



REPORTABLE

CASE NO: SA 10/2023
CASE NO: SA 34/2023

IN THE SUPREME COURT OF NAMIBIA

In the matter between:

PRIME PARADISE INTERNATIONAL LTD

Appellant

and

WILMINGTON SAVINGS FUND SOCIETY FSB

First Respondent

ACT MARITIME LLC

Second Respondent

**THE MOTOR TANKER "MARVIN STAR", HER
OWNERS AND ALL OTHERS INTERESTED**

IN HER

Third Respondent

PANORMOS CRUDE CARRIERS LTD

Fourth Respondent

Coram: DAMASEB DCJ, SMUTS JA and FRANK AJA

Heard: 17 July 2023

Delivered: 24 August 2023

Summary: Two interrelated appeals surrounding the motor tanker vessel MT “Marvin Star” served before the Supreme Court. The vessel was arrested on 10 August 2021 off Walvis Bay at the instance of the first and second respondents, Wilmington Savings Fund Society FSB and ACT Maritime LLC, (the banks) in terms of a summons *in rem* for monies due and owing under a loan agreement. Panormos Crude Carriers Ltd, the registered owner of the vessel did not defend the claim. Prime Paradise International Limited (Prime), the appellant in both appeals however defended the claim. The banks invoked the admiralty jurisdiction of the High Court and launched an application for the judicial sale of the vessel *pendente lite* under rule 138 of the Vice-Admiralty Court rules on 19 August 2021. A provisional order for the sale was granted by the High Court on 5 October 2021 and a final order was granted on 22 October 2021. An appeal against this order was dismissed by this Court (*Prime Paradise International Ltd v Wilmington Savings Fund FSB & others* 2022 (2) NR 359 (SC)). Shortly after the judicial sale application was launched, and on 1 September 2021, the banks brought an application against Prime to provide security for the preservation costs of the vessel for the period 19 August 2021 to 30 September 2021 (the date upon which the application for the judicial sale was originally set down) for the total amount USD432 924 plus security for a further period of three weeks after the judicial sale application to provide for a period to cover the handing down of a judgment – totalling a further sum of USD211 248. The basis for the banks’ application for the provision of security for the preservation costs was that Prime’s opposition of the judicial sale application was unreasonable and vexatious. The court below found that while neither the Vice-Admiralty rules nor the High Court rules provided for a *peregrinus* plaintiff being entitled to demand security from a *peregrinus* defendant for preservation costs of a vessel, a court, invoking its inherent jurisdiction, may come to the rescue of such a plaintiff when justice demands it and directed that security for those costs be furnished in exercising its inherent power to regulate its own process.

Appeal under Case No. 10/2023

The issue before this Court concerned whether the High Court had jurisdiction to direct a *peregrinus* defendant to pay security for preservation costs of an arrested

vessel at the instance of a *peregrinus* plaintiff, and if it did, whether such order was justified on the facts of this case.

Held that, it is well established that the court has the inherent power to regulate and determine its own procedures in the proper administration of justice. This power has been exercised in exceptional cases to afford parties a remedy not afforded in the rules to avoid or correct an injustice.

Held that, this inherent jurisdiction must be exercised only in exceptional circumstances and where there are strong grounds to persuade a court to act outside its powers provided for in its rules. The courts have repeatedly stressed that it is a power to be invoked sparingly and only if satisfied that justice cannot properly be done unless that form of relief is granted.

Held that, the banks approached the court to invoke its inherent powers to protect itself and others against an abuse of its process for an improper purpose as was stated by this Court in *Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation Ltd* 2012 (2) NR 671 (SC).

Held, taking into account the facts of this case and the vexatious nature of the opposition, the High court correctly found that the banks had discharged the onus upon them as to the reasonable need for security for the preservation costs occasioned by the delay caused by Prime's unreasonable opposition to the sale in question.

It follows that the appeal against the first order falls to be dismissed with costs.

