

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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

Northern Endeavour Shipping Pte Ltd v The Owners of the MV NYK Isabel

The SCA today dismissed an appeal from the Durban and Coast Local Division, Durban sitting as a court of admiralty. The *NYK Isabel* had been arrested by Northern Endeavour Shipping (NES) in an action *in rem*. It claimed that cargo lost overboard and damaged on a voyage by the *Northern Endeavour* between Durban and Santos, Brazil, had been lost and damaged as a result of negligence on the part of NYK Lines. The action was defended and NYK Lines sought and obtained an order that NES provide it with security for its claim against NES in proceedings in Brazil in which NES had been ordered to indemnify NYK Lines in respect of the self-same loss and damage.

The court upheld the arrest of the *NYK Isabel* as an associated ship in relation to the *Northern Endeavour*. It said that a slot charterer is a charterer of the ship in relation to which the claim arises for the purpose of the deeming provision in section 3(7)(c) of the Admiralty Jurisdiction Regulation Act. When NYK Lines entered appearance to defend the action it became a party to the proceedings and accordingly entitled to invoke the power of the court to order the provision of security. The SCA

was satisfied that the requirements for an order to provide security had been satisfied and accordingly dismissed the appeal.