

Supreme Court of Appeal of South Africa

MEDIA SUMMARY– JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 29 May 2019

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.

Afgri Grain Marketing (Pty) Ltd v Trustees for the time being of Copenship Bulkers A/S (in liquidation) and Others

The SCA today upheld an appeal by Afgri Grain Marketing (Pty) Ltd against an order by the Gauteng Division of the High Court, Johannesburg, ordering it to provide security to Copenship in terms of s 5(3) of the Admiralty Jurisdiction Regulation Act 105 of 1983 for an amount in excess of \$6 million. The security related to a claim by Copenship against Afgri Grain arising from a charterparty for the carriage of maize from Maputo to Mombasa. The maize arrived in a damaged condition and the consignee rejected a portion of the cargo. The owner of the chartered ship claimed an indemnity from Afgri Grain in respect of any amount for which it might be held liable arising from this incident. The dispute was the subject of an arbitration in London.

The SCA held that Copenship failed to produce any evidence that it had a genuine and reasonable apprehension that Afgri Grain would either be unable to meet any award made against it or would try to avoid making payment. Its financial statements revealed that it was a large and profitable business forming part of a large and well-established agri-business. It had paid its obligations to Copenship under the charterparty in an amount of around \$1 million arising out of a settlement of related disputes between

the parties. This showed a willingness to meet its obligations when due. In accordance with the policies of the larger group of which it was a member. Copenship's reliance on conventional banking arrangements to suggest that it would avoid meeting its obligations misconstrued those arrangements. Accordingly it had failed to discharge the onus resting on it of establishing a genuine and reasonable need for security.