

**THE OWNER OF THE CARGO LATELY LADEN ON BOARD  
THE MV *IOANNIS NK***

Applicant

v

**THE MASTER AND CREW OF THE MV *IOANNIS NK*:**

**RUBEN GIACOSA**

1<sup>st</sup> Respondent

**JORGE SEIXAS**

2<sup>nd</sup> Respondent

**JOSE L SANGUINETTI**

3<sup>rd</sup> Respondent

**JULIO ROMAY**

4<sup>th</sup> Respondent

**NICOLAS SALDIVIA**

5<sup>th</sup> Respondent

**LUIS CASTILLO**

6<sup>th</sup> Respondent

**EDGARD MARZOL**

7<sup>th</sup> Respondent

**LUIS CIFUENTES**

8<sup>th</sup> Respondent

**ELBIO MIR**

9<sup>th</sup> Respondent

**DONATO SUAREZ**

10<sup>th</sup> Respondent

**WALTER NOCETI**

11<sup>th</sup> Respondent

**SANTIAGO SANTIS**

12<sup>th</sup> Respondent

**JAVIER CASTRO**

13<sup>th</sup> Respondent

**RUBEN PETRONIO**

14<sup>th</sup> Respondent

**LUIS BERON**

15<sup>th</sup> Respondent

**MILTON DA ROCHA**

16<sup>th</sup> Respondent

**JORGE PRESTO**

17<sup>th</sup> Respondent

**CIRO MORALES**

18<sup>th</sup> Respondent

**EDUARDO ALCAIRE**

19<sup>th</sup> Respondent

**JORGE LARROSA**

20<sup>th</sup> Respondent

**THE OWNER OF THE MV *IOANNIS NK***

21<sup>st</sup> Respondent

**RENNIES SHIP AGENCY (PTY) LTD**

22<sup>nd</sup> Respondent

**CLEAVER J**

- [1] On 29 July 2009 this court granted a *rule nisi* which had been applied for on an *ex parte* basis in terms whereof the respondents were called upon to show cause on 3 August 2009 why an order should not be made in terms of section 5(5) of the Admiralty Jurisdiction Regulation, Act 105/1983 as amended (“the Admiralty Act”), that the applicant be authorised to take the evidence of the first to twentieth respondents, being the master and crew of the MV *Ioannis NK* (“the vessel”) with regard to the circumstances surrounding the sinking of the vessel on 23 July 2009 and all matters incidental thereto.
- [2] The owner of the vessel is cited as the 21<sup>st</sup> respondent. The 22<sup>nd</sup> respondent was appointed by the owner to attend to the repatriation of the Master and Crew.
- [3] The application stems from the sudden sinking of the vessel, some 98 nautical miles off Cape Columbine. The applicant is the owner of the cargo on the vessel, being 22 500 metric tonnes of raw cane sugar valued at US\$8 572 500.00 which was being carried to a port in India pursuant to a charter party concluded between the applicant and the owner of the vessel. The vessel’s flag state is Panama and the crew on board were employed by Seabound Maritime Inc, of Greece, who were the managers in terms of the charter party. The first 20 respondents are the crew of the vessel but the provisional order was served only on the master, the chief mate, chief engineer and second engineer, the remainder of the crew having been repatriated to their countries of origin before service could be effected on them.

[4] On 4 August 2009 confirmation of the rule was sought but opposed by the owner of the vessel and the four crew members on whom the provisional order had been served. After hearing argument, I confirmed the rule on 6 August and issued an order detailing the steps which were to be taken for the hearing of the evidence. The matter had come before me as the duty judge hearing urgent matters and because of the heavy roll I had to deal with, I was not able to furnish my reasons for confirming the rule by 6 August, but indicated that these would follow. This judgment contains my reasons and incorporates the order which was issued on 6 August.

[5] The authority for the grant of the provisional order is to be found in section 5(5) of the Admiralty Act which provides

- “(a) A court may in the exercise of its admiralty jurisdiction at any time on the application of any interested person or on its own motion -*
- (i) if it appears to the court to be necessary or desirable for the purpose of determining any maritime claim, or any defence to any such claim, which has been or may be brought before a court, arbitrator or referee in the Republic, make an order for the examination, testing or inspection by any person of any ship cargo, documents or any other thing and for the taking of the evidence of any person;*
  - (ii) in making an order in terms of subparagraph (i), make an order that any person who applied for such first-mentioned order shall be liable and give security for any costs or expenses, including those arising from any delay, occasioned by the application and carrying into effect of any such order;*
  - (iii) grant leave to any person to apply for an order that any such costs or expenses be considered as part of the cost of the proceedings;*
  - (iv) in exceptional circumstances, make such an order as is contemplated in subparagraph (i) with regard to a maritime claim which has been or may be brought before any court, arbitrator, referee or tribunal elsewhere than in the Republic, in which case subparagraphs (ii) and (iii) shall then mutatis mutandis apply.*
- (b) The provisions of this Act shall not affect any privilege relating to any document in the possession of, or any communication to or the giving of any evidence by, any person.”*