Appeal under Case No. 34/2023

The banks applied for the second order after Prime's appeal against the order directing the sale of the vessel was dismissed and the appeal against the first order directing security was struck from the roll as leave to appeal had not been sought or granted. The application for the second order was brought to direct Prime to comply with the first order and make payment of the security as required by the first order.

Held that, after Prime's appeal against the first order was struck from the roll, it was incumbent upon Prime to comply with the first order. The second application was necessitated because it did not do so and its purpose was to enforce the payment of security pursuant to the first order. The banks had clearly made out a case for that order.

Held that, the High Court correctly stressed that orders of court are to be adhered to and are enforceable until and unless set aside by a court of competent jurisdiction. The rule of law, a foundational principle of the Namibian Constitution, requires nothing less and underlines the importance to be attached to the unqualified obligation to obey a court order unless and until that order is discharged and set aside. In granting the second order, the High Court correctly directed that Prime comply with its obligation in the first order as directed by the High Court.

It follows that the appeal against the second order likewise is to be dismissed with costs.

APPEAL JUDGMENT

SMUTS JA (DAMASEB DCJ and FRANK AJA concurring):

[1] There are two interrelated appeals before us in this further chapter in the saga surrounding the motor tanker MT "Marvin Star". The fundamental issue raised by these appeals concerns whether the High Court had jurisdiction to direct a *peregrinus* defendant to pay security for preservation costs of an arrested vessel at the instance of a *peregrinus* plaintiff.

Background facts

[2] That vessel was arrested on 10 August 2021 off Walvis Bay at the instance of the first and second respondents, Wilmington Savings Fund Society FSB (Wilmington) and ACT Maritime LLC (ACT) respectively (the banks), in terms of a summons *in rem* for monies due and owing under a loan agreement. The arrest of the vessel had been effected the day before at the instance of Destel Energy DMCC in respect of a much smaller claim of USD18 500 for unpaid lubricants supplied in Indonesia.

[3] The claim of the banks is for USD19 658 045,06 loaned to the registered owner of the vessel, Panormos Crude Carriers Ltd (Panormos) which has not defended the claim. Shortly after the arrest, Prime Paradise International Ltd (Prime), the appellant in both appeals, indicated that it would defend the claim.

[4] The banks invoked the admiralty jurisdiction of the High Court and launched an application for the judicial sale of the vessel *pendente lite* under rule 138 of the Vice-Admiralty Court Rules very soon after that on 19 August 2021. The banks in that application also sought the establishment of a fund for the proceeds of the sale.

[5] A provisional order for the sale was granted by the High Court on 5 October 2021 and a final order was granted on 22 October 2021. An appeal against that order was dismissed by this Court.¹

¹ *Prime Paradise International Ltd v Wilmington Savings Fund Society FSB & others* 2022 (2) NR 359 (SC).

[6] Shortly after the judicial sale application was launched, and on 1 September 2021 the banks brought an application against Prime to provide security for the preservation costs of the vessel for the period 19 August 2021 to 30 September 2021 (the date upon which the application for the judicial sale was originally set down) for the total amount USD432 924 plus security for a further period of three weeks after the judicial sale application to provide for a period to cover the handing down of a judgment – totalling a further sum of USD211 248.

[7] The security application sought an order that security was to be in the form of cash deposited into the trust account of Prime's legal practitioners payable in the event of Prime's opposition to the sale application being dismissed or cash deposited into the registrar's account designated as the fund constituted by the sale of the vessel.

[8] The security application was opposed and heard on 21 September 2021 and an order to that effect was granted by the High Court on 28 September 2021. Reasons for the order were subsequently provided on 5 November 2021. Prime noted an appeal against that judgment and order (the first order appealed against). This Court however found that the order is interlocutory and that leave to appeal in terms of s 18(3) of the High Court Act 16 of 1990 was required. As Prime had not at the time obtained leave to appeal against that order, that appeal was struck from the roll.²

² *Prime Paradise* para 109.

