CC. 013/23 2023 D. NO. 1

IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION

BETWEEN

DYNAMIC FUELS S.I
(SUING BY ITS ATTORNEY
GIBRIL SESAY) -PLAINTIFF

AND

MV SHIN 1 (AKA M.V. Guardian)
IMO NUMBER 916545
(THE OWNERS AND /OR PERSONS
INTERESTED IN THE VESSEL) -1ST DEFENDANT

THE SHIP MANAGER
MV SHIN 1 (AKA M.V. Guardian)
IMO NUMBER 916545 -2ND DEFENDANT

THE CAPTAIN
MV SHIN 1 (AKA M.V. Guardian)
IMO NUMBER 916545 -3RD DEFENDANT

MAEL SHIP MANAGEMENT COMPANY -INTENDED 4TH DEFENDANTS

RULING OF THE HONORABLE JUSTICE LORNARD TAYLOR DELIVERED ON THE 3RD APRIL 2023

A.S. SESAY -COUNSEL FOR THE 1ST DEFENDANT/ APPLICANT

I. SORIE -COUNSEL FOR THE PLAINTIFF /RESPONDENT

On the 3rd December 2021 the applicant entered into a Standard Bareboat Charter with the MAEL SHIP MANAGEMENT COMPANY. This charter was for a period of 12 months and was to terminate on the 2nd December 2022. These facts are all contained in the Standard Bareboat Charter exhibited as Exhibit ROM9.

In September 2022, while the vessel was in the custody of MAEL SHIP MANAGEMENT COMPANY, as represented by its agents who are the 2nd and 3rd defendants to this action, the Plaintiff supplied bunker beds and lubricants receipt of which was acknowledged by the master of the vessel and the chief engineer respectively. These goods were not paid for. As a

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result, the Plaintiff instituted the present action and sought an order for the arrest of the vessel as a lien for the claim of the Plaintiff.

Subsequent to the arrest of the vessel, the applicant entered an appearance as owners of the vessel and filed the present application for inter alia that the vessel to be released from arrest. The argument in this regard is that the applicant as owner of the vessel was not a party to the agreement between the Plaintiff and the 2nd and 3rd defendant who are agents of MAEL SHIP MANAGEMENT COMPANY. Based on this, the applicant is not privy to the contract between the Plaintiff and the other defendants and as such a lien cannot be placed on its vessel. As a matter of fact, even though the said vessel was leased out to the other defendants, the applicant had in fact taken steps to terminate the said lease which culminated in an arbitration award dated 18th November 2022 by which an order was made authorising the applicant herein to repossess the vessel.

Consequently, the 1st defendant being owner of the vessel and not at all in any contractual relationship with the Plaintiff should not have its vessel used as a lien for the claim of the Plaintiff. The pith and substance of the argument of the 1st defendant in this regard is well captured in their mention and reliance on the case of **Shell Oil Co. v The Ship "Lastrogoni" (1974) 131 C.L.R. 1 at page 5**. Counsel stated ***"an action in rem is instituted to compel the appearance of the owner but the vessel is not liable unless the owner is personally liable".*** It is for this reason that the 1st defendant makes the point that the order for the arrest of the vessel ought to be discharged.

The first question this court must address for a clear perspective in this application is why are actions involving vessels instituted as actions in rem? In the context of shipping law, an action in rem is typically brought against the ship or vessel itself rather than against the owner or operator. This is because ships are often located in different jurisdictions and the identity of the owners are usually unknown. By bringing an action in rem, the Plaintiff is able to secure the vessel as security for any potential claims or damages that may arise from the dispute. The Plaintiff in these circumstances, can have the vessel arrested and prevent the defendant from moving or selling it while the dispute is being litigated.

In the case of **The Bold Buccleugh (1851) 7 Moo PC 267**, the principle laid down is that the in rem jurisdiction of the court was necessary in order to prevent the possibility of the ship avoiding the claim. In the case of **The Galatea (1995) 1 Lloyd's Rep 338**, the court held that the purpose of an action in rem was to ensure that the Plaintiff had a security interest in the vessel pending the resolution of the dispute.

It is for this reason that it was held in the case of **The Banco (1971) 1 AER 524 at 531** that

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"If the defendant enters an appearance, the action in rem proceeds just as an action in personam. If judgment is entered against the defendant, it can be executed against any of his property within the jurisdiction".

