CIV.APP.30/2019

IN THE APPEAL COURT OF SIERRA LEONE

(COMMERCIAL AND ADMIRALTY DIVISION)



BETWEEN:

STACO INSURANCE COMPANY (SL) LIMITED - APPELLANT

24 UPPER BROOK STREET

FREETOWN

AND

SEA COACH BOAT COMPANY LIMITED - RESPONDENT

70A OFF SIR SAMUEL LEWIS ROAD

ABERDEEN

Coram:

Hon. Mr. Justice A. B. Halloway JSC - Presiding

Hon. Mrs Justice F. B. Alhadi JSC - (JA as she then was)

Hon. Mrs. Justice J. E. L. King JA

Counsel:

R. S. V. Wright Esq - for the Appellant

E. Pabs-Garnon Esq. - for the Respondent

JUDGMENT DELIVERED THIS 3RD DAY OF JUNE 2026

ALHADI JSC: On the 18th of April 2019 a Notice of Appeal was filed by the Appellant, Staco Insurance Company (SL) Limited against the judgment of the Hon. Mr. Justice Sengu Koroma JSC dated 15th April 2019 on the following grounds:

GROUND A

That the Learned Trial Judge (LTJ) erred in law and misdirected himself when he concluded that the vessel MV Princess Caroline was insured by the Defendant at the time of the alleged loss.

PARTICULARS

When he said at page 7
It is not in dispute that the vessel MV Caroline was insured by the Defendant on the 26th September, 2012.

GROUND B

That the LTJ erred in law and misdirected himself by totally disregarding the terms of the Insurance Policy and the Institute Time Clauses which stated that the vessel must be seaworthy and must possess a periodic survey report before it can be validly covered by the insurance policy.

PARTICULARS

When he said at Page 7

It is not in dispute that the vessel MV Caroline was insured by the Defendant on the 26th September, 2012. The final sinking for which the plaintiff is claiming total loss took place on the 3rd October, 2012. There is no denying that the sinking would not have happened at that time had the events of the 26th September, 2012 not occurred. To my mind, they form a chain of events that cannot be separated from one another. It is my conclusion therefore that

the material time for determining whether the policy was valid is the 26th day of September, 2012. The policy was to expire on the 30th September, 2012.

GROUND C

That the LTJ erred in law and misdirected himself in failing to take consideration of the fact that, even assuming that the vessel was originally validly insured, the alleged loss occurred after the expiration of the original insurance policy and before renewal of the insurance policy and that the vessel was not covered by the insurance policy at the time of the alleged loss.

PARTICULARS

When he said at page 7

It is not in dispute that the vessel MV Caroline was insured by the Defendant on the 26th September 2012. The final sinking for which the plaintiff is claiming total loss took place on the 3rd October, 2012. There is no denying that the sinking would not have happened at that time had the events of the 26th September, 2012 not occurred. To my mind, they form a chain of events that cannot be separated from one another. It is my conclusion therefore that the material time for determining whether the policy was valid is the 26th day of September, 2012. The policy was to expire on the 30th September, 2012.

GROUND D

That the LTJ erred in law and misdirected himself by misapplying or totally failing to apply the definition of perils of the sea to the facts of the case when, in the absence of any evidence that the MV Princess Caroline was sea worthy, he held that the definition of perils of the sea in Black's Law Dictionary 6th edition covers Article 6.1.1 of the Insurance Policy, thus suggesting that loss was caused by a peril of the sea.

PARTICULARS

When he said at page 8

In analysing these submissions, I must first of all state clearly that the definitions of perils of the sea given by Black's Law Dictionary 6th edition represents the common law position regarding Perils of the Sea which I shall adopt here. To the extent of that definition, Article 6.1.1 of the Insurance Policy covered loss referred to in that definition.

GROUND E

That the LTJ erred in law and misdirected himself when in the total absence of any evidence to the effect, he relied on and accepted the narrative from the expert witness, whose neutrality had clearly been discredited, that the Princess Caroline was caught in a storm and the waves rose to 1-1 ½ meters which forced the vessel to loss mooring lines and drifted towards Man of War Bay, when in fact the expert's entire evidence was hearsay and was established as such in the course of cross-examination.

