

Centre for Maritime Law Case Commentary 4/2026*MV Tai Harmony v Sure Success Steamship SA*¹

Ship arrest – Security arrest – Topping up application – Alternative security

1 Facts

On 19 May 2022, Sure Success SA (the shipowner) and Perfect Bulk Ltd (the charterer) entered into a charterparty of the *Sea Success* (the ship concerned) for a period of 11 to 14 months.² The charterer undertook to pay for bunkers during the hire period.³

The charterer took delivery of the ship on 29 June 2022. The ship was redelivered on 9 May 2023, earlier than the agreed date. The shipowner claimed unpaid hire.⁴ A further claim arose from the unpaid bunkers for the period from 31 December 2022 to 15 January 2023.⁵

The shipowner initiated arbitration proceedings in London for unpaid hire.⁶ The charterer denied liability.⁷ The shipowner amended its claim to incorporate the bunkers claim.⁸

On 18 August 2023, prior to the incorporation of the bunkers claim in the London arbitration, the shipowner arrested the *Tai Harmony* to secure its claim in the London arbitration pursuant to s 5(3) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the AJRA 1983).⁹ The relevant section gives the court the power to arrest the ship to secure the claim in another

¹ [2026] ZASCA 60. Judgment by Mbatha JA of the Supreme Court of Appeal was handed down on 28 April 2026. Meyer and Smith JJA, and Vally and Norman AJJA concurred.

² Ibid [5].

³ Ibid.

⁴ Ibid [6].

⁵ Ibid.

⁶ Ibid.

⁷ Ibid [7].

⁸ Ibid [8].

⁹ Ibid [9].

forum, but without commencing in rem proceedings against this ship (security arrest). The shipowner expressly reserved the right to seek increased security for the bunker claim, as the bunker claim had not yet crystallised.¹⁰ The shipowner sought to settle the bunker payments with the provider, thereafter claiming that sum in the proceedings against the charterer.

The *Tai Harmony*, owned by Tai Harmony Ltd, was arrested as an associated ship.¹¹ According to the Sea Searcher Report, to which Makaula ADJP of the Eastern Cape Division of the High Court referred when granting the order to arrest the ship, the associated ship was beneficially owned by Perfect Shipping Co Ltd, a Hong Kong-registered company.¹² The shipowner contended that both the registered and beneficial owners were ultimately owned and controlled by Zheng Jiangwei, who in turn owned and controlled the charterer.¹³

The shipowner claimed that the charterer was a special-purpose vehicle for chartering ships and had no property.¹⁴ Accordingly, the shipowner had a reasonable need for security, and the ship could be arrested under s 5(3) of the AJRA 1983. Makaula ADJP found that the shipowner met all the jurisdictional requirements.¹⁵

Tai Harmony Ltd provided alternative security in the form of a Gard Letter of Undertaking, not exceeding US\$876,000.⁸⁴ The associated ship was released.¹⁶ The shipowner submitted an urgent application to increase security upon settlement of the bunker claim.¹⁷ The urgency was justified by the imminent hearing of the application to set aside the arrest of the associated ship.¹⁸ Rossi AJ dismissed the associated ship jurisdictional challenge, the argument on failure to establish a prima facie case, and the argument on absence of

¹⁰ Ibid.

¹¹ As to the emergence and development of associated ship arrest, see South African Law Commission, *Report on the Review of the Law of Admiralty* (Project 32, 15 September 1982) [7.3]; D Shaw, *Admiralty Jurisdiction and Practice in South Africa* (Juta 1987); M Wallis, *The Associated Ship & South African Admiralty Jurisdiction* (Siber Ink 2012).

¹² Ibid [11].

¹³ Ibid.

¹⁴ Ibid [12].

¹⁵ Ibid [13].

¹⁶ Ibid [10].

¹⁷ Ibid [14].

