aside the arrest or to reduce the amount secured.

2. The main and only issue the parties agreed to refer to the arbitration was, who was to meet the cost of Kshs.311,289.95 being the bankers consumed by the vessel between 15<sup>th</sup> April and 6<sup>th</sup> May 2011. That claim was decided against the claimant on the basis the arbitral tribunal held was the misinterpretation of the charter and the claimant was ordered to pay for the bankers consumed during the period.

3. Parties in their submissions both oral and written agree and accept the position of the law that costs follow the event. In this matter, the plaintiff sued the 1<sup>st</sup> and 2<sup>nd</sup> defendant on the basis that there was no hire for a definite period. When that matter was referred to arbitration, the claimant was faulted and determined to have been wrong on its assertions and ordered to meet the costs of the bankers it sued to recover.

4. To this court therefore, beyond the consent recorded in court and the findings in the ruling dated 24/2/2012 (Mwongo J) the Claimant failed in his contentions and pursuits and the ultimate event the costs must follow is that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents succeeded in resisting the claim. For that reason it is found and ordered that the plaintiff shall pay to the 1<sup>st</sup> and 2<sup>nd</sup> defendants the costs incurred by them in this suit.

5. It is so ordered.

**Dated** and delivered at **Mombasa** this **4th** day of **August 2017**.

**P.J.O. OTIENO**

**JUDGE**