PARTICULARS

When he said at page 9

In resolving this issue, I shall again refer to the only expert evidence in this case Exhibit "A".

In exhibit "A", the expert described the events of the 26th September 2012. He stated that the Princess Caroline moved at its position at Cape Sierra Light House, was caught in a storm arising within few minutes and without any warnings the waves rose to 1-1 ½ meters and a storm from North to East, forced the vessel to loss the mooring lines and it drifted towards Man of War Bay.

I accept the analysis of PW 1 in Exhibit "A" and hold that there is no evidence of self inflicted damage to something of negligence.

GROUND F

That the LTJ, suo moto; in his judgment, inexplicably introduced and/or relied on evidence that was never presented and/or adduced in the course of the trial when he stated that there was an attempt of 2 crew members to drop an anchor when the storm occurred, when in fact it was clearly established in the course of the trial that no one was on board the vessel on the night it allegedly broke free.

PARTICULARS

When he said at page 9

The onboard security crew of 2 man, launched the emergency anchor, but this attempt failed due to shallow waters. The grounding of the vessel on the rocks caused damage to the hull structure, with some water ingressing through the hull. The plaintiff's staff quickly had water pump brought on board and started pumping out the water.

I accept the analysis of PW1 in Exhibit "A" and hold that there is no evidence of self- inflicted damage to something of negligence.

GROUND G

That the LTJ erred in law when he applied the concept of vicarious liability by affixing liability to the Defendant for the alleged negligence of an independent contractor.

PARTICULARS

When he said at page 8

On the Defendant, the expert stated that their involvement in bringing the wreck back to former operational standard, by hiring a group of mariners to perform glass fibre repair works on the vessel whilst grounded at Aberdeen

bridge which dry up in the low tides and have 2-3 metre of water during high tide, caused more damage to the hull and overall wreck.

I accept the analysis of PW1 in exhibit "A" and hold that there is no evidence of self-inflicted damage to something of negligence.

GROUND H

That the LTJ erred in law and misdirected himself by imputing liability on the Defendant on the basis of the alleged liability of a 3rd party, when the party that allegedly committed the negligent act was not in a master-servant relationship with the Appellant nor was he made a party to the action which are prerequisites for affixing vicarious liability.

PARTICULARS

When he said at page 8

On the Defendant, the expert stated that their involvement in bringing the wreck back to former operational standard, by hiring a group of mariners to perform glass fibre repair works on the vessel whilst grounded at Aberdeen Bridge which dry up in the low tides and have 2-3 metres of water during high tide, caused more damage to the hull and overall wreck.

I accept the analysis of PW 1 in exhibit "A" and hold that there is no evidence of self-inflicted damage to something of negligence.

GROUND I

That the LTJ erred in law and misdirected himself by holding the Defendant liable in negligence in the total absence of any duty of care owed by the Defendant to the plaintiff and/or a breach thereof resulting in the loss.

PARTICULARS

When he said at page 8

Same as Ground H.

GROUND J

That the LTJ erred in law and misdirected himself when he relied solely on the Report of the Expert Witness to conclude that the vessel was a total loss to the exclusion of all the other evidence that was adduced/tendered in court.

PARTICULARS

When he said at page 9

In the absence of a proper report by an expert countering that of exhibit "A" this court is left with little choice but to admit exhibit "A" as representative of the state of the vessel. It therefore hold that the vessel was a total loss.

GROUND K

That the LTJ misdirected himself when he stated that the facts surrounding the accident and the subsequent sinking of the vessel are not in dispute, when in actuality the so-called facts were expressly and comprehensively controverted by the Defendant in the course of the trial.

PARTICULARS

When he said at page 8

The facts surrounding the accident and the subsequent sinking of the vessel are not in dispute here and it would therefore not serve any purpose to narrate them.

GROUND L

That the LTJ erred in law and misdirected himself by failing to determine the actual cause of the alleged loss and conflicted himself by determining the cause of the accident on two (2) separate grounds and totally failing to deal with the concept of insurable interest.

