

## 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: 12 March 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.

#### **MFV Qavak: Twende Africa Group (Pty) Ltd v MFV Qavak**

Fisherman Fresh CC is the registered owner of the MFV *Qavak*, which it purchased from an Irish company, C & M Donohue Fishing Ltd, in terms of a Memorandum of Agreement (MOA) executed by both parties on 18 August 2017. On 26 January 2018, the appellant, Twende Africa Group (Pty) Ltd t/a Tag Marine (TAG) caused the *Qavak* to be arrested in Port Elizabeth Harbour in an action *in rem* based upon a claim for brokering commission arising out of the purchase of the vessel. The arrest was set aside by the Eastern Cape Division of the High Court, Port Elizabeth.

The SCA today dismissed an appeal against the setting aside of the arrest. It held that in order to sustain its claims for commission, or damages for breach of a brokerage agreement, TAG needed to prove evidence on a prima facie basis that Fisherman Fresh had appointed Tag as its broker to find a suitable vessel for its fishing activities. The evidence showed that TAG had listed the vessel for sale on its website and that Fisherman Fresh responded to that advertisement. No brokerage agreement was discussed and an offer to purchase the *Qavak*, addressed to TAG, referred to the Irish owners as TAG's client. The evidence was accordingly inconsistent with TAG having been acting as broker on behalf of Fisherman Fresh.

An attempt to sustain the arrest on the basis of an alternative claim for damages for breach of the brokerage agreement between TAG and Donohue Fishing failed for similar reasons. TAG had listed the *Qavak* for sale on its website without obtaining an appointment as broker from Donohue Fishing, or obtaining its prior permission to do so. In the circumstances Donohue Fishing assumed that TAG was acting on behalf of Fisherman Fresh, which it described as ‘your clients’. In dismissing the appeal the court pointed out that a broker acting without having a mandate from one or other party to the transaction acts at risk of not being entitled to commission if a sale results from its efforts.