¹⁸ Ibid [15].

association, and granted the order in favour of the shipowner to top up security by US\$435,508.50 to cover the unpaid bunker claim.¹⁹

2 The First Appeal

The *Tai Harmony*, represented by Advocate D Cooke, submitted an appeal, arguing that there was no basis for the arrest of the ship.²⁰ The appellant argued that the court should not follow the majority judgment in *The Heavy Metal*, but rather adopt the minority view.²¹ As the initial arrest was not justified, the top-up application could not be granted either.²² The appellant also argued that the shipowner failed to establish a prima facie bunker claim²³ and failed to disclose the defences that arose in the London arbitration.²⁴ Furthermore, the applicant claimed that the High Court misdirected itself in exercising its discretion, as Tai Harmony Ltd was irregularly dragged into the jurisdiction by an ex parte decision and had already provided substantial security. The additional topping up aggravated the prejudice.²⁵

3 Decision on the First Appeal

The person or entity seeking additional security bears the onus of proof.²⁶ It must prove that the existing security is insufficient and that there is a genuine and reasonable need for additional security.²⁷ It must make full and frank disclosure of all material facts.²⁸ If a prima facie case is made, the onus may shift to the respondent to prove why the security should not be granted.²⁹

With reference to *The NYK Isabel*,³⁰ the court found that under s 3(7)(c) of the AJRA 1983, the time charterer of the ship concerned at the material times was deemed the shipowner for the

¹⁹ Ibid [16].

²⁰ Ibid [20.a].

²¹ *Belfry Marine Ltd v Palm Base Maritime SDN BHD (The Heavy Metal)* [1999] ZASCA 44, 1999 (3) SA 1083 (SCA).

²² *The Tai Harmony* (n 1) [20.b].

²³ Ibid [20.c].

²⁴ Ibid [20.d].

²⁵ Ibid [20.e].

²⁶ Ibid [24].

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ *Northern Endeavour Shipping Pte Ltd v Owners of NYK Isabel* [2016] ZASCA 89, 2017 (1) SA 25 (SCA).

purpose of establishing the association.³¹ The court said this interpretation aligned with the intended purpose of the associated ship provisions, as it prevented the claim from being frustrated.³²

The party establishing a prima facie case must demonstrate that it has a maritime claim against a party against whom security is sought and that this claim has reasonable chances of success.³³ The court found that it was an undisputed fact that the bunker claim against the charterer was incorporated in the London arbitration.³⁴ This was sufficient to establish a prima facie case. The nature of the defences raised in the London proceedings was irrelevant. Separately, it was noted that the bunker claim against the shipowner was secured by a maritime lien, as US law applied to the existence of maritime liens in the relevant case. Accordingly, the shipowner had no reasonable alternative but to settle the claim and, after that, to demand compensation from the charterer.³⁵ Accordingly, the High Court had the grounds and jurisdiction to arrest the associated ship and, therefore, to grant the topping-up application.

Advocate Cooke further argued that the owner of the associated ship, Tai Harmony Ltd, did not submit to the jurisdiction of the High Court, and therefore, the court could not oblige it to provide additional security. He based this interpretation on *The Zlatni Piasatzi*.³⁶ With reference to *The Alina II* and *The NYK Isabel*,³⁷ the court found that submission to the jurisdiction is an issue of fact that can arise from conduct in litigation commenced before the court that lacks jurisdiction. The court concluded that the provision of security, even when the association is disputed, brings the matter within the relevant court's jurisdiction for security proceedings.³⁸

³¹ *The Tai Harmony* (n 1) [25].

³² Ibid.

³³ Ibid [26].

³⁴ Ibid [28].

³⁵ Ibid [29].

³⁶ *Frozen Foods International Ltd v Kudu Holdings (Pty) Ltd (The Zlatni Piasatzi)* 1997 (2) SA 569 (C) 575.

³⁷ *Transnet Ltd v The Owner of the Alina II* [2011] ZASCA 129, 2011 (6) SA 206 (SCA) [11-13]; *The NYK Isabel* (n 30) [34].

³⁸ *The Tai Harmony* (n 1) [39, 41].