PARTICULARS

When he said at pages 7 & 8

Page 7

It is not in dispute that the vessel MV Caroline was insured by the Defendant on the 26th September, 2012. The final sinking for which the plaintiff is claiming total loss took place on the 3rd of October, 2012. There is no denying that the sinking would not have happened at that time had the of the 26th September, 2012 not occurred. To my mind, they form a chain of events that cannot be separated from one another. It is my conclusion therefore that the material time for determining whether the policy was valid is the 26th day of September, 2012. The policy was to expire on the 30th September, 2012.

Page 8

On the Defendant, the expert stated that their involvement in bringing the wreck back to former operational standard, by hiring a group of mariners to perform glass fibre repair works on the vessel whilst grounded at Aberdeen Bridge which dry up in the low tides and have 2-3 metre of water during high tide, caused more damage to the hull and overall wreck.

I accept the analysis of PW1 in exhibit "A" and hold that there is no evidence of self-inflicted damage to something of negligence.

GROUND M

That in the light of all the evidence that was adduced, the judgment/orders were in complete contradiction to the actuality that was established in the course of the trial.

PARTICULARS

When he said at page 9

1. *Judgment is given in favour of the plaintiff in the sum of US$187,000 being 3/4th of the Insured value of the MV Princess Caroline.*
2. *Interest therein at the rate of 2 percent per annum from the 18th day of June 2013 to date of judgment.*

RELIEFS SOUGHT FROM THE COURT OF APPEAL

1. That the Judgment/Orders of the Learned Justice Sengu Koroma JSC dated the 15th day of April 2019 be overturned and/or set aside.
2. Costs to be borne by the Respondent.

THE BRIEF FACTS OF THE CASE

The Appellant is a private insurance company registered in Sierra Leone. The Respondent is a private limited company registered in Sierra Leone and engaged in the provision of water taxi business. It was the owner of a marine vessel named MV Princess Caroline (hereinafter referred to as "The Vessel") which was insured and covered by a policy No. SSL/MH/0034/10 valued at US$250,000 and issued by the Appellant, Staco Insurance Company (SL) Limited. According to the Respondent, on the 26th of September 2012, the vessel Princess Caroline owned by the Respondent was blown off its mooring by a violent storm and hit some rocks, thereby causing the vessel to suffer substantial damage to its hull, as it ran aground off the Cape Lighthouse at the Aberdeen Area of Freetown. The Respondent through its Managing Director informed the Appellant (the Managing Director) of the accident. The Appellant paid a visit to the scene and contacted salvage experts to repair and salvage the vessel. The salvage experts moved the vessel to another area and in the process drilled some holes in the hull of the vessel. Unfortunately, on the 3rd of October 2012, the vessel sank. It is this incident that has formed the basis of the Respondent's claim in the High Court. Being dissatisfied with the decision of the High Court on the 5th of April 2019, the Appellant filed a Notice of Appeal to the Court of Appeal.

Summary of Submissions of Counsel for the Appellant

Grounds A, B, C, D & E (INSURANCE)

The Respondent had 'secured a fleet insurance policy' which covered all the vessels owned by the Respondent. It is submitted that the 'Princess Caroline' as a vessel on its own, would never have gotten insurance coverage for the simple fact that it never had any survey let alone regular surveys done, in order to obtain a Sea Worthiness Certificate and therefore never held a Sea Worthiness Certificate which position was in complete contravention of the rules governing insurance coverage vessels. In other words, in the state that it was, 'Princess Caroline' would never have been given any form of insurance coverage not having ever held a Sea Worthiness Certificate, since it was purchased by the Respondent.

The fact that the group insurance policy, to wit: Policy No SSL/MH/0034/10 had actually expired on the 30th day of September 2012 and the Princess Caroline purportedly sank on the 5th of October 2012, had not been renewed, should put the issue of whether the *"Princess Caroline"* was not insured at the time of the incidence/or purported loss, beyond dispute. Particularly, as the new premium on the group insurance was not paid or renewed until after a month after the incident, clearly indicating that there was no insurance coverage at the time of the alleged sinking.

It is therefore submitted that on this ground alone legally, at the time of the incident the 'Princess Caroline' could not have been and was certainly not covered by any form of Insurance Policy in the absence of a Sea Worthiness Certificate, irrespective of whether the group policy in question was still valid; Lowry v. Bourdieu (1780) 2 Doug K.B 468; Kulen Kemp v. Vignel (1786) I.T.R. 305 at 309, and as such, there cannot be said to be in existence a valued policy at that material time.

