

**PAPUA NEW GUINEA
[IN THE NATIONAL COURT OF JUSTICE]**

WS No. 303 OF 2006

BETWEEN:

RABAU SHIPPING LIMITED
Plaintiff

AND:

**CHRIS RUPEN, GENERAL MANAGER,
NATIONAL MARITIME SAFETY AUTHORITY**
First Defendant

AND:

NATIONAL MARITIME SAFETY AUTHORITY
Second Defendant

AND:

**THE INDEPENDENT STATE
OF PAPUA NEW GUINEA**
Third Defendant

WS No. 304 OF 2006

BETWEEN:

MASSIM EXPEDITIONS & TOURS LTD
Plaintiff

AND:

**CHRIS RUPEN, GENERAL MANAGER,
NATIONAL MARITIME SAFETY AUTHORITY**
First Defendant

AND:

NATIONAL MARITIME SAFETY AUTHORITY
Second Defendant

AND:

**THE INDEPENDENT STATE OF
PAPUA NEW GUINEA**
Third Defendant

Kokopo: Paliau, AJ
2008: 17th & 23rd October

INTERPRETATION – Section 1 of Protection of the Sea (Shipping Levy) Act, No. 8 of 2003 – Definition of "ship" – whether Plaintiff's ships fall within the definition of "ship" as defined under the Act in order to attract the imposition of oil spill levy.

Cases cited:

No Cases cited.

Counsels:

Mr. D. Lidgett, for the Plaintiff

Mr. J. Haiara, for the Defendants

23rd October, 2008

1. **PALIAU, AJ.:** The Plaintiff in 2006 (4th May 2006) filed by way of Originating Summons seeks an interpretation of the word "*ship*" as defined under Section 1 of the *Protection of the Sea (Shipping Levy) Act No. 8 of 2003*. "*Ship*" means "any sea-going vessel and any sea-borne craft of any type actually carrying oil in bulk as cargo." It also seeks declarations and restraining order that:

- (1) the Second Defendant has improperly imposed the oil spill levy (the Levy) on its motor passenger vessel Kula Queen because it does not carry oil in bulk as cargo;
 - (2) the Kula Queen is not a "ship" within the meaning of Section 1 of the *Protection of the Sea (Shipping Levy) Act No. 8 of 2003* because it does not carry oil in bulk as cargo; and
 - (3) an injunction restraining the First and the Second Defendant from imposing and collecting the oil spill levy until the interpretation is decided by the Court.
2. That upon registration of MV Kula Queen in December 2005, the First Defendant advised the Plaintiff of the requirement to pay the oil spill levy as per a profoma Invoice.
 3. On 3rd December 2005, the Plaintiff wrote to the Defendant protesting the payment of oil spill levy which was paid together with other fees by a bank cheque.
 4. The Plaintiff protested because their ships including MV Kula Queen do not actually carry oil in bulk as cargo but only use oil for operation and running of the

propulsion, generator and other motors. As such oil spills levy should not be imposed by the Defendants.

5. The above factual situations are not disputed. The parties also agree that the factual situations are similar to the proceedings in OS 304 of 2006, MASSIM EXPEDITIONS & TOURS LTD v. CHRIS RUPEN, GM. NATIONAL MARITIME SAFETY AUTHORITY & 2 OTHERS. Any decision by the Court will also apply to this proceeding.

6. The only issue for consideration by this Court is the interpretation of the *Protection of the Sea (Shipping Levy) Act (the Act)* as to whether the Plaintiff's ships fall within the definition of "ship" as defined under the Act in order to attract the imposition of oil spill levy.

7. The Plaintiff's evidence is contained in the Affidavit in support and Supplementary Affidavits of Peter Sharp filed on the 8th and 10th April 2008 respectively. In essence the affidavits depose to the fact that the vessels in question do not actually carry oil in bulk as cargo.

8. The Defendants cross-examined Mr. Sharp about his affidavits and raised issues in relation to the authority for the Plaintiff to bring this action and the proceedings being an academic exercise because the Defendants are no longer collecting or charging levies. I will deal with these issues later.

9. But first the interpretation issue which is the main issue. If the determination of this issue is in favour of the Plaintiff, then the other issues will logically fall into place.

10. Section 1 of the *Protection of the Sea (Shipping Levy) Act 2006* provides under Interpretation the definition of "ship" and "*ship is defined to mean, any sea-going vessel and any sea-borne craft or any type actually carrying oil in bulk as cargo.*"

11. The long title to the Act states that the Act is an Act to impose a levy in respect of certain ships in Papua New Guinea ports with oil and board and for related purposes.

12. Section 4(1) of the *Act* states that where, at anytime during a year a ship to which this Act applies is in a port, a levy is imposed in respect of the ship for the year.

13. The definition of "*oil in bulk*" in Section 1 means oil stored in a bunker or tank or in both a bunker and tank.

14. It is clear that in order for a levy to be imposed on a ship, the ship must be carrying or actually carrying oil as cargo. It does not matter whether oil is stored in a bunker or tank or both bunker and tank as long as it is cargo or forming part of the ship's cargo.

15. The Plaintiff's evidence is clear in that their ships are not carrying oil in bulk as cargo. The oil is being stored for use only for operation and running of the propulsion, generator and other motors. This evidence is not challenged by the Defendants. The

Defendants have not filed affidavits to contest this evidence.

16. In fact during the submissions by counsel for the First and Second Defendants, it was intimated that the Defendants has accepted the Plaintiff's contention that their ships do not fall within the definition of ship under the legislation, that is why they are no longer imposing the oil spill levy on the Plaintiff's ships.

17. I consider therefore that the Plaintiff's vessels or ships do not actually carry oil in bulk as cargo, so clearly do not come within the definition of a "ship" for purposes of the Act.

18. As to the issue of whether Mr. Sharp was authorized to take out this action I consider that Mr. Sharp had the authority as there is evidence that he is both the Managing Director and a sole director of Rabaul Shipping Limited and Massim Expeditions & Tours Limited. He is the Board of Directors. He had the authority to take out this action.

19. The Plaintiff's action is not an academic exercise. If the Defendants are no longer charging oil spill levy on the Plaintiff's ships because the ships are not actually carrying oil in bulk as cargo, then they must advise the Plaintiff in writing. This has not been done. This evidence is coming from the Bar Table which I will not accept. Unless the Defendant advises that Plaintiff in writing that it will no longer charge oil spill levy, the Plaintiff has the legal right to come to the Court to seek an interpretation, declaration and injunction as contained in the Originating Summons. The Plaintiff is not being speculative in its action.

20. I do not think the case authorities that are cited are of relevance in the present case.

ORDERS:

1. That the Second Defendant, National Maritime Safety Authority has improperly imposed the Oil Spill Levy because the Plaintiff's motor vessels Kula Queen and Samarai Queen do not carry oil in bulk as cargo;
2. That the Kula Queen and Samarai Queen are not ships within the meaning of the Act because they do not carry oil as cargo; and
3. That the First and the Second Defendants are restrained from imposing and further collecting the oil spill levy until such time the First and the Second Defendants advise the Plaintiff in writing that they will no longer impose and collect fees from the Plaintiff.
4. Costs are in the cause.

Ordered accordingly.

Warner Shand Lawyers: *Lawyer for the Plaintiff*

Steeles Lawyers: *Lawyer for the Defendants*