In the present matter, the Plaintiff has made a claim against the defendants which include the vessel, its owners, its captain and its ship manager. This claim is yet to be litigated and determined. The applicant by its first prayer on the face of the notice of motion maintains that it is the owner of the vessel and wants the vessel released even before the claim is determined. It relies on the case of **Shell Oil Co. V The Ship "Lastrogoni" (1974) 131 C.L.R. 1 at page 5 cited above** and the assertion that ***"an action in rem is instituted to compel the appearance of the owner but the vessel is not liable unless the owner is personally liable".***

The Applicant wants this court to deduce from this, the assertion that the vessel ought to be released in the present circumstances because there is no claim against the applicant personally. My understanding of the pleadings filed is that the claim is not merely against the owner of the vessel but also the vessel itself. That the owner is absolved of liability does not mean the vessel is. The supply was made to the vessel and is for the vessel to utilise. As would be seen below, in shipping law, even the vessel itself has a legal personality. It can sue and be sued.

The first prayer before this court is for the vessel to be released on the basis that the order for a warrant to be issued ought not to have been granted. As stated above, ships are arrested to ensure that the claimant's claim is not defeated if in the end he is successful. Counsel for the applicant have not made a case against this. His arguments are that the owner of the vessel is not privy to the contract sought to be enforced. This argument could be better served when the when the subsequent prayers on the face of the notice of motion are being considered,but definitely not under this prayer in this application. This prayer as I understand it is concerned with the arrest of the vessel and the consequent security the arrest holds for the claim of the plaintiff and that is why it is followed by an order for an undertaking in damages to be filed.

Further to the above, Sierra Leone is a signatory to the **International Convention Relating to the Arrest of Sea-Going Ships (Brussels Convention) of 1952**. Sierra Leone signed this convention on the 14th July 1986 and ratified it on the 5th August 1987. The convention entered into force in Sierra Leone on the 3rd November 1987. Article 3 (4) states;

"When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions

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of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship".

This brings the issue of the arrest of the vessel into perspective. It is clear from this provision, that as in the present circumstance, where the Plaintiff has a claim against the charterer as opposed to the registered owner, the vessel may nonetheless be arrested. I therefore have no doubt in my mind that the arrest of the vessel M.V. Shin 1 IMO Number 9165451 was done within the law and the execution of the warrant was not in any way wrongful.

The applicant also seeks an order striking out the writ of summons on the ground that no cause of action have been disclosed against the 1st Defendant. The argument is that the owners of the vessel are not privy to the contract sought to be enforced by the Plaintiff in this action. They are not parties to same and as such cannot be held liable for failure to perform. The law with respect to privity of contract is quite simple and a straight forward principle. A contract cannot be enforced against who is not a party to it. It is a principle by which the rights and obligations under the contract are limited to those who are parties to it. Several cases in English law have applied this principle as far back as the memory of the law. **Tweedle v Atkinson (1861) 1 B&S pg. 393** and **Dunlop v Pneumatic Tyre Co. Ltd v Selfridge (1915) AC pg. 847** are just 2 examples.

It is understandable that the Applicant holds the view that the present contract cannot be enforced against it. This action is for payment for bunker beds and lubricants supplied by the Plaintiff and the applicant's case is that it was not a party to the agreement for such supplies. The applicant makes the case that the owners of the vessel should cease to be a party to the action pursuant to Order 18 rule 6 (1) and (2) of the High Court Rules 2007 and for the court to strike out the action as it discloses no cause of action pursuant to Order 21 Rule 17 of the High Court Rules 2007.

This court agrees with the principles of law cited above by the applicant and agrees that no one should be made to bear the burden of a contract to which he is not a party. Further, where a person has been unnecessarily made a party to an and action and the pleadings disclose no cause of action against him, he must be removed without the need for a full blown trial and the pleadings be struck out for there is nothing to be tried and no judgment can reasonably be given against a person against whom there is no case.

However, this leaves us with a number of critical questions. In the case of **The Banco** cited above, it was held that;

"If the defendant enters an appearance, the action in rem proceeds just as an action in personam. If judgment is entered against the defendant, it can be executed against any of his property within the jurisdiction".