[9] The vessel was duly sold by public auction on 2 June 2022 for the sum of USD26,4 million plus an amount of USD907 837,01 for the vessel's bunkers. A total of thus USD27 309 837,01 constitutes the fund held by or on behalf of the registrar.

[10] Claims by the banks and Prime were submitted to the referees appointed under the sale order. The recommendation of the referees was that the claims against the fund be stayed pending the outcome of a final judgment upon the claims of the banks in the action *in rem* set down for 18 September 2023.

[11] On 15 June 2022, the banks launched an application (for the second order – appeal SA 34/2023) against Prime directing that it pay USD2 959 922 into the fund in accordance with the order directing security for preservation costs (the first order – appeal SA 10/2023). That further application was opposed by Prime which also sought leave to appeal against the first order.

[12] The High Court on 25 January 2023 granted the second order appealed against and directed that Prime pay USD644 352 into the fund as security for the preservation costs in question. The High Court also granted Prime leave to appeal against the first order and directed that the operation and execution of the second order be suspended pending the determination of the appeal against the first order.

[13] On 8 March 2023 the High Court granted Prime leave to appeal against the second order.

Appeal in Case No. SA 10/2023 (the first order)

[14] The parties and the court below accept that there is no provision in the Vice-Admiralty rules or in the rules of the High Court which entitles *peregrinus* plaintiffs (which the banks are) which have arrested a ship to demand security from a *peregrinus* defendant to furnish security for preservation costs of a vessel.

[15] The basis of the banks' application for security for those costs is that they are additional preservation costs occasioned by the unreasonable and vexatious opposition by Prime to the judicial sale application. The additional costs incurred related to the period 19 August 2021 to 21 October 2021. The banks emphasised that, but for Prime's opposition to the sale, these additional preservation costs would not have been incurred.

[16] The basis of the banks' application was that Prime's opposition was so unreasonable and in effect vexatious and amounted to an attempt to exert pressure on the banks, 'being innocent parties acting in good faith, to extract some kind of settlement for a claim which is yet to be properly formulated and purportedly arose in 2017'.

[17] In support of its claim as to the unreasonableness of Prime's defence, the banks asserted that it was unclear and lacked evidence to support it and was based on hearsay and conjecture. Apart from these features, it was also pointed out by them that Prime failed to explain why it allowed the vessel to trade for years without taking steps to assert the rights relied upon.

[18] The court below found that, while neither the Vice-Admiralty rules nor the High Court rules provided for a *peregrinus* plaintiff being entitled to demand security from a *peregrinus* defendant for preservation costs of a vessel, a court may come to the rescue of such a plaintiff when justice demands it and directed that security for those costs be furnished in exercising its inherent power to regulate its own process.

[19] The High Court found that Prime had been aware of the banks' mortgage since at least 23 December 2019 and had taken no steps to enforce its claim. The court further found that Prime was unable to clearly formulate its claim, had not itself arrested the vessel and only opposed its sale.

[20] The court also took into account that the true ownership of Prime was unclear and could mean that the banks may have no recourse against Prime to recover the additional preservation costs. The court also found that Prime's claim to ownership of the vessel was disputed and would only be resolved after a trial which would take some considerable time. The preservation costs pending that outcome would increase and could be prejudicial to the banks and other creditors. The vessel was valued for some USD29 million for the purpose of the sale application. The court found that it would be unlikely if the full market value could be achieved and that the resultant fund would have insufficient means to cover the banks' claims.

The parties' submissions on appeal

[21] Counsel for Prime argued that the right of a *peregrinus* plaintiff to compel a *peregrinus* defendant to furnish security for costs of preserving arrested property – if it were to exist – is substantive in its nature. Counsel contended that no grounds existed for developing the substantive law so as to give courts that power.

