



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
ADMIRALTY CLAIM NO. 2 OF 2014

ADVANCED DISTRIBUTION CO. LTD.....CLAIMANT

VERSUS

IGNAZIO MESSINA & C.SPA as previous owners of the Motor Vessels “*JOLLY ROSSO*” and “*JOLLY VERDE*” and as owners of the Motor Vessel “*JOLLY DIAMANTE*”.....DEFENDANT

RULING

By way of an application dated 27th August, 2014 and filed in court on 1st September, 2014 the defendant **IGNAZIO MESSINA & C. SPA** (as previous owners of the motor vessel ‘*Jolly Rosso*’ and ‘*Jolly Verde*’) and as owners of the motor vessel ‘*Jolly Diamante*’ sought a variety of orders. Owing to the urgency of the matter the parties agreed to approach the court for an urgent determination of only prayer (b). The said prayer (b) was phrased as follows

“(b) Pending the hearing and determination of this application the motor vessel JOLLY DIAMANTE be released forthwith on the security of a letter of undertaking to be issued to the claimant by The United Kingdom Mutual Steam Ship Assurance Association (Europe) Limited for and on behalf of the defendant in the sum of US\$1,500,000.00 without any admission on the part of the defendant of any allegation contained in the Claim Form, the Application Notice dated 27th August, 2014, the certificate of urgency dated 27th August, 2014 or the affidavit sworn by Sanjeev Jain on 27th August, 2014, without submitting to the jurisdiction of this court and only for purposes of securing the immediate release of that vessel.”

The present application arises from the Application Notice dated 27th August, 2014 filed under certificate of urgency by the claimant **ADVANCED DISTRIBUTION COMPANY LIMITED**. After hearing the claimant the High Court in Mombasa did on 27th August, 2014 grant a freezing order by way of Mareva Injunction to restrain the vessel ‘*Jolly Diamante*’ from leaving the jurisdiction of the court. It is this freezing order that the defendant is anxious to have lifted.

I have carefully considered the submissions of **MR. KINYUA** learned counsel for the applicants and **MR. KHAGRAM** learned counsel for the claimant. Once a Mareva injunction has been sought and obtained then the defendant is required to offer sufficient security before the vessel may be released. In this case both parties are agreed on the amount of security which is stated to be US\$1.5 million. The point of disagreement is what form this security should take. This court cannot compel the claimant to accept one form of security as opposed to another. As long as the security offered is legal and valid then it will be acceptable to the court. Neither will the court enter into the arena of dispute by dictating to the

parties the terms or conditions which must be included in any such security. This is a matter which must be decided exclusively by the parties themselves. In order to discharge the court's orders of 27th August, 2014 and to secure the release of the vessel pending the full inter partes hearing of the entire application I do hereby direct that the defendant present to the court a Bank Guarantee for and on behalf of the defendant from a First Class International Bank in the sum of US\$1,500,000. I further direct that this matter be mentioned before the Admiralty Division of the High Court on 10th September, 2014 for directions on the hearing of the remaining prayer of the defendant's application.

Dated and delivered in Mombasa this 5th day of September, 2014.

M. ODERO

JUDGE

In the presence of:

Mr. Khagram for Claimant

Mr. Kinyua for Defendant

Court Clerk Mutisya

M. ODERO

JUDGE

Mr. Kinyua:

I apply for typed proceedings.

Court:

Typed proceedings to be availed to counsel.

M. ODERO

JUDGE

Mr. Kinyua:

I seek leave to appeal if required.

Court:

Such leave is granted.

M. ODERO

JUDGE

5TH SEPTEMBER, 2014