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Does this not mean then that having entered an appearance in this matter and filing the present application, the matter now becomes an action in personam? If the answer to this is in the affirmative, would it not be safe to conclude that the action now being in personam ought to be dismissed on the basis of the doctrine of privity of contract between the Plaintiff and applicant? This is the point the applicant has been making throughout this proceeding. However, in as much as I agree with the principles of law as cited by the applicant, I make haste to say that they are not on all fours with facts as presented to warrant the outcome desired by the applicant.

The Plaintiff brought this action in rem against the vessel and all other persons claiming to have an interest in the vessel. The claim is for the supply of bunker beds and lubricants which are items acquired for the operation and maintenance of the vessel. A contract to which the applicant is not a party.

However, regardless of this position, the applicant cannot ultimately absolve itself of liability with respect to the claims of the Plaintiff. This is based on two doctrines in admiralty law.

Firstly, the vessel itself is a party to the action. In shipping law, a vessel does have legal personality. It is capable of suing and being sued under the principle of "ships as legal persons". In the case of **The Halcyon Isle [1981] 1 WLR 1238**, the English Court of Appeal held that a ship had a separate legal personality from its owners, and that the ship could be held liable for damage it had caused to a third party. This same principle was applied in the case of **The Owners of the Steamship "Indian Grace" v Owners of the Cargo Lately Laden on Board the Steamship "Indian Grace" [1993] 2 Lloyd's Rep 284**, where Saville J. held that the vessel had a legal personality and could be held liable for damage caused to the cargo it was carrying. The court stated that the vessel was a separate legal entity from its owners and that it could be sued in its own name.

Applying this principle in this matter will only lead to a conclusion where necessaries are supplied to the vessel, it is indebted to the Plaintiff for necessaries supplied to it and consequently, a lien will be placed on it until the debt is settled. It is for this reason inter alia that in admiralty matters, the vessel is itself personally made a party to the action. In the present case, the 1st Defendant is the vessel together with the owners and persons interested in it. By this singular action, the liability of the vessel itself is called into question. As such generally speaking, the fact that the owner of the vessel and or persons interested in it plead that they are not liable to the Plaintiff does not absolve the vessel of its liability where it is sued in its own name. This principle I must state however is subject to the further rule that the Plaintiff/supplier must be unaware of who the true owner of the vessel is as will be discussed below.

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In addressing this court counsel for the applicant relied inter alia on the case of **THE DRUID (1842) LWR 8391** and Dr. Lushington's assertion that there could be no proceedings against the vessel when there is no proceedings against the owner. I must state that regardless of the above, I do agree with this assertion but do not see how it contradicts the principle of the vessel having a legal personality of its own. The present action is against the vessel, the owner and all persons having interest in the vessel. I do not understand Dr. Lushington's statement to meant that there has to be a claim against the owner personally. It is sufficient that in proceedings against the vessel, the owner or persons interested in the vessel must also be made a party. They must be accorded the opportunity to put up a defence on behalf the vessel as the liability of the vessel will ultimately be that of teh owner or the person interested in the vessel. If the claim is established against the vessel, it is the owner or interested person who must satisfy it otherwise he will lose the vessel.

Secondly, Under English law, a ship is generally liable for the goods supplied to it for its maintenance and operation. This principle is known as the "necessaries" doctrine. By its application, ship owner is responsible for paying for the goods and services necessary for the proper operation and maintenance of the vessel. In the case of "**The Bold Buccleugh" (1851) 7 Moo PC 267**, the court held that a ship owner was liable for the value of coal supplied to the vessel for its voyage. The court reasoned that the coal was necessary for the proper operation of the vessel and that the supplier of the coal had a right to recover its value from the ship owner. Similarly, in the case of **"The Anmaron" [1981] 1 Lloyd's Rep 381**, the court held that a ship owner was liable for the value of bunkers supplied to the vessel, if the supplier was unaware that the vessel was owned by a third party.

In the present matter, the Plaintiff's claim is that it supplied bunkers and lubricants to the vessel. It turned out that the vessel was owned by the applicants who were not a party to the agreement for the supply of the bunker beds and lubricants. By the aforementioned authorities, the vessel itself received supply of the products. Since the vessel itself cannot pay for the products, it is but logical that the owners of the vessel are made parties to the action and thus liable for payment for same.