[22] It was argued in the alternative that, even if grounds to expand the substantive law in this way were found to exist, then that power should be sparingly exercised and only where it was evident that opposition to the sale is vexatious, reckless and amounts to an abuse. Counsel for Prime submitted that Prime's opposition to the sale was neither reckless nor an abuse and that its defence to the banks' claim *in rem* is seriously advanced.

[23] Counsel for Prime referred to the basis of Prime's claim – that it is the *de facto* owner of the vessel – and that the vessel was bareboat chartered to Panormos and that Prime had taken steps to assert those rights. Prime had commenced an action *in rem* in Singapore to have it declared as owner. It was argued that Prime's claim was not against the banks but based upon its ownership of the vessel and that it is not liable for the underlying debt and that the banks' mortgage is unenforceable. Counsel accordingly submitted that Prime's opposition was reasonable and did not amount to an abuse.

[24] Counsel for Prime also argued that there was no need for the security directed by the High Court and that the banks failed to make out a case for it. The value of the vessel (USD29 million) referred to in the application for security exceeded their claim including costs by some measure and amounted to an

impermissible 'top up' of their claim. There was thus, according to counsel for Prime, no genuine need for the security sought and granted.

[25] It was also contended on behalf of Prime that the first order was contradictory and incapable of compliance. Criticism was levelled at the manner in which payment of the security is provided for in para 4 and it was argued that there is no clear description of an event upon which Prime would be entitled to the repayment of the part or all of the security in the event of the banks' claim not succeeding.

[26] On the other hand, counsel for the banks stressed that the security was sought and granted only in respect of additional preservation costs caused by Prime's opposition to the judicial sale application. He pointed out that those costs would not have been incurred but for Prime's opposition to the sale application.

[27] Counsel for the banks argued that the order was capable of a sensible meaning which should be resorted to rather than avoiding the order. Counsel also pointed out that the criticism concerning the formulation of the order was not raised when the order was sought and strenuously opposed by Prime. Counsel also pointed out that the order had in certain respects been superseded by events but was capable of meaning and enforcement.

[28] Counsel for the banks referred to the approach of this Court in its reference to Prime's opposition to the sale application when dismissing the appeal against the grant of that order. Counsel referred to the opposition being based on inadmissible

hearsay evidence with its 'unsatisfactory unexplained features', as found by this Court. Counsel submitted that Prime's opposition to the sale application was vexatious in the circumstances.

[29] It was contended on behalf of the banks that the High Court was entitled to exercise its inherent jurisdiction to provide a remedy to the banks where none existed to prevent an abuse of its process and to protect the banks from irreparable prejudice.

[30] Counsel argued that the banks had on the papers made out a case for the court below to protect them from being victims of vexatious proceedings. The Vice-Admiralty rules and the High Court rules did not preclude the relief sought. Counsel submitted that it is an extraordinary remedy which would be sparingly granted to avoid injustice.

[31] Counsel for the banks finally argued that the banks had established the need for security which would be determined with reference to what served before the High Court and not by subsequent events. He also pointed out that Prime appeared to be a special purpose vehicle without assets.

Did the High Court have the jurisdiction to make the order?

[32] It is common ground between the parties that neither the Vice-Admiralty rules nor the rules of the High Court entitle a *peregrinus* plaintiff which has arrested a vessel to demand security from a *peregrinus* defendant for preservation costs of the

arrested vessel. At issue between the parties is whether the High Court could make such an order in the exercise of its inherent jurisdiction and, if so, whether such an order was justified on the facts of this case.

