

SUPREME COURT OF APPEAL OF SOUTH AFRICA

PRESS RELEASE

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Lloyds & others v Classic Sailing.(250/09) [2009] ZASCA 89 (31 May 2009)

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

Lloyds, the London underwriters, had insured Classic Sailing's yacht, the *Mieke*, which sank off the Mozambican coast in September 2005. Lloyds declined to pay the sum insured, R10m, because it contended that the cause of the sinking was not covered by the policy; that the policy was vitiated by certain misrepresentations and non-disclosure of material facts; and that the voyage was illegal because the skipper did not have all the necessary South African Marine Authority's certificates, and inaccurate information about the stability of the vessel was reflected in the stability book on board.

The Western Cape High Court (exercising its Admiralty jurisdiction) found that the sinking had been caused by a latent defect in the hull which was covered by the policy. It also found that the misrepresentations and non-disclosures alleged had not been made and that the voyage was legal. The high court relied on an English statute and cases in reaching these decisions, for the parties had chosen English law to govern their contract. It ordered Lloyds to pay Classic Sailing R10m, less the cost of a stealth boat (tender), on which the crew had reached shore after the yacht sank.

Today the SCA dismissed Lloyds's appeal, but applied South African law: the provisions of the Short-Term Insurance Act 53 of 1998 govern misrepresentations and non-disclosures (s 53) and illegality (s 54). They are not consistent with the English law. Because these sections are enacted to protect the rights of the insured one cannot waive their application nor choose

to be bound by the provisions of another system of law that are inconsistent with them: it would be contrary to public policy and the public interest. It would also be in conflict with s 6 of the Admiralty Jurisdiction Regulation Act 105 of 1983.

The SCA found that Classic Sailing, through its insurance broker, had not made misrepresentations and was not guilty of non-disclosure. The voyage was also not illegal simply because a statute had been contravened. It confirmed the high court's finding that the sinking had been caused by a latent defect in the hull which caused a large aperture to open and sea water to flood the *Mieke*, causing her to sink. The court thus dismissed the appeal.