But how does this synchronise with the applicant's argument that there existed a bareboat charter between the applicants and MAEL SHIPPING AND MANAGEMENT COMPANY, as represented by its agents who are the 2nd and 3rd defendants respectively and that it is the law that the applicant cannot be made personally liable for this claim as it is privy to the contract? For this assertion, the applicant relied on the case of **Shell Oil Co. v The Ship "Lastrogoni" (1974)** and counsel for the applicant in addressing the court on this question stated ***"an action in rem is instituted to compel the appearance of the owner but the vessel is not liable unless the owner is personally liable".*** I took the liberty to go through the said judgment

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and it was not hard to realise that this assertion of counsel is based on the words of Menzies J. when he said;

> *"The practice that once an appearance has been entered to an action in rem it proceeds as an action in personam as well as an action in rem, is, it seems to me, an acknowledgment that, except in special circumstances, there must be liability in the owners before an action in rem lies against the ship".*

I also took the liberty to go through **The Anmaron" [1981] 1 Lloyd's Rep 381.** Bingham J had this to say;

> *"The principle of necessaries entitles a supplier of goods or services to a maritime lien over the vessel on which the goods or services have been supplied. The owner of the vessel is primarily liable to pay for the necessaries, but a lien may be obtained against the vessel itself to secure payment. Where the vessel is owned by a third party, there is no right to a maritime lien unless the supplier was unaware of this fact at the time of supply."*

These 2 cases put it all into perspective and the position of the law therefore becomes quite clear. If it must be stated in a few words, I will dare to assert that the supplier of necessaries to a vessel cannot make a claim against the owner of the vessel or lay a lien on the vessel unless it is shown that that owners are personally liable in contract or where the vessel is owned by a third party not privy to the contract, it must be shown that the supplier was unaware of the existence of such third party at the time of the contract and supply. This statement will agree with the assertion that the owners need to be made personally liable before a maritime lien can be placed on the vessel while at the same time establishes the ignorance of the supplier as a special circumstance pursuant to which a maritime lien would be placed on a vessel without the need to establish the personal liability of the actual owner.

To succeed in its application, the applicant needed to prove that at the point when the Plaintiff contracted with whomsoever received supply on behalf of the vessel, it knew that it was not contracting with the actual owner of the vessel. In this undertaking, the applicant failed.

Clause of 16 of the Charter agreement between the applicant and MAEL SHIP MANAGEMENT COMPANY is quite instructive in this regard. It states;

> *"The Charterers will not suffer, or permit to be continued any lien or encumbrance incurred by them or their agents which might have priority over the title and interest of the owners of the vessel. The Charterers also agree to fasten to the vessel in a conspicuous place and to keep fasten during the charter period a notice reading as follows:*
>
> > ***"This vessel is the property of (name of owners). It is under charter to (name of charterers) and by the terms of the***

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Charter party neither the Charterers not the Master have any right, power or authority to create or incur or permit to be imposed on the vessel any lien whatsoever".

It is clear from the above that the current situation was envisaged and provided for by the parties as at the point of executing the bareboat charter. Evidence of compliance with this term of the agreement would have been sufficient for this court to hold that the Plaintiff was aware that the vessel was under charter and belonged to someone else. Unfortunately, the applicant fell short in this regard. It could not prove that the notice was posted on the vessel. That the Plaintiff had notice of who the owners of the vessel were and that it was only the applicant who had authority to contract on behalf of the vessel. In this circumstance, the applicant's remedy lies in damages for breach of contract against MAEL SHIP MANAGEMENT COMPANY and certainly not in securing the release of the vessel from its lien in this manner.

