



**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 6 October 2021

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

MV 'MSC Susanna': Owners and Underwriters of the MV 'MSC Susanna' and Another v Transnet (SOC) Ltd and Another (1039/2020) [2021] ZASCA 135 (6 October 2021)

The SCA today upheld an appeal from the KwaZulu-Natal Provincial Division, Pietermaritzburg, exercising admiralty jurisdiction, in this matter, which arises from events on 10 October 2017 during a substantial storm in the port of Durban. During the storm the *MSC Susanna* broke her moorings and collided with several other vessels as well as land installations. One of these vessels was the *FNS 'Floreal'* a French naval vessel owned by the French Defence Ministry.

The owners, underwriters and charterers of the *MSC Susanna* are facing substantial claims from Transnet and from the French Defence Ministry arising out of this incident. If held liable they wish to invoke their right in respect of these claims to limit the damages they must pay in terms of the provisions of s 261(1)(b) of the Merchant Shipping Act 57 of 1951 (the MSA). To that end they sought the joinder of the French Defence Ministry in the limitation action. The joinder was resisted on the grounds that the provisions of the MSA could not be invoked against the Ministry in the light of the provisions of s 3(6) of the MSA, which provides that the provisions of the MSA

shall not apply to ships belonging to the SANDF or the defence force of any other country. The high court held that this precluded the appellants from relying on their right to limit their liability as against the French Defence Ministry and dismissed the application for joinder.

The SCA held that the exclusion in s 3(6) applies to ships and not the owners of ships. This was in accordance with the language of the section. Section 261(1) clearly affords ship owners facing extremely large claims the right to limit their liability if the claims arose from a single incident and was not due to the owner's fault or privity. The international conventions relating to the limitation of liability of the owners of ships do not provide an exclusion as contended by the Defence Ministry and there is no international jurisprudence supporting such an exclusion. It would also give rise to several anomalies.

Accordingly the appeal was upheld and an order for joinder made in place of the high court's order.