



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

Date: 1 October 2024

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Minmetals Logistics Zhejiang Co Ltd v The Owners and Underwriters of the MV 'Smart' and Another (573/2023) [2024] ZASCA 129 (1 October 2024)

The Supreme Court of Appeal (SCA) today struck an appeal by Minmetals Logistics Zhejiang Co Ltd (Minmetals) against the Owners and Underwriters of the MV 'Smart' (the Owners) and the National Ports Authority, a division of Transnet (SOC) Ltd (Transnet), from the roll with costs, including the costs of two counsel.

The appeal arose from an order, granted by the KwaZulu-Natal Division of the High Court, Durban, exercising its admiralty jurisdiction and relying on the provisions of section 5(1) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Act), which joined Minmetals, as a party to an application to compel. The application to compel is brought by Transnet, against the Owners, in respect of an action between them, relating to the fully laden bulk carrier, the *MV 'Smart'*, time chartered by Minmetals at the time, on 19 August 2013 having run aground in the vicinity of the Richard Bay harbour entrance when departing from the port, causing it to break up and sink. Transnet seeks to compel the Owners to produce documents, relating to a private arbitration which has been finalised between the Owners and Minmetals in London, in respect of which Minmetals claims confidentiality, and which it contends are privileged from disclosure.

The SCA concluded that section 5(1) of the Act, properly interpreted, provides for three instances of joinder, that these must be read disjunctively, as separated by the use of the word 'or,' and that the second 'or' in the provision should not be interpreted to mean 'and.' The

section accordingly grants the admiralty court the power and jurisdiction to order the joinder of a third party foreign company in the position of Minmetals, which has a direct and substantial interest in the application to compel. Having concluded that the section confers such power, the SCA held that the decision to join the third party, was not appealable, inter alia as it was not finally dispositive of the relief claimed, that it would fragment the appeal process, deplete judicial resources unnecessarily, cause delay as it was interlocutory to an interlocutory application, and that it was not in the interest of justice that the joinder order be treated as appealable. The appropriate order was therefore that the appeal be struck from the roll.

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