Ground F (Non-Evidence)

Contrary to what the Learned Trial Judge asserted in his judgment, the uncontroverted evidence is that there was no one on board the vessel on the night of the incidence (contrary to maritime regulations). It is further submitted that if anyone had been on board the vessel that night, he would have been the perfect witness to testify as to how the incidence commenced and to tender the piece or rope that allegedly snapped leading to the boat floating away. Unfortunately, no such witness was produced and no such evidence was tendered. Clearly indicating that the Plaintiff version of event was never substantiated or proved in the trial.

Grounds G, H & I (Negligence/Vicarious Liability)

It is submitted that the Plaintiff having failed to establish before the High Court that;

a. That the Princess Caroline was even legally insurable.
b. That it was covered by a subsisting insurance policy at the time of the incident,
c. More significantly that the alleged loss was a result of a 'peril of the sea' contained in and covered by the insurance policy. The Plaintiff then attempted to affix liability on the Defendant by way of alleging negligence and by extension vicarious liability.

The fundamental legal position as far as negligence is concerned is that in order for the Plaintiff to succeed in a claim of negligence, the Plaintiff has to show;

a. That there was owed a duty of care by the Defendant,
b. That the Defendant by act/omission was in breach of that duty of care,
c. That the alleged damage arose as a direct result by this breach of duty of care on the part of the Defendant.

It is submitted that the Defendant as an insurance company apart from the fact that it's Managing Director was very suspiciously woken up at 2:00am to come and witness alleged sinking of the vessel, which vessel incidentally did not sink at the time.

The Defendant never owed any form of duty of care to the Plaintiff as far as to the sinking or otherwise of the Princess Caroline at the time when the incident took place.

It is further submitted that the only duty of the Defendant was to pay on the insurance policy assuming there was a genuine legal and valid claim vis-a-vis the sinking of the vessel.

It is quite obvious that the Plaintiff failed woefully to establish that the Defendant owed any duty of care as far as the vessel was concerned in the circumstances wherein the vessel mysteriously became untied and floated away to allegedly hit some rocks.

In the absence of any duty of care owed by the Defendant to the Plaintiff in such circumstances, it is submitted there could not be any breach on the part of the Defendant and consequently any causal effect as far as the sinking of the Princess Caroline is concerned. Therefore, the claim based on alleged negligence on the part of the Defendant cannot stand and this Honourable Court is invited to so hold.

In so far as the allegation that the vessel Princess Caroline sank as a result of the holes bored in the vessels side, this is an attempt to affix vicarious liability on the Defendant for the acts and/or omission of the engineers that were hired in good faith, by the Defendant to assist in salvaging/saving the vessel from actually sinking.

It is interesting to note that instead of attempting to salvage or save its own vessel and thereby mitigating its loss, the Plaintiff was busy filing the vessel with sandbags to ensure, that it would rest in the mud at the bottom of the water but can turn around and attempt to blame the Defendant for trying to save the vessel in the first instance.

Summary of Submissions of Counsel for the Respondent

Grounds A, B, C, D & E (Insurance)

The issue of a fleet insurance policy is not central to the Respondent's Case. The Respondent's case has always been that at the time of the accident itself the Vessel was properly covered by the policy. That has never been controverted. The Respondents went at pains in its arguments to show that

in the law of insurance there is a distinction between (a) time of accident/peril insured against and (b) the time of the loss. In the instant case the time the accident occurred on the 26th September 2012 and the loss or sinking took place on the 3rd of October 2012. There was no intervening act and the sinking was a direct result of the vessel running aground on the rocks on the 26th of September 2012 and the same causative effects were in play.

For the sake of argument one simple question is whether the Appellant would have insured a sinking and a holed vessel as the vessel was on the 30th of September 2012. The answer would be an obvious No. it is for this reason that the law has placed such paramount importance on the time of the accident. The only relevant date for the purposes of the policy is the 26th day of September 2012 when the Vessel was covered by the policy.

Counsel will rely on the same cases and authorities earlier referred to.

