

SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

**NAME OF VESSEL MV SPIRIT OF NAMIBIA
BIG RED ONE INCORPORATED ; QUARTERDECK PROSPECTING AND
MINING (PTY) LTD AND MARCO FISHING (PTY) LTD CASE NO 33/06**

From: The Registrar, Supreme Court of Appeal

Date: 1 JUNE 2006

Status: Immediate

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

The Supreme Court of Appeal today dismissed an appeal against a decision of the High Court, Cape Town, to order the sale of a ship, the *MV Spirit of Namibia* and the creation of a fund with the proceeds prior to the resolution of a claim which a Namibian Company, Marco Fishing (Pty) Ltd, had instituted against a Virgin Island corporation, Big Red One incorporated and a S A Company, Quarterdeck Prospecting and Mining (Pty) Ltd. The claim arose from the loss of the fishing vessel 'Meob Bay' off the coast of Namibia when its propeller fouled a polypropylene rope floating on the surface and attached to a steel anchor on the sea bed which had allegedly been left there by the MV 'Lady S'. The 'Lady S', which was then engaged

in mining operations, was attached to found the jurisdiction of the Cape High Court but was released on 29 August 2002 when the '*Spirit of Namibia*' was substituted in its place.

The SCA affirmed that courts were generally reluctant to order the sale of property of a defendant prior to the adjudication of the dispute but held that the inordinate delay in the resolution of the dispute and the extent of the outstanding port dues justified the sale in this instance. The court emphasized the need for proceedings in such cases to be conducted with the utmost expedition and was critical of the delays that had occurred. The court also rejected an argument that the terms of the substitution agreement conducted between the parties precluded the court from ordering a sale prior to the determination of the dispute.

--- ends ---