[33] It is well established that the court has the inherent power to regulate and determine its own procedures in the proper administration of justice.³ This power has been exercised in exceptional cases to afford parties a remedy not afforded in the rules to avoid or correct an injustice.⁴

[34] This court in *Likanyi*⁵ stressed that caution is to be adopted in exercising inherent jurisdiction, as had been expressed in *Moulded Components and Rotomoulding SA (Pty) Ltd v Coucourakis & another*.⁶ It is a power to be exercised only exceptionally and there would need to be strong grounds to persuade a court to act outside its powers provided for in its rules. The courts have repeatedly stressed that it is a power to be invoked sparingly and only if satisfied that justice cannot properly be done unless that form of relief is granted.⁷

[35] The purpose of the invocation of a court's inherent jurisdiction is in essence to provide a remedy to avoid an injustice. Whilst it is correct, as submitted by Prime's counsel, that the court would not readily, in the absence of a conflict with or in furtherance of constitutional rights, have an inherent power to create substantive law,

³ *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* 1996 (3) SA 1 (A) 7B-H.

⁴ *Ibid* para 57.

⁵ *S v Likanyi* 2007 (3) NR 771 (SC) para 54-55; *Universal City Studios Inc & others v Network Video (Pty) Ltd* 1986 (2) SA 734 (A) at 754 read with Art 78(4) of the Constitution.

⁶ *Moulded Components and Rotomoulding South Africa (Pty) Ltd v Coucourakis & another* 1979 (2) SA 457 (W) at 461-462.

⁷ *Coucourakis* 462. *Likanyi* paras 54-55.

Corbett JA in *Universal City Studios* stressed that the dividing line between substantive and adjectival law is not an easy one to draw.⁸ It is however not necessary for present purposes to pursue this question any further because of the basis upon which the application for security was brought and fell to be addressed by the High Court.

[36] Included in the High Court's inherent powers is to protect itself and others against an abuse of its process as was recently restated by this Court in *Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation Ltd*.⁹ This Court made it clear in *Aussenkehr* that an abuse of the process occurs when the court process is used for an improper purpose.¹⁰

[37] This would be a question of fact to be determined by the circumstances of each case.¹¹ In the exercise of its inherent jurisdiction, a court can afford a remedy to a party where an abuse occurs to avoid irreparable prejudice.

[38] The banks approached the High Court on this basis – that the opposition raised by Prime is so unreasonable that it is vexatious and was raised for an improper purpose. Prime's claim as a 'de facto' owner in the sale application was found by this Court to be founded upon inadmissible hearsay evidence. Not even the sources of the specific allegations of the fraud contended for were identified for the purpose of confirmatory affidavits. No defence was thus properly raised. As was also

⁸ *Universal City Studios* at 754G-H and the authorities collected there.

⁹ *Aussenkehr Farms (Pty) Ltd v Namibia Development Corporation Ltd* 2012 (2) NR 671 (SC) para 18.

¹⁰ *Ibid* para 24.

¹¹ *Aussenkehr* para 25.

found by this Court, there were moreover unsatisfactory unexplained features to the defence raised by Prime. The defence was thus so unreasonable so as to amount to vexatious in the sense of meaning 'frivolous, improper and solely as an annoyance' to the applicant banks, including in the sense of use for an ulterior motive.¹²

[39] Given the vexatious nature of the opposition to the sale application advanced by Prime, the High Court was entitled to exercise its inherent jurisdiction to prevent an abuse of its process by directing Prime to furnish security for additional preservation costs which would not otherwise have been incurred but for that opposition and in this instance for the period 19 August 2021 to 21 October 2021 and correctly did so in order to avoid an injustice.

[40] As for the need for security, disputed by Prime, the facts to be considered are those which served before the High Court when it determined that application and not subsequent developments. The fact that the action *in rem* is still proceeding and its eventual outcome are likewise irrelevant. This is because the security claimed is in respect of the additional preservation costs occasioned by the opposition to the sale application, confined to that distinct period.

[41] It was incumbent upon the banks seeking security to persuade the court that security should be ordered to avoid an injustice. In the supplementary affidavit filed in the application, the banks stated that it was probable that the fund would not be

¹² *Fisheries Development Corporation of SA Ltd v Jorgensen & another; Fisheries Development Corporation of SA Ltd v AWJ Investments (Pty) Ltd & others* 1979 (3) SA 1331(W) 1339E-F. Approved by this Court in *Agricultural Bank of Namibia v Gaya* (SA 38-2023) [2023] (28 July 2023).

sufficient to cover all creditors' claims, including those advanced by Prime for hire and/or damages as a result of the alleged fraud.