Ground F

Counsel will regretfully state that this case has been marred by blatantly spurious allegations that have no basis in fact. Counsel will submit that there is no maritime regulations that stipulates sailors be on board a moored vessel at anchorage. This is totally dependent on the size of the vessel and various other conditions. The issue was never in fact raised in the High Court and Counsel will object on the grounds of raising a fresh issue. What is most strange is that all the evidence shows that in fact sailors were on board the vessel and the argument of the Appellant is red herring meant to obfuscate the facts. (See page 23 on the Records). As such this ground is moot as the evidence shows that there were 2 sailors on board.

Grounds G, H & I – Negligene & Vicarious Liability

The Respondent proved that the Princess Caroline was legally insurable on various levels. The only point raised as a desperate last measure to forestall payment of the insured amount was the issue of the certificate of fitness. The argument of the Respondent was that there had been a waiver of this requirement by circumstances and course of dealing between the parties. The evidence in the High Court was that there was no person professionally capable of providing a certificate of fitness in Sierra Leone for such a vessel.

If the argument of the Appellant is taken at face value (that it needed such a certificate) it is indeed worrying that it (the Appellant) had been insuring the Respondents boats and any other boats for that matter. This is because it had in the past insured 18 of the Respondent's vessels and other sundry vessels without the said certificate. As such it would mean that the Appellant had been perpetrating a massive fraud on unsuspecting members of the public by blithely accepting their premium when its ultimate aim would be not to pay out at the end if there was an accident because it would claim that the insured vessel lacked a certificate of fitness.

In fact, there is evidence on record that the Appellant had even paid out once on a small vessel of the Respondent that was destroyed by fire. All done without the now "vital" certificate of seaworthiness which requirement had always been waived in the past. There was definitely a course of delaying between the parties. Counsel will rely on all arguments proffered related supra on the subject of waiver.

Counsel will further repeat and rely on previous arguments that the vessels was properly covered by the relevant policy at the time of the accident.

Counsel will again rely on arguments and definitions related to perils of the sea whilst juxtaposing the insurance policy itself as against the definition in Black's Law Dictionary.

Analysis of the Law, Facts and Evidence

Having enumerated the above, the issues which arise are thus:

(a) Was the Insurance policy valid?

The Appellant, Staco Insurance Company Limited, argued that the Respondent, Sea Coach Boat Company Limited, failed to satisfy the implied warranty of seaworthiness as required under Section 39(1) of the Marine Insurance Act 1906. According to Staco Insurance Co Limited, the vessel's seaworthiness certificate had not been produced, rendering the policy invalid at the time of loss. Counsel for Sea Coach Boat Co Ltd, in response, submitted that the implied warranty was inapplicable in this case as the policy was time-based, not voyage-based. Additionally, Sea Coach Boat Co Ltd

contended that the insurer's long-standing acceptance of premiums without requesting a seaworthiness certificate amounted to a waiver or estoppel.

Under Section 39 of the Marine Insurance Act 1906, the implied warranty of seaworthiness applies to voyage policies but not to time policies, as confirmed in Kriti Rex v. S. Smith Marine & Ors [1996] 1 Lloyd's Rep. 171. In this case, the policy in question was a time policy, meaning that seaworthiness was not a condition precedent to liability unless explicitly stated otherwise. Furthermore, this Court accepts the trial judge's finding that the insurer waived the requirement for a seaworthiness certificate by consistently renewing the policy and accepting premiums without objection. The doctrine of estoppel as articulated in Eagle Star Insurance Co. v. Games Video Co. [1992] 1 WLR 484 supports this conclusion.

This Court, therefore, upholds the trial court's finding that the policy was valid at the time of the alleged loss.

(b) Was there a Constructive Total Loss?

Staco Insurance Company Ltd contended that the loss did not meet the criteria for constructive total loss as outlined in Section 60 of the Marine Insurance Act 1906. They argued that the evidence was insufficient to show that the cost of repairs exceeded the insured value of the vessel. Conversely, Sea Coach Boat Company Ltd relied on the expert testimony, which established that repair costs would far exceed the insured value.

Section 60(1) of the Marine Insurance Act 1906 defines a constructive total loss as occurring when the insured is "deprived of the subject-matter insured," or the cost of repairing the damage exceeds its value. This principle is affirmed in Irving v. Manning (1847) 1 HL Cas 287.