The security proceedings were found to be distinguishable from ordinary in personam proceedings. The purpose of security proceedings is to obtain security against the risk of losing the property. Accordingly, the court, having regard to the security application, should not attach or otherwise establish its jurisdiction after the security arrest is granted and alternative security is provided.³⁹

As for the issue that, after topping up, the security can exceed the ship's value, the court found that the security arrest was in personam. The court commented that *The Monica S* and *The Dictator* validated the position that the person who appeared before the court became fully liable for a claim in personam, but it was incompatible with South African admiralty law and the Constitution. This was discussed with reference to *The Alina II* and Wallis's extrajudicial writing.⁴⁰ However, given the specific nature of the security proceedings, the court distinguished the present case from *The Alina II* and held that the security could exceed the value of the res, as the claim secured by arrest was in personam.⁴¹

The issue of the association and the arrest's validity in general was not considered in the topping-up proceedings. The court found that this issue must be considered within the proceedings on the application to set the arrest aside.⁴²

On that basis, the first appeal was dismissed.

4 The Second Appeal and the Decision on the Second Appeal

The second appeal concerned the appealability of a referral to oral evidence and leave to appeal against the judgment directing the persons to testify.⁴³ With reference to principles of appealability,⁴⁴ the court struck off the roll the applications to adduce further evidence and

³⁹ Ibid [45].

⁴⁰ Wallis (n 11) 367. In the decision, Mbatha JA refers to this book as *The Associated Ship* (2010). This may be because the book was first published as a doctoral thesis in 2010. The page number cited in the decision corresponds to the 2012 published version.

⁴¹ *The Tai Harmony* (n 1) [49]. Cf D Cooke, *Hofmeyr's Admiralty Law* (Juta 2025) 209-210; *The Zlatni Piasatzi* (n 36) 575.

⁴² Ibid [40].

⁴³ Ibid [51, 54].

⁴⁴ With reference to *Zweni v Minister of Law and Order* [1992] ZASCA 197, 1993 (1) SA 523 (A) [12]; *FirstRand Bank Ltd v McLachlan* [2020] ZASCA 31, 2020 (6) SA 46 (SCA) [21-22]; *TWK Agriculture Holdings (Pty) Ltd v Hoogveld Boerderybeleggings (Pty) Ltd* [2023] ZASCA 63, 2023 (5) SA 163 (SCA) [19]; *United Democratic Movement v Lebashe Investment Group (Pty) Ltd* [2022] ZACC 34, 2023 (1) SA 353 (CC) [33]; *Cyril v The*

for leave to appeal, as these should be decided in the proceedings on the merits and, therefore, the court lacked jurisdiction to order on them.⁴⁵

5 Comment

The decision concerns a security arrest in favour of foreign arbitration proceedings and an increase in the security (s 5(2)(d), 5(3) of the AJRA 1983). The court confirmed that a security arrest is a separate mechanism with different requirements from those for an arrest in rem.⁴⁶ These two tools became more distinctive with the 1992 amendment to the AJRA 1983.⁴⁷ Before this period, security arrest was permitted only when the action in rem could be brought in South Africa. After 1992, the applicant can arrest the ship to secure a claim without establishing the court's in rem jurisdiction.⁴⁸

Security arrest is a unique mechanism among common law jurisdictions.⁴⁹ In England, the arrest of ships in rem is always linked to establishing in rem jurisdiction.⁵⁰ For that reason, it was for long impossible to arrest the ship to secure the claim in arbitration.⁵¹ Now, due to statutory intervention, it is possible to obtain in rem security by commencing proceedings in rem, with the following stay in favour of arbitration or a foreign court determination.⁵² In Singapore, it is still not possible to arrest the ship to secure proceedings in a foreign court.⁵³ For arbitration, a mechanism similar to the English one is permitted under a statutory provision.⁵⁴

Commissioner for the South African Revenue Service [2024] ZASCA 32 [8]; *Nedbank Ltd v Survé* [2023] ZASCA 178 [18]; *Spilhaus Property Holdings (Pty) Limited v Mobile Telephone Networks* [2019] ZACC 16, 2019 (4) SA 406 [44].

