



Neutral Citation Number: [2026] EWHC 940 (Comm)

Case No: CL-2026-000030

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND & WALES
COMMERCIAL COURT (KBD)

The Rolls Building
7 Rolls Buildings
Fetter Lane, London
EC4A 1NL

Date of hearing: 20 March 2026

Before:

HIS HONOUR JUDGE PELLING, KC
(Sitting as a Judge of the High Court)

Between:

KAMA METAL TRADING LLC
(a company incorporated in the UAE)
-and-
(1) MAERSK A/S
(a company incorporated in Denmark)

Claimant/
First Respondent

(2) MAERSK MALAYSIA SDN. BHD
(a company incorporated in Malaysia)
-and-
COMID

First Defendant/
Applicant

Second Defendant

Second Respondent

DR ARUN KASI (C) (instructed by **Brooke Law Group LLP (?)**) for the **Claimant/First Respondent**

JOSEPH GOURGEY (C) (instructed by **HFW LLP**) for the **Defendants**

Approved Judgment

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HIS HONOUR JUDGE PELLING, KC:

1. This is an application made by the first defendant essentially for directions and declarations as to what it is to do with a cargo shipped on board one of its ships. In the normal way of these things, the claimant, being the holder in due course of the bill of lading which relates to the relevant cargo, would be entitled, upon presentation of the original bills, to seek delivery up to it of the cargo. The particular difficulty which has arisen on this occasion is that an assertion was made by the shipper that it continued to be interested in the cargo, that delivery of the original bills to the claimant had been obtained by subterfuge and that therefore there should be no delivery up of the cargo to the claimant by the defendant. The defendant shipowner has no interest in this dispute and merely wants directions as to what is to happen to the cargo. In those circumstances it seeks the order that I have indicated requiring in effect a direction that the cargo be delivered to the claimant in accordance with the application.
2. It is perhaps unnecessary for me to set out in any detail the history of this unfortunate transaction. It is set out in the evidence filed in support of the application and it is reprised in each of the skeletons filed respectively on behalf of the claimant and the first defendant.
3. In summary however, the relevant history of this matter starts on 3 December of last year when a letter of demand was received from the claimant's solicitors saying that the claimant was the consignee, the lawful holder of the bill of lading, was in possession of all three copies of the relevant bill of lading and demanding delivery up in accordance with the usual principles.
4. Meanwhile, on 19 December, the shipper commenced proceedings against the Kenyan subsidiary of the first defendant in Kenya and against the claimant as well, seeking an injunction restraining the release and delivery up of the relevant cargo. The basis of those proceedings was in essence that the shipper claimed to be either the unpaid seller of the cargo or alternatively a partially unpaid seller of the cargo. The claimant and consignee maintains that it has paid what is due and the reason that what was paid was different from what was originally agreed was to do with technical issues concerning the quality and purity of the relevant cargo. In the result, the claimant, as I have said, claims to be the lawful holder of the bill of lading and has appeared to assert that claim. The vendor and shipper does not appear and is not represented, notwithstanding that the evidence establishes that it has been served with this application.
5. These proceedings are therefore ones in which in effect the shipowner seeks an order that it be permitted to release the cargo to the holders of the bill of lading. There is no basis on which I can sensibly refuse such an order, not least because the shipper has not taken part in these proceedings and the evidence all points to the entitlement of the consignee to receive the cargo.
6. This leads to the conclusion that in those circumstances I should accede to this application under CPR part 86 by making an order broadly in the terms sought. I am satisfied that the first defendant is a stakeholder within the meaning of CPR rule 86.1 and thus there is jurisdiction to make the order sought. Whilst there was initially a dispute about that, it is no longer in dispute. Applying the

principles which were identified amongst other things in the recent decision in *SKAT v Sanjay Shah* [2020] EWHC 1658 (Comm) at 27, I am satisfied that the first defendant is indeed a relevant party for the purposes of CPR rule 86.1.

7. In those circumstances, the only question is what should be done in relation to this application. Whilst I accept that the correspondence which was received from the second respondent to this application is capable of constituting notice that it was asserting a claim or title to the cargo, the truth of the matter is that there is no evidence to support the claim that has been made. The evidence that is available to me all points in one direction, namely that I should not interfere with what would be the general principle, that a shipowner is both entitled and bound to deliver goods against the production of an original bill of lading. As I have said, the claimant in this case is able to produce the original bills of lading and has explained why it is that there is no viable claim available to the shipper in circumstances where the shipper has had the opportunity to establish it has an arguable claim. In those circumstances, it is appropriate that I should make the order sought so as to enable the shipper to safely dispose of the property that was shipped on board its ship.
8. The only issue that was in debate in the course of the submissions concerns a proposal by the first defendant that I should include within the order a direction to the effect that the second respondent be permanently barred from commencing or pursuing any claim against the first defendant or any related party in relation to the cargo under the bill of lading or otherwise, for the release of the cargo and/or misdelivery or conversion.
9. So far as I am aware, there is no basis on which I could make such an order. The consequence of my making the order that I have made is one which is determined by the general law. In *ST Shipping and Transport Pte Limited & Ors v Space Shipping Limited & Anor* [2018] EWHC 156 (Comm), Mr Justice Teare considered the consequences of making an order in the terms that I am otherwise minded to make. He pointed out at paragraph 36 of his judgment as follows:

“I do not consider that, if the court orders that the sum in the stakeholder account is paid out to the disponent owners, there is a risk that the charterers may be ordered at a later date to pay the head owners the same sum. The head owners are party to the stakeholder claim. They are bound by reason of the doctrine of *res judicata* by any order the court makes. In the event that the court ordered that the sum in the stakeholder account be paid out to the disponent owners in satisfaction of the debt owed by the charterers the head owners would be estopped from contending that they, rather than the disponent owners, were entitled to the debt owed by the charterers. In any stakeholder claim that estoppel is the reason why the stakeholder is protected by the court's order. The losing party is no longer free to advance a claim against the stakeholder. It would be unconscionable for the losing party to do so”.

10. In those circumstances, as a matter of general law the consequence of my making the order which is sought is that the second respondent will be estopped as a matter of English law from further contending any entitlement to the cargo or maintaining any claim by reason of its delivery to the shipper. In those circumstances I see no utility in my including within paragraph 8 the declaration sought, which is concerned with an issue that is to be determined by the general law. I consider it would be undesirable to include a declaration to this effect because it may have unintended consequences which extend beyond the general law and is unnecessary precisely because the issue is one that is determined by application of the well-established legal principles to which I have referred earlier. The occurrence of unintended consequences is easily avoided by the simple expedient of not making the order sought in paragraph 8 of the order and leaving matters to be resolved in accordance with the general law, which is my preference.
11. In those circumstances I am prepared to make an order in broadly the terms sought, subject to a discussion as to what I should insert in paragraph 1 of the draft order but excluding paragraph 8.

For proceedings, see separate transcript

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(This Judgment has been approved by the Judge.)