The position in civil cases is that when one party has adduced sufficient evidence to prove his case, the burden will move to the opposing party to adduce more cogent evidence which will disprove the opponent's case and induce the court to believe him and rule in his favor. Where the Defence seeks to dispute the evidence as put forward by Sea Coach Boat Co Ltd at the High Court, the burden of disputing the claim of the

Respondent, Sea Coach Boat Co Ltd shifts to the Appellant, Staco Insurance Co Ltd. In the case of Lafarge Cement Wapco (NIG) Plc v. Oladipo & Others (2024) LPELR-62398(CA), the Court opined as follows:

> "In the trial of civil claims, the burden of proof shifts depending on whose responsibility it is to introduce evidence on a particular fact alleged in a case. See Section 136(1) of the Evidence Act, which provides thus: "The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other." The above is what is called evidential burden of proof and it is different from the general burden of proof in civil cases, as explained in the case of Tazoor V. Loraer (2016) 3 NWLR (PT. 1500) 463 (SC), where it was held that: "There is a distinction between legal burden of proof and evidential burden of proof. Whereas legal burden of proof remains throughout on the claimant to establish his case otherwise he loses his claim, the evidential burden of proof in a case fought on the pleadings rests on the party who asserts in the affirmative and shifts depending on the pleadings of the parties at each turn. The burden of proof rests upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issues".

The trial court considered uncontroverted expert evidence provided by the Respondent that repair costs would be economically prohibitive. The Appellant, on the other hand, failed to adduce any contradictory evidence or expert testimony to rebut the Respondent's claim. This left the lower court with only one set of narrative to adjudicate the facts before it. In other words, the Respondent asserted that the cost of repairs far exceeded the insured value of the vessel and relied on expert evidence to substantiate the assertion. The burden consequently fell on the Appellant to adduce rebutting evidence to that effect.

This Court agrees with the trial court that the loss constituted a constructive total loss and affirms the finding.

(c) Have the allegations of negligence and fraud been proven?

The Appellant alleged that the Respondent had either negligently caused or intentionally orchestrated the vessel's sinking to benefit from the policy payout. Counsel relied on The Star Sea [2001] UKHL 1 to argue that fraud or recklessness invalidates coverage under marine policies. The Respondent denied these allegations, submitting that the loss was purely accidental and caused by a storm.

Allegations of fraud or negligence must be substantiated with clear evidence Versloot Dredging BV v. HDI Gerling Industrie Versicherung AG (2016) UKSC 45. The Appellant presented no direct evidence supporting its assertions at the trial court, nor was it adduced in evidence by any of its witnesses. On the other hand, the trial court found no irregularities in the Respondent's conduct. Moreover, the contributory actions by the Appellant in the salvage operations further undermined its argument.

In view of the above, the court finds that the Appellant's claim of negligence and fraud were unsubstantiated and dismisses this ground.

(d) Was there a proximate cause of the loss?

The Appellant argued that the storm was not the proximate cause of the loss, contending instead that subsequent mismanagement in the aftermath caused the vessel's sinking. The Respondent argued that the storm was the originating cause, as required by Section 55(1) of the Marine Insurance Act 1906.

The principle of proximate cause, as explained in Leyland Shipping Co v. Norwich Union Fire Insurance Society Ltd [1918] AC 350, holds that an insured peril remains the proximate cause if it initiates the chain of events leading to the loss. It was uncontroverted at the trial court that there was a storm which had caused the ship to break away and suffered damages in the month of September, which is a rainy season and is known to sometimes

have violent storms. It is also uncontroverted that the damaged ship was subsequently placed in the Appellant's care as its insurer. This court therefore finds it unconscionable that the Appellant would now deny any contribution to the condition of the ship that emanated from the accident. This Court is of the view that the trial court correctly found that the storm triggered the loss, and subsequent mishandling did not break the chain of causation. This ground is therefore dismissed.

(e) Where there material non-disclosures and bad faith?