In this regard, the rights of the applicant are secured by clause 17 of the aforementioned bareboat charter. It states;

> *"The charterers shall indemnify the owners against any loss damage or expense incurred by the owners arising out of or in relation to the operation of the vessel by the charterers and against any lien of whatsoever nature arising out of an event occurring during the charter period. If the vessel be arrested or otherwise detained by reason of claims or liens arising out of her operation hereunder by the charterers, the charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the vessel is released including the provision of bail. Without prejudice to the generality of the forgoing the Charterers agree to indemnify the owners against all consequences or liabilities arising from the Master, officers, or agents signing bill of lading or other documents. The Charterers warrant to indemnify the owners in full from any claims and/or any loss and/or any incurred or suffered by the owners by reason of or in relation to the operation of the vessel whether prior to or during the Charter period"*

I therefore have no doubt in my mind that the applicants remedy in this circumstance does not lay in an application for the release of the vessel so that it can be on its merry way, while leaving the Plaintiff worried about whether it could ever be in position to enforce its claim. If the court should succumb to arguments that would release the vessel to the owner when the supplier clearly supplied based on the understanding that the vessel itself would be security for payment, it is my considered view that the shipping industry itself will be unsustainable. For suppliers would insist on upfront payment for goods and services and shores will be littered with vessels far from home in dire need of necessaries. This will not be good for the shipping industry and certainly not good for business and economic growth.

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More recent cases have followed this trend of making the owner of chartered vessels liable for the supply of necessaries.

In **The Rafaela S [2005] EWCA Civ. 1030**, the Court of Appeal held that the owner of a vessel was liable for bunkers supplied to the vessel by a third party, even though the owner did not personally contract for the supply of those bunkers. The court held that the bunkers were a necessary expense for the operation of the vessel and therefore fell within the principle of necessaries. The court also held that the supplier had a maritime lien against the vessel for the value of the bunkers.

In **The Pacific Champ [2017] EWHC 257 (Comm)**, the High Court held that the owner of a vessel was liable for port charges and pilotage fees incurred by the vessel, even though the charterer had contracted for the use of the port and the services of the pilot. The court held that the charges and fees were necessaries for the operation of the vessel and therefore fell within the principle of necessaries.

In addition to these cases, the principle of necessaries has been recognized and applied in many other English cases, including **The Evia Luck [2002] 2 Lloyd's Rep 36 and The Tychy [2007] 1 Lloyd's Rep 423**. It has as I see it, attained the status of trite law.

Will the position be different if this court considers the fact that the charter had been terminated and an award handed down by arbitrators? I think not. The charter was for a period of 12 months as shown in box 21 of the charter agreement. The said period commenced from the date of delivery in box 14 of the said charter which is nonetheless between the 30th January 2022 and the 28th February 2022. By this token, it can safely be assumed that the vessel would have been under the charter until the 27th February 2023. However, this charter was terminated and adjudged to be so on the 18th November 2022 by which time the Plaintiffs are alleging they had supplied the bunker beds and lubricants since September 2022. As such, these supplies were made while the charter was still active and therefore subject to the time charter agreement.

This court cannot therefore in the circumstances hold that there is no cause of action to be maintained against the 1st defendant as the vessel was itself sued in its own name for goods suppled to it and the cause of action against the vessel can also lie against the owners especially in circumstances where the Plaintiff had no idea who the actual owners of the vessel are.

The applicant has also approached this court seeking an order for MAEL SHIP MANAGEMENT COMPANY to be added as a defendant to the action. This application is made pursuant to Order 18 rule 6 (1), (2)(b) & (3) of the High Court Rules 2007. The provisions provide thus;

(1) No cause or matter shall be defeated by reason of the misjoinder or non-joinder of any party; and the Court may in any cause or matter

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determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter.

(2) Subject to this rule, at any stage of the proceedings in any cause or matter the Court may, on such terms as it thinks just and either of its own motion or on application

(b) order any of the following persons to be added as a party: -

(i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or

(ii) any person between whom and any party to the cause or matter where there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) Any application by any person for an order under sub-rule (2) to add that person as a party shall be made by motion supported by an affidavit showing the person's interest in the matter in dispute before or at the trial.

This provision grants this court the authority to add as a party, any person who ought to have been added as a party and whose presence is necessary to ensure that all matters in the case are effectively adjudicated upon and determined. The applicant makes the case that it is the owner of the vessel MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545. That the said vessel was Chartered by MAEL SHIP MANAGEMENT COMPANY. While under the said charter, the vessel accumulated the debt now claimed by the Plaintiff.