⁴⁵ *The Tai Harmony* (n 1) [73].

⁴⁶ *Mediterranean Shipping Co SA v Cape Town Iron and Steel Works (The MSC Gina)* [2011] ZAKZDHC 8, 2011 (2) SA 547 (KZD) [20].

⁴⁷ Admiralty Regulation Jurisdiction Amendment Act 87 of 1992, s 4.

⁴⁸ *Hofmeyr's Admiralty Law* (n 41) 209.

⁴⁹ *Ibid* 208.

⁵⁰ A Tettenborn and F Rose, *Admiralty Claims* (2nd edn, Sweet & Maxwell 2025) [4-131].

⁵¹ *The Andria (now renamed Vasso)* [1984] QB 477, 490, [1984] 2 WLR 570, [1984] 1 Lloyd's Rep 235 (CA); *The Golden Trader* [1975] QB 348, 359, [1974] 3 WLR 16, [1974] 1 Lloyd's Rep 378.

⁵² Civil Jurisdiction and Judgments Act 1982, c 27, s 26; *Greenmar Navigation Ltd v The Bazias 3 (with the Bazias 4)* [1993] QB 673, 682; [1993] 2 WLR 854; [1993] 1 Lloyd's Rep 101 (CA).

⁵³ *The ICL Mahendra Raja* [1998] SGHC 419, [1998] 2 SLR(R) 922 [22]; *DSA Consultancy (FZC) v The Eurohope* [2017] SGHC 218, [2017] 5 SLR 934, [2017] 2 Lloyd's Rep 415 [28].

⁵⁴ International Arbitration Act 1994 (2020 rev edn), s 7.

In the present case, the court emphasised the onus of proof that the applicant bears in respect of a security arrest. In comparison with an in rem arrest, obtaining a security arrest requires the claimant to prove a genuine need for security.⁵⁵ This makes the security arrest closer to a ‘freezing injunction’ in English law.⁵⁶ However, the burden of proof for a freezing injunction in England is much higher.⁵⁷

The need for security is an issue of fact that the applicant must prove on a balance of probabilities.⁵⁸ In the case, the court found that the genuine need for security stemmed from the charterer’s status as a special-purpose vehicle with no property. Therefore, without the security, the arbitration award could not be enforced.⁵⁹ This interpretation corresponds to the purpose of the reform of admiralty law in South Africa and the introduction of the associated ships provisions. The idea is that the shipowner cannot hide behind the complex corporate structure of one-ship companies or other special-purpose vehicles.⁶⁰ The purpose of the associated ship arrest was emphasised in the majority judgment in *The Heavy Metal*.⁶¹

Interestingly, Advocate Cooke for the associated ship claimed that the court establishing the association should apply the minority judgment in *The Heavy Metal*.⁶² The main difference between the majority and minority judgments was that, under the majority judgment, de jure control by a nominee is sufficient to establish an association, and the applicant’s burden of proof is more relaxed.⁶³ The minority judgment held that control should be actual and that nominee control is insufficient.⁶⁴ Unfortunately, the court declined to consider the issue of association in topping-up application proceedings and did not comment on it. The fact that Advocate Cooke made the argument on the desirability of using the minority judgment in *The*

⁵⁵ *Hofmeyr’s Admiralty Law* (n 41) 217.

⁵⁶ *Ibid* 208, 215.

⁵⁷ *Tettenborn and Rose* (n 50) [5-035]. For example, see *Western Bulk Shipowning III A/S v Carbofer Maritime Trading ApS (The Western Moscow)* [2012] EWHC 1224 (Comm), [2012] 2 Lloyd’s Rep 163 [22].