The Appellant, Staco Insurance Co Ltd argued that the Respondent, Sea Coach Boat Co Ltd failed to disclose material facts about the vessel, including its prior condition, inactivity, and maintenance history. Counsel relied on Section 18 of the Marine Insurance Act 1906 and cases like Pan Atlantic Insurance Co. Ltd v. Pine Top Insurance Co. Ltd [1995] 1 AC 501, which impose a duty of utmost good faith on both parties. The Appellant maintained that, this non-disclosure was a breach of that duty. The Respondent countered the submission, by asserting that all material facts had been disclosed and that any omission was immaterial to the underwriter's assessment of the risk.

Section 18(2) of the Marine Insurance Act 1906 provides that non-disclosure of a fact only voids the policy if the fact is material—meaning it would influence a prudent underwriter's decision to accept the risk or set premium terms. As held in Pan Atlantic Insurance, materiality requires both objective relevance and subjective influence on the actual insurer.

The trial judge concluded that the information allegedly omitted by the Respondent, did not rise to the level of materiality. The insurer had consistently renewed coverage without raising issues regarding the vessel's condition, indicating that these facts did not affect the underwriting process. Furthermore, the insurer's acceptance of premiums and issuance of policy endorsements is indicative of its constructive awareness of the vessel's status.

This Court upholds the trial court's finding and agrees with its conclusion, that there was no breach of the duty of utmost good faith.

(f) Was there non-compliance with the notice of abandonment requirement?

The Appellant asserted that Respondent failed to provide a timely notice of abandonment, as required by Section 62(1) of the Marine Insurance Act 1906. Counsel argued that the failure to notify the insurer rendered the claim for constructive total loss invalid. The Respondent submitted that notice had been provided promptly after the loss was discovered.

Section 62(1) states that a notice of abandonment must be given "within a reasonable time" after the insured becomes aware of the loss. The trial judge found that the Respondent promptly issued notice upon confirming the vessel was irreparable, in line with judicial interpretations in Polurrian Steamship Co Ltd v. Young [1915] 1 KB 922. No evidence was adduced to prove the contrary.

The Court therefore concurs, that the notice was served in a timely manner and in good faith. The Appellant's challenge on this ground lacks merit.

(g) Was the court's assessment of the expert evidence insufficient?

The Appellant argued that the trial judge improperly relied on the Respondent's expert witnesses without sufficiently scrutinising their methodologies or credentials. The Respondent contended that the experts were qualified, independent, and credible, and that the Appellant failed to rebut their conclusions with its own evidence.

Courts have a wide discretion to accept or reject expert testimony, as emphasised in National Justice Compania Naviera SA v. Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] 2 Lloyd's Rep 68. The trial judge carefully evaluated the expert evidence and found it compelling due to its logical reasoning and factual basis. In contrast, the Appellant offered no credible evidence to contradict the Respondent's experts. As held in the case of LAFARGE CEMENT WAPCO (NIG) PLC v. OLADIPO & ORS (2024)

LPELR-62398(CA) supra, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.

This Court finds no procedural or substantive flaw in the trial judge's reliance on the expert testimony. We affirm that the evidence was properly admitted and given appropriate weight.

(h) Were the quantum of damages and interest correctly calculated?

Counsel for the Appellant, Mr. Wright argued that the calculation of the damages did not properly account for the depreciated value of the vessel or salvage recovery. He challenged the quantum of damages and the trial Judge's decision to award interest. Counsel cited Livie v. Janson (1810) 12 east 648 to argue that any recovery must deduct salvage value. Counsel argued that the damages exceeded the insured value and were improperly calculated, citing Cory v. Burr (1883) 8 App. Cas. 393.

Counsel for the Respondent, Mr. Pabs-Garnon, submitted that the trial court's methodology conformed to the agreed policy terms, which insured the vessel on a valued basis. He said that the damages were accurately based on the policy limits and included costs reasonably incurred due to the loss.

Valued policies, as governed by Section 27(3) of the Marine Insurance Act 1906, indemnify the insured based on a pre-agreed sum, irrespective of depreciation or market fluctuations. The trial court considered the salvage recovery and applied an appropriate deduction in line with judicial guidance in Irvine v. Union Marine Insurance Co. (1867) LR 2 QB 209. The damages awarded were consistent with the insured value minus the estimated salvage value as determined from credible evidence.

Under Section 67 of the Marine Insurance Act 1906, damages are limited to the sum insured unless additional liability is expressly contemplated. The trial court correctly awarded damages based on the insured value of the vessel.

