



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ADMIRALTY CAUSE NO. 2 OF 1998**

**CLAIMANT : MURRI INTERNATIONAL SALVAGE OPERATION  
COMPANY LTD**

**THE OWNERS OF: THE MOTOR TUGS “BARBARA” AND “STEVE B”  
AND THEIR MASTERS**

**DEFENDANTS : 1. M/s FESTIVAL LIMITED**

**THE OWNERS OF THE MOTOR TANKER  
“JOEY” AND ITS MASTER**

**AND**

**2. M/s VEBA OIL SUPPLY AND TRADING  
GMBH OF HAMBURG, GERMANY THE OWNERS OF  
THE CARGO LADEN ABOARD MOTOR TANKER “JOEY”**

**RULING**

1. Before Court is Claimant’s Notice of Motion dated 23<sup>rd</sup> March 2012. By that application Claimant seeks the following orders-

Ø The Judgment entered against the 2<sup>nd</sup> Defendant on the 25<sup>th</sup> October 2001 be set aside;

Ø Judgment be entered in default of Acknowledgment of Service of Writ for the Claimant for a sum of US\$ 492,500.00 plus interest thereon at 8% above the labor rate p.a. with effect from 5<sup>th</sup> August 1998 until payment in full or alternatively in such an amount for salvage services rendered by the Claimant to be determined or assessed by this Honourable Court in respect of the Salvage claim plus interest thereon as against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants jointly and severally.

**BACKGROUND**

2. The 1<sup>st</sup> Defendant are owners of the motor tanker which I shall hereafter refer to as “*Joey*”. The 2<sup>nd</sup> Defendant was the owner of cargo on board ‘*Joey*’. On 22<sup>nd</sup> June 1998 the Claimant entered into

international Towage Agreement with the Claimant for Claimant to provide Towage services to be rendered by tug "Barbara" to "Joey" and her cargo.

3. It is Claimant's case that 1<sup>st</sup> Defendant on 2<sup>nd</sup> July 1998 unilaterally terminated the Towhire Agreement. The tug "**Barbara**" as provided under the Towhire Agreement continued to standby in the high seas after that termination. On 9<sup>th</sup> July 1998 Claimant entered into fresh negotiation and agreed to reconnect its tow with the tug "**Barbara**" and "**Steve B**". "**Joey**" was successfully towed to Port of Mombasa but there persisted a dispute between the Claimant and the 1<sup>st</sup> Defendant on remuneration. On 4<sup>th</sup> August 1998 the Claimant obtained a writ of Summons and Warrant of Arrest of "**Joey**" on 26<sup>th</sup> August 1998 claimant amended the writ of Summons to include the name of the 2<sup>nd</sup> Defendant.

4. An order was made for release of "**Joey**" on 30<sup>th</sup> September 1998.

5. 1<sup>st</sup> Defendant unsuccessfully sought to set aside the writ. 1<sup>st</sup> Defendant filed an appeal against the Court's refusal to set aside the writ. That appeal was dismissed on 27<sup>th</sup> April 2007.

6. 1<sup>st</sup> Defendant had part paid the towage claim for the period of 23<sup>rd</sup> to 27<sup>th</sup> June 1998 for US\$25,000. The balance of Claimant's claim remained unsettled for both tugs "**Barbara**" and "**Steve B**".

7. In the affidavit in support of Notice of Motion the deponent stated-

**Ø I am advised by the Claimant's Advocates on record which I verily believe that the 2<sup>nd</sup> Defendant has been served with a further Amended Writ filed in pursuance of leave granted on the 14<sup>th</sup> September 1998. In this connection I also crave leave to refer to the Affidavit of Service sworn by the Process Server Alfred Kingi on 6<sup>th</sup> May 2011 and filed herein on 5<sup>th</sup> March 2012.**

**Ø I am also advised by the Claimant's Advocates which I verily believe that upon service of the Further Amended Writ of Summons and a copy of the Chamber Summons Application dated 7<sup>th</sup> March 2011 the 2<sup>nd</sup> Defendant's Advocates on record filed an Acknowledgment of Service on the 19<sup>th</sup> May 2011 giving notice of the 2<sup>nd</sup> Defendant's intention to dispute the jurisdiction of this Honourable Court. I annex hereto a true copy of the same marked "PT 10".**

**Ø I am advised by the Claimant's Advocates which I verily believe that after filing the said Acknowledgment of Service the 2<sup>nd</sup> Defendant has failed to file a subsequent or valid Acknowledgment of Service to date.**

**Ø I am also advised by the Claimant's Advocates which I verily believe that there is no defence to the Claimant's claim for towage or salvage services which have been rendered to both Defendants herein and that the 1<sup>st</sup> Defendant has already admitted that towage services have been rendered and are due and payable to the Claimant and that a sum of US\$ 80,000.00 has already been paid towards the Claimant's claim herein by the 1<sup>st</sup> Defendant after the filing of these proceedings and before the 1<sup>st</sup> Defendant had filed its defence herein.**

## **APPLICATIONS**

8. The 2<sup>nd</sup> Defendant requested the Court, through its Learned Counsel to consider, its pending Application Notice dated 21<sup>st</sup> February 2012. I have considered this Application and I am in agreement with Claimant's Learned Counsel that it has been overtaken by event. It sought to set aside judgment entered against the 2<sup>nd</sup> Defendant on 25<sup>th</sup> October 2001. It is overtaken by events because the Claimant Amended writ of Summons and Learned Counsel

for 2<sup>nd</sup> Defendant filed acknowledgment of service in that regard on 19<sup>th</sup> May 2011 as deponed above. It follows that the three prayers sought by 2<sup>nd</sup> Defendant that is; setting aside of judgment; the striking of Claimant's claim; and for extension to file defence, are not available to the 2<sup>nd</sup> Defendant. Accordingly the Application Notice dated 21<sup>st</sup> February 2012 is dismissed with no orders as to costs.

### **CONCLUSION**

9. In the end I grant the following orders-

**(a) Judgment entered against 2<sup>nd</sup> Defendant on 25<sup>th</sup> October 2001 is hereby set aside.**

**(b) Judgment is hereby entered against the 2<sup>nd</sup> Defendant in default of Acknowledgment of Service of writ for the Claimant for US\$ 492,500 plus interest thereon at 8% above Libor with effect from 5<sup>th</sup> August 1998 until payment in full.**

**(c) 2<sup>nd</sup> Defendant shall pay costs to Claimant.**

**DATED and DELIVERED at MOMBASA this 26<sup>TH</sup> day of FEBRUARY, 2015.**

**MARY KASANGO**

**JUDGE**