[42] The banks explained that a delay of at least 43 days amounting to USD432 942 in preservation costs would arise excluding the time taken for the court to give judgment in respect of which further costs of USD211 248 would be incurred. The banks would not appear to have recourse against Prime for the lost additional preservation costs caused by the unreasonable opposition to the sale application. A further factor is that Prime would appear to be a special purpose corporate vehicle registered in the British Virgin Islands having no assets.

[43] Taking into account these factors and the vexatious nature of the opposition, the High Court correctly found that the banks had discharged the onus upon them as to the reasonable need for security for the preservation costs occasioned by the delay caused by Prime's unreasonable opposition to the sale in question.

[44] I turn to the point raised about the terms of para 4 of the first court order. It reads:

- '4. Security shall be in one of the following forms:
 - 4.1 Cash deposited into the Trust account of ENS and payable on demand to the Applicants in the event that Prime's opposition is dismissed by this Honourable Court; or
 - 4.2 Cash deposited into the Registrar's account designated as the fund constituted by the sale of the MT "Marvin Star" payable to the Applicants upon submission of its claim to the Referee in due course pending the

determination of Prime's objection(s) and therefore its liability in respect of such costs.'

[45] The approach to interpreting a court's order was recently thus summarised by this Court with reference to apposite authority and principle:¹³

'[24] The well-established test accepted by this court for the interpretation of court orders or judgments, emanating from *Firestone South Africa (Pty) Ltd v Gentiruco AG*,¹⁴ is essentially the same as that for the construction of documents.¹⁵ This test has recently been succinctly summarised by the South African Supreme Court of Appeal¹⁶ (and subsequently expressly approved of by that country's Constitutional Court)¹⁷ thus:

"The starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention."

[25] The well-known rules relating to the construction of text or documents, as recently restated, stress the importance of the context in which a document is drafted which is 'relevant to its construction in all circumstances, not only when the language appears to be ambiguous'.¹⁸

[26] As was recently stated by this court in *Fischer* in the context of construing a court order:

¹³ *Communications Regulatory Authority of Namibia v Mobile Telecommunications Company of Namibia* 2021 (4) NR 1039 (SC) para 24-26.

¹⁴ *Firestone South Africa (Pty) Ltd v Gentiruco AG* 1977 (4) SA 298 (A) at 304D-F.

¹⁵ *Handl v Handl* 2008 (2) NR 489 (SC) para 16.

¹⁶ *Finishing Touch 163 (Pty) Ltd v BHP Billiton Energy Coal South Africa Ltd & others* 2013 (2) SA 204 (SCA) para 13.

¹⁷ *Eke v Parsons* 2016 (3) SA 37 (CC) para 29; *Member of the Executive Council for Health, Gauteng Provincial Government v PN* 2021 (6) BCLR 584 (CC) para 22.

¹⁸ *Total Namibia (Pty) Ltd v OBM Engineering and Petroleum Distributors* CC 2015 (3) NR 733 (SC) and followed in this context by *Fischer v Seelenbinder & another* 2021 (1) NR 35 (SC) para 27.

“At the risk of repetition, the clear and unambiguous meaning must be ascertained in the context and not semantically without regard to the context.”

[46] Part of the context of the order is the judgment and order in the related sale application.

[47] Applying these principles, it would follow that Prime had an election in para 4 of the order either to provide security into the trust account of the legal practitioners referred to or into the registrar’s account designated as the fund constituted by the sale of the vessel. Prime had this election as to the manner of payment of security and retained the right to object to any claim made by the banks against the fund which would in the full context of the matter arise in the action *in rem* to be determined by the High Court.