The interest rate applied by the trial court, was consistent with market norms and fairly addressed the time value of money. Accordingly, this Court finds no error in the computation of damages or the interest awarded. We find that the trial court properly calculated damages under the principles of valued policies and relevant statutory provisions. The Appellant's argument, lacks legal and factual foundations and as such, this ground is dismissed.

(i) Was there a failure to mitigate the loss?

The Appellant contended that the Respondent failed to mitigate the loss as required under general principles of insurance law. Counsel argued that steps to salvage and repair the vessel were delayed or improperly conducted. In response, the Respondent asserted that reasonable efforts were made to mitigate the loss, but the extent of the damage rendered further action futile.

Under Section 78(4) of the Marine Insurance Act 1906, an insured party has a duty to take reasonable measures to avert or minimize loss. This duty, however, does not compel an insured to take impractical or prohibitively costly measures. The trial judge found that Respondent took reasonable steps, including engaging qualified professionals to assess and secure the vessel.

The evidence demonstrates that the Respondent acted prudently under the circumstances, and the alleged failure to mitigate is unsupported.

(j) Has there been any illegality?

The Appellant argued that the insurance claim was unenforceable due to alleged violations of maritime regulations, including the failure to maintain required licenses and certifications for the vessel. Also, the Appellant invoked the principle of public policy, contending that no party should benefit from unlawful conduct.

The Respondent submitted that no evidence of illegality was presented and that the claim was based entirely on insured perils. Counsel relied on Brown

v. Royal Insurance Co (1859) 1 El. & El. 853, which provides that an insurer cannot avoid liability unless the illegality is causally linked to the loss.

For a claim to be unenforceable on grounds of public policy, the illegality must have contributed to the insured loss (Patel v. Mirza [2016] UKSC 42). The trial court found no causal link between the alleged regulatory breaches and the storm damage that caused the vessel's loss. The Appellant also accepted premiums and renewed the policy despite knowledge of the vessel's operational history, effectively waiving any objections on this basis.

The Court has not seen any evidence of illegality and affirms the trial judge's decision.

(k) Where there procedural irregularities in the trial?

The Appellant's alleged procedural irregularities, including the trial judge's alleged bias in favour of the Respondent and refusal to admit certain documents tendered by the Appellant. The Respondent countered that all procedural steps were conducted in compliance with fair trial principles and rules of evidence.

Judicial bias is a serious allegation requiring substantial proof, as established in Porter v. Magill [2001] UKHL 67. The trial record reflects that the judge provided both parties with ample opportunity to present their cases and followed due process in admitting or excluding evidence. No procedural error was demonstrated to prejudice the Respondent.

On the issue of excluded documents, the trial judge noted that the Appellant failed to lay a proper foundation for their admissibility, consistent with the principles of admissible evidence under section 3 (1) of Cap 26 Evidence (Documentary) Ordinance dated 25th January 1940.. We therefore find no irregularity that affected the fairness of the proceedings or the outcome of the trial.

Conclusion

In conclusion, after reviewing the submissions of both parties and considering the applicable legal principles and authorities, this Court concludes as follows:

1. The trial judge did not err in finding the insurance policy valid.
2. The determination of constructive total loss was substantiated by evidence and law.
3. The allegations of fraud and negligence were unsubstantiated.
4. The application of proximate cause was correct.
5. There was no material non-disclosure or breach of good faith.
6. Damages and interest were properly awarded.
7. Notice of abandonment was validly issued.
8. Expert evidence was correctly accepted.
9. The Plaintiff reasonably mitigated the loss.
10. Allegations of illegality lacked merit.
11. No procedural irregularities affected the trial's fairness or judgment.

ORDER:

1. **The Appeal is HEREBY DISMISSED.**
2. **The Judgment of the High Court dated the 15th day of April 2019 is UPHELD.**
3. **Costs for the Respondent, Sea Coach Boat Co Ltd. It is to be taxed if not agreed upon.**

Signed:

Hon. Mrs. Justice F. Bintu Alhadi JSC (JA as she then was)

Signed:

Hon. Mrs. Justice Jamesina E. L. King JA

COURT OF APPEAL SIGNED DATE..... REGISTRY

