THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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De Beers Marine (Pty) Ltd v Harry Dilley (Pty) Ltd (Case no 413/22) [2023] ZASCA 110 (19 July 2023)

The Supreme Court of Appeal (SCA) today handed down judgment upholding, in part, an appeal against an order of the the Western Cape Division of the High Court, Cape Town (the high court). The appellant, De Beers Marine (Pty) Ltd (De Beers), owns an autonomous underwater vehicle (AUV) used to map the seabed in its mining operations. De Beers concluded an agreement with the respondent, Harry Dilley (Pty) Ltd (HD), to charter a work boat, the Nkwaza, to assist De Beers in conducting sea trials of the AUV in False Bay (the charter agreement). During the sea trials on 27 October 2017, the AUV suffered a communication breakdown and ran aground on the rocks near Simon's Town. Two commercial divers assisted De Beers in recovering the AUV, for a fee of R10 000. The Nkwaza took up a position about 150 metres offshore. One of the divers swam to AUV with a rope which he secured to the AUV, and using a rigging sling, he attached himself to the AUV. The Nkwaza then towed the AUV with the diver on top of it, and brought it alongside in Simon's Town harbour. The entire operation took about an hour.

Subsequently HD sued De Beers for a salvage reward of R10 million, later reduced to R5 525 288, relying on article 13(1) of the International Convention on Salvage, 1989 (the Salvage Convention), which forms part of our law by virtue of s 2(1) of the Wreck and Salvage Act 94 of 1996. De Beers denied that the recovery of the AUV was a salvage operation. It contended that HD was obliged to tow the AUV under the charter agreement. The high court held that the HD's towage of the AUV was voluntary and that it was therefore entitled to a salvage reward. The court fixed the reward at R5 525 288 – 10% of the replacement cost of the AUV in 2017 (R55 252 882).

The SCA held that the high court was correct in finding that HD's services were rendered voluntarily and that it was engaged in a salvage operation. However, the high court erred in attributing a value of R55 252 882 when fixing the salvage reward, because that was not the value of what had been salved. Article 13(1) of the Salvage Convention refers to the 'salved value of the vessel and other property', ie the value of the AUV after it had been salved. Further, the salvage reward of R5 525 288 was altogether out of proportion to the services rendered by HD. The whole salvage operation took only an hour. Its success was mainly due to the efforts of the diver who swam to the AUV, attached a rope to it and was exposed to the most danger. The towage was uneventful and the Nkwaza had not really been imperilled.

The SCA concluded that on an overall application of the criteria, a reward of R80 000 was fair to both parties. It gave effect to the principle that the salvee should pay for the benefit received; that the salvor should be rewarded for the service provided; and that the reward should reflect public policy. And public policy in the law of salvage is implemented in the practice of making awards on a generous scale, so as to encourage salvage services.

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