[48] Contradiction contended for by Prime does not arise upon a reading of the order in its proper context because Prime would be entitled to repayment of part or all of the security in the event of its defence to the banks’ claim being successful. A sensible reading of the order in the context of subsequent events, removes the inconsistency or contradiction contended for by Prime.

[49] It follows that the appeal against the first order falls to be dismissed with costs.

Appeal under Case No. SA 34/2023 (the second order)

[50] The banks applied for the second order after Prime's appeal against the order directing the sale of the vessel was dismissed and the appeal against the first order directing security was struck from the roll as leave to appeal had not been sought or granted. The application for the second order was brought to direct Prime to comply with the first order and make payment of the security as required by the first order.

[51] The High Court granted the second order and directed Prime to pay security in the sum of USD644 352 into the fund established by the sale of the vessel.

[52] The parties accepted that should Prime's appeal against the first order succeed, then it would follow that the appeal against the second order would also succeed because the second order gives effect to the first order.

[53] Counsel for Prime however contended that even in the event of its appeal against the first order being dismissed, the appeal against the second order should nonetheless succeed. It was argued that the second order is 'separate and free standing' from the first order and that the banks had not made out a case in the second application for that order.

[54] It was argued that the second order was not in accordance with the first order because of the changed circumstances relating to the manner of payment in terms of para 4 of the first order as a fund had by then been established, given the sale of the

vessel. As already stated, a sensible interpretation of that paragraph of the order in its context addresses the contrived point taking in relation to it.

[55] A point is also taken concerning the change of sanction in the two orders. In para 5 of the first order the sanction relates to the sale application. The second order's sanction is different and includes the power to apply to court to strike out Prime's defence to the banks' claim *in rem*. It was submitted on behalf of Prime that the second application's purpose was to 'smother' Prime's defence to the action and that the High Court erred in granting that order.

[56] This point is likewise contrived and the description entirely misplaced as it fails to take into account the nature and purpose of the second application. The second application and order was plainly directed at securing Prime's compliance with the first order. The terms of the second order merely take into account superseding events following the grant of the first order as the sale application had become resolved and the action *in rem* remained to be determined. Naturally the sanction would then relate to the action. The computation of the amount of security in the second order (of USD644 352) was with reference to the additional preservation costs incurred as a result of Prime's unsuccessful opposition to the sale application for the period 19 August 2021 to 21 October 2021. Had Prime not unsuccessfully opposed the sale application the vessel would have been sold in September 2021. The payment of security directed in the second order was in respect of this specific time period contemplated in the first order and to give effect to it.

[57] After Prime's appeal against the first order was struck from the roll, it was incumbent upon Prime to comply with the first order. The second application was necessitated because it did not do so and its purpose was to enforce the payment of that security pursuant to the first order. The banks had clearly made out a case for that order.

[58] As was correctly stressed by the High Court, orders of court are to be adhered to and are enforceable until and unless set aside by a court of competent jurisdiction. The rule of law, a foundational principle of our Constitution, requires nothing less and underlines the importance to be attached to the unqualified obligation to obey a court order unless and until that order is discharged and set aside. In granting the second order, the High Court correctly directed that Prime comply with its obligation in the first order as directed by the High Court.

[59] It follows that the appeal against the second order likewise is to be dismissed with costs.

Order

[60] The following orders are made:

1. In the appeal in Case No. SA 10/2023:

The appeal is dismissed with costs, including the costs occasioned by the employment of one instructing legal practitioner and one instructed legal practitioner, where engaged.

2. In the appeal in Case No. SA 34/2023:

The appeal is dismissed with costs, including the costs occasioned by the employment of one instructing legal practitioner and one instructed legal practitioner, where engaged and including the costs occasioned in the High Court.

SMUTS JA

DAMASEB DCJ

FRANK AJA

APPEARANCES

APPELLANT:

M Wragge, SC

Instructed by ENSafrica

FIRST and SECOND

RESPONDENTS:

M Fitzgerald, SC (with him W Grant)

Instructed by Koep & Partners