

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Admiralty Claim 13 of 2005

EAST AFRICAN POWER MANAGEMENT LTD.CLAIMANT

VERSUS

THE OWNERS OF THE VESSEL (VICTORIA EIGHT)DEFENDANT

RULING

The subject matter of this ruling is the application notice dated 25.11.2005 in which the defendant has prayed for an order of declaration to the effect that this court has no admiralty jurisdiction over the cause. The claimant opposed the application notice.

The main contention raised by the defendant is that the claimant's claim is not in connection to a ship. It is submitted that this cause was the subject of previous claims i.e. H.C.C.C. 18 of 2004 and a Winding Up Cause. In those claims there was no mention of a ship but the claim is said to have been based on operation and management agreements. It is argued in those agreements there is no mention of a ship. The agreements mention operations and maintenance of a plant. It is said the entire agreement has nothing to do with a ship but a power generation plant whose foundation is mounted on water located in a site controlled by Kenya Ports Authority.

The Claimant vehemently resisted the application notice on the basis that no grounds have been pleaded in support of it. It is argued that the subject matter of these proceedings are identified as 'Victoria 8'. It is said that there is no denial that 'Victoria 8' is a ship. It is said that the claim is set out in respect of operations and maintenance of 'Victoria 8'. It is argued that the particulars of the ship have been stated in the claim form and that the nexus between the ship and the claim is shown. It was argued that 'Victoria 8' sailed through deep seas to Mombasa hence it was capable of navigating. It is said that although the same was referred to as a plant the same did not cease to be a ship when it sailed to Mombasa to generate power. It was arrested when it had already stopped generating electricity. The claimant suggested that the word 'plant' should be substituted for the word 'ship' in the claim form.

I have considered the material placed before me and the above submissions made by Messrs. Kapila and Khanna learned advocates for the defendant and the claimant respectively. There is no doubt that the claim is for US\$ 1,125,000/- as set out on the claim form dated 25.10.2005. That is the claim form the defendant now seeks to be struck out on the ground that this court lacks jurisdiction. The question which has been posed is whether or not vessel 'Victoria 8' should be treated as a ship or a plant. If the same is treated as a ship, then the defendant's application must fail and vice-versa. There is no doubt that 'Victoria 8' sailed to Mombasa as a ship through the deep waters to be used as a power generating plant mounted on a barge. With respect, I agree with the submission of Mr. Kapila that 'Victoria 8' had its voyage as a ship but upon reaching Mombasa it became a platform. In my view the claim herein falls under the operations and maintenance of the power plant based on a fixed power generating plant.

In the final analysis I find the application notice dated 25.11.2005 to be well founded. It is allowed as prayed. For the avoidance of doubt, the consequential order is that the claim form dated 25.10.2005 is ordered struck out and the subsequent orders set aside. The security be released to the defendant. Since the claim has nothing to do with a ship I declare that this court has no admiralty jurisdiction to deal with such a dispute. Costs is awarded to the defendant.

Dated and delivered at Mombasa this 23rd day of July 2009.

J. K. SERGON

J U D G E

In open court in the presence of Mr. Khanna for the applicant and Miss Naggi for the Applicant.