When the Plaintiff instituted this action, the 1st defendant named on the face of the writ of summons is MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545 (THE OWNER AND/OR PERSONS INTERESTED IN THE VESSEL). By this singular action of the Plaintiff, this action was commenced as an action in rem. This means that the action was against the vessel, the owners of the vessel, i.e. the applicants herein and any other person interested in the vessel which by my estimation includes MAEL SHIPP MANAGEMENT COMPANY. When the applicant entered an appearance to the action, it became an action in personam between the Plaintiff, the vessel and the applicant but also continued as an action in rem against all other persons who have an interest in the vessel.**Shell Oil Co. v The Ship "Lastrogoni" (1974).**

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However, it is clear from the provision cited above, that this court has the authority to add as a party, any person whose presence in the matter is a necessity to ensure that all matters in dispute are effectually adjudicated and determined by the court. The applicant's case is that MAEL SHIP MANAGEMENT COMPANY transacted with the plaintiff on behalf of the vessel considering that the vessel was in its possession and custody as at the time the Plaintiff made the supplies.

I have no doubt in my mind that MAEL SHP MANAGEMENT COMPANY are a necessary party to the action. I will accordingly make orders in that direction.

The applicant has also asked this court for an order for the 2nd and 3rd defendants to be served with this notice of motion and also MAEL SHIP MANAGEMENT COMPANY when it shall have been made a party. I do not see the rationale for this prayers. The applicant does not need the leave of this court to serve the other defendants to this action and certainly, as at the point when MAEL SHIP MANAGEMENT COMPANY would have been made a party, this application would have been determined. At the inception of this matter, this court ordered all parties to be served with the originating process as well as the order of the court. This court will not consider any further order for service of this application as it lacks legal basis.

The applicant has also approached this court for an interlocutory injunction restraining the 2nd, 3rd, and 4th defendants from dealing with, selling, hiring or disposing off or removing out of Sierra Leone the vessel MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545. This prayer I find also most unnecessary. The said vessel is under arrest and in the custody of the undersheriff unless ordered by this court. The vessel was arrested as a lien for the Plaintiff's claim. As such, the vessel will continue in the custody of the undersheriff unless and until an interested party by application makes the case for its release. In that event, if the court considers that a case stronger than the Plaintiff's lien is made, this court will not have its hands tied by an injunction. Besides, a potential buyer or hirer of the vessel will have to take subject to the Plaintiff's claim currently being adjudicated by the court.

The applicant has asked this court for leave to enforce its arbitration award cited above and for a writ of assistance to be issued to aid the leave to enforce the award. An application of this nature must name the opposing party to the arbitration proceedings as a party. This is in compliance with the principle of natural justice Audi alteram partem. In the present application, MAEL SHIP MANAGEMENT COMPANY is not named as a party. It is only in this application that an application is made for them to be added as a party. This court cannot consider granting this prayer at this stage of the proceedings.

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The Applicant also prayed for an order giving possession of the vessel MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545 to the applicant. For the reasons already cited above, this prayer will be refused.

I therefore make the following orders;

1. The vessel MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545 shall continue to be under arrest and in the custody of the undersheriff unless otherwise ordered bythis court.
2. The applicant being the owner of the said vessel shall be responsible for the maintenance of the said vessel while in the custody of the undersheriff unless ordered by this court.
3. The undersheriff shall within 3 days from the date of this order, present to the applicant the account and costs incurred thus far in maintaining the vessel MV SHIN 1 (AKA M.V. Guardian) IMO NUMBER 916545 and the applicant shall pay a refund to the undersheriff within 7 days upon receipt the said account from the Undersheriff.
4. Where the applicant neglects, fails and or refuses to comply with orders 2 and 3 above, the undersheriff shall be at liberty to seek further directions from this court.
5. The application for writ of summons herein to be struck out is refused.
6. The applicant shall henceforth be named the 4th defendant in this action.
7. The applicant is at liberty to add MAEL SHIP MANAGEMENT COMPANY as the 5th defendant to this action and the originating process herein shall be served on MAEL SHIP MANAGEMENT COMPANY by the applicant.
8. The application for an interlocutory injunction pending the hearing and determination of this action is refused.
9. The application for leave to enforce the arbitration award dated 18th November 2022 at this stage of the proceedings is refused.
10. The application for leave to issue a writ of assistance is refused.
11. Liberty to apply
12. The cost of this application is assessed at Le 176 million Leones

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