⁵⁸ *Katagum Wholesale Commodities Co Ltd v The MV Paz* 1984 (3) SA 261 (N) 269-270; *Bocimar NV Kotor Overseas Shipping Ltd* [1994] ZASCA 5, 1994 (2) SA 563 (A) 583; *Louis Dreyfus Armateurs SNC v Tor Shipping Limited (The La Pampa)* [2006] ZAKZHC 3, 2006 (3) SA 441 (D) [29].

⁵⁹ *The Tai Harmony* (n 1) [34].

⁶⁰ South African Law Commission, *Report on the Review of the Law of Admiralty* (Project 32, 15 September 1982) [7.3].

⁶¹ *The Heavy Metal* (n 21) [10] (Smalberger JA).

⁶² The minority judgments were given by Marais JA and Farlam AJA.

⁶³ *The Heavy Metal* (n 21) [10] (Smalberger JA).

⁶⁴ *Ibid* [76] (Farlam AJA).

Heavy Metal shows that the majority judgment, even though it is still considered the authority, remains debatable. The doubts over *The Heavy Metal* judgments also appear in the new edition of *Hofmeyr's Admiralty Law*, written by Advocate Cooke and published in 2025.⁶⁵

The court found that the association should be considered separately in the application to set the arrest aside. The associated ship's owner argued that if the security arrest was unjustified from the outset, the topping-up application could not be granted. This is also related to the fact that the topping-up application was treated as urgent in light of the prospective proceedings to set aside the arrest. This decision seems to address the situation adequately. Otherwise, there may be a problem of conflicting judgments. If the court decides in the topping-up application that the ship could not be arrested, the court in the separate application to set the arrest aside is bound by this judgment and cannot rule otherwise. The owner of the property was provided with a separate remedy and could not mix it with the proceedings on the opposite party's topping-up application.

The court also distinguished a security arrest from an ordinary arrest in rem. It confirmed that a security arrest confers in personam jurisdiction on the court over security and that no additional property attachment is required.⁶⁶ This means that the security arrest procedure is not purely in rem.⁶⁷ In this regard, the court found that it had jurisdiction to require the owner to provide additional security, regardless of the property's value. This position is contrary to the earlier authorities.⁶⁸ However, it seems to align with the purpose of a security arrest, which is to prevent the claim from being frustrated. The parties' interests, in turn, are balanced by the higher onus of proof, as the applicant must prove a genuine need for security.

⁶⁵ *Hofmeyr's Admiralty Law* (n 41) 169-172. *The Heavy Metal* criticism can be found unchanged in the previous edition: see G Hofmeyr, *Admiralty Jurisdiction: Law and Practice in South Africa* (2nd edn, Juta 2012) 142-144. See also J Hare, *Shipping Law & Admiralty Jurisdiction in South Africa* (2nd edn, Juta 2009) 110-114; Wallis (n 11) 206-222; G Bradfield, 'Guilt by Association in South African Admiralty Law' [2005] LMCLQ 234, 244-248; G Bradfield, 'Arrest of Associated Ships' in P Myburgh (ed), *The Arrest Conventions: International Enforcement of Maritime Claims* (Hart Publishing 2019) ch 2, 45-48. See another relatively recent decision of the Supreme Court of Appeal in *MV New Endeavor v Indian Oil Corp Ltd* [2024] ZASCA 67, 2024 (6) SA 64 (SCA) [13-18].

⁶⁶ *Imperial Marine Co v MV Pasquale Della Gatta* [2011] ZASCA 131, 2012 (1) SA 58 (SCA) [23].

⁶⁷ *Bouygues Offshore Another v Owner of the MT Tigr* 1995 (4) SA 49 (C) 68; *SA Boatyards CC (t/a Hout Bay Boatyard) v The Lady Rose* 1991 (3) SA 711 (C) 715. Cf *The Alina II* (n 37) [35].

⁶⁸ *The Zlatni Piasatzi* (n 36) 575; *Hofmeyr's Admiralty Law* (n 41) 209.

The second appeal concerned the court's order to call witnesses to testify. The court found that this issue was not final and therefore not appealable. The witness testimony and its relevance to the dispute should be considered in the proceedings on the merits.

[BK]