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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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 judgment of the Supreme Court of Appeal

Name of Ship: MV 'Haralambos': Hengdeli Deyesion International Shipping Limited v MV 'Haralambos' and Others (104/2025) [2026] ZASCA 107 (13 August 2026)

Today the Supreme Court of Appeal (SCA) upheld with costs an appeal by Hengdeli Deyesion International Shipping Limited (Hengdeli) against the judgment of the KwaZulu-Natal Division of the High Court, Durban, per Wallis AJ (the high court) (exercising its Admiralty Jurisdiction).

The appellant, formerly known as Deyesion International Shipping Limited, changed its name on 11 October 2021 to Hengdeli, a company duly incorporated in accordance with the laws of Hong Kong. Iron Pasha Incorporated (Iron Pasha), the registered owner of the *MV Argentina*, chartered her to Hengdeli. A dispute over the carriage of a cargo of iron ore fines and over the payment of hire ended on 2 December 2021, when Brave Maritime Corporation Incorporated (Brave Maritime), acting for Iron Pasha, withdrew the vessel and cancelled the charterparty. Hengdeli accepted the withdrawal as a repudiation and claimed USD 5 008 949.61 in damages in London arbitration proceedings.

On 6 June 2024 the high court, per Harrison AJ, granted an *ex parte* order for the security arrest of the *MV Haralambos* under s 5(3)*(a)* of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the AJRA), on the ground she was an associated ship of the *MV Argentina* under ss 3(6) and 3(7). A letter of undertaking (LOU) left her under a deemed arrest under s 3(10)*(a)*(i). On reconsideration under Uniform Rule 6(12)*(c)*, Wallis AJ set aside the arrest with costs, holding the evidence did not establish control within the meaning of s 3(7) of the AJRA.

The issue before this Court was whether Hengdeli discharged the *onus* of establishing the alleged association between the ship-owning companies of the two vessels. The question central to that issue was who controls those ships. Hengdeli relied on circumstantial evidence: a share prospectus filed with the United States Securities and Exchange Commission describing Brave Maritime as controlled by members of the Vafias family, entries in the world shipping register recording Brave Maritime as owner and manager of both Iron Pasha and Nero Oil Incorporated (Nero Oil), the registered owner of the *MV Haralambos*, a Lloyd's List Intelligence Seasearcher report reflecting the Vafias Group as beneficial owner of that vessel, and an email from her owners describing the *MV Argentina* as a sister vessel. The respondents elected not to file an answering affidavit.

The SCA held s 3(7)*(a)*(iii), read with s 3(7)*(b)*(ii), expresses control in terms of power: a person with power, directly or indirectly, to control a company is deemed to control it. The relevant power determines the direction and fate of the company, not its day to day operations, and the section extends *de jure* power to *de facto* power to prevent concealment of assets from creditors. Where ship-owning companies are incorporated in a jurisdiction without public disclosure of share registers, a court identifies the controlling person through an accumulation of credible circumstantial evidence. The standard of proof remains a balance of probabilities at every stage, including reconsideration. No adverse inference arises from a respondent's silence, but the election carries a substantive evidential consequence. Where the facts lie peculiarly within the respondents' knowledge, less evidence is required of the applicant and the court assesses an uncontroverted *prima facie* case at its full weight. Such a case, accepted as credible and reliable, will then ordinarily constitute proof on a balance of probabilities.

The SCA held the high court erred in according the Seasearcher report little or no weight, s 6(3) of the AJRA permitting a court to receive hearsay evidence in admiralty proceedings. Such reports rank among the most widely used vessel-tracing tools in the industry and, absent contradicting evidence, carry full evidential weight on verifiable facts. The SCA distinguished *Saga Welco AS v MV Guo Shun* [2017] ZAKZDHC 43, where the applicant relied on documents it failed to attach and held a court reconsidering an *ex parte* order must not advance meanings unsupported by the papers filed.

The SCA found Harry Vafias controls the Vafias family group, which controls Brave Maritime, and the world shipping register identifies Brave Maritime as owner and manager of Iron Pasha and Nero Oil rather than as a mere agent. The controllers of Iron Pasha on 2 December 2021, when the claim arose, and of Nero Oil on 6 June 2024, when the action commenced, correspond. Hengdeli accordingly established the association under s 3(7)*(a)*(iii) read with s 3(7)*(b)*(iii) of the AJRA, and proved the remaining arrest requirements.

As a result, the SCA upheld the appeal with costs, including the costs of two counsel where so employed and replaced the high court's order with one dismissing the reconsideration application with costs of two counsel where so employed.

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