- [6] The applicant has been advised that the vessel's side plating had parted and its deponent testifies that

*“The most probable cause for this was wastage or corrosion of the side plating and underlying structure. This would constitute a breach on the part of the owner of its obligation to provide a seaworthy ship. For this reason the applicant intends to commence arbitration proceedings in London against the owner for damages arising from the total loss of its cargo.”*

- [7] The applicant's case is that the only direct evidence available as to the circumstances surrounding the sinking of the vessel is that which will be given by the master and crew. In the founding affidavit the deponent records that

*“The applicant has a real and genuine concern that, should the master and crew be permitted to depart from South Africa, return to their homes and take up other employment, they will not be available to give evidence at the arbitration which will probably take place some time in the future. It is for this reason that I submit that it is in the interests of all of the parties that the evidence of the master and crew be taken before a commissioner and thereby preserved. ”*

- [8] The attitude of the owner was that as the vessel flew a foreign flag and had sunk 98 nautical miles off the South African coast, the South African Maritime Safety Authority (“SAMSA”) did not have jurisdiction to commence a preliminary enquiry into the sinking. An official of SAMSA did however interview the master, chief officer and chief engineer, but the owner's representative refused to allow the applicant's representative to be present at the interview and the owner has also refused to allow the crew members to be interviewed.

- [9] It will be seen from the provisions of section 5(5) (a) (iv) that exceptional circumstances must be present before a court may in exercise of its discretion make an order for the taking of evidence of any person with regard to a maritime claim which

may be brought before any court arbitrator, referee or tribunal elsewhere than in the Republic. The crisp issue in this matter is accordingly whether the applicant has established exceptional circumstances as envisaged in the section and if so, whether I should exercise my discretion in favour of the applicant.

[10] The concept of “*exceptional circumstances*” in the sense used in section 5 of the Admiralty Act has received some judicial consideration. In “*The Askania Nova*”<sup>1</sup> and in “*The C Tashin*”<sup>2</sup> the court found exceptional circumstances to exist, in circumstances where a ship had sunk in unexplained circumstances. In “*The Askania Nova*” in which the preservation of documents was in issue, the court found that exceptional circumstances existed because there was *prima facie* proof that documents could be lost as a result of the ship being lost at sea and that their preservation was necessary for future litigation. In his judgment, **Jones J** held as follows:

*“Suffice it to say that I consider that the whole factual complex in this matter, the whole series of events which has led to the present application, is sufficient to warrant a conclusion that exceptional circumstances are indeed present. Here we have a vessel carrying a cargo of some R50m which takes in water in its engine-rooms and also in the holds and a salvage operation is required. This is indeed an exceptional and unusual event which confronted the parties, certainly the owners and insurers of the cargo, and I am satisfied that the whole factual complex indeed does constitute exceptional circumstances.”*<sup>3</sup>

---

<sup>1</sup> *The MV “Askania Nova”: Insurers and Owners of the Cargo Laden on Board the MV “Askania Nova” v The MV “Askania Nova”* 1997 SCOSA E 6 (SE)

<sup>2</sup> *“The C Tashin”*: Koch Oil Marketing SA v Owner of the “C Tashin” 2002 SCOSA E 129 (E)

<sup>3</sup> *“The Askania Nova”* (*supra*) at E7 H4 – E8 A4

[11] In this division there is the judgment of “*The Urgup*”<sup>4</sup> in which **Thring J** described the purpose of section 5(5) as being in follows:

*“It seems to me that the real purpose of this subsection is to provide a litigant, or a prospective litigant, with relief which is more akin to the well-known so-called Anton Piller order, or to the relief provided for in Uniform Rule 36(6) relating to the inspection or examination of property, the condition of which may be relevant to a matter at issue.*

*The object of an Anton Piller order is not to sanction a search for evidence which may or may not exist and which may or may not go to found a cause of action, but to preserve specific evidence which is known to exist, which prima facie constitutes vital substantiation of a known cause of action, and whose concealment, loss or destruction is feared by the applicant for the order.”*<sup>5</sup>

[12] Unfortunately the reference by **Thring J** to an Anton Piller order seems to me to have been misunderstood. Counsel for the respondents submitted that since the judgment is a judgment of this court, I am bound by the approach adopted by **Thring J** and in particular by his reference to an Anton Piller order. It is not clear to me in which manner I should consider myself to be bound and to what extent. In “*The C Tashin*” the judge recorded that it would have been unwise for him to have approached the matter on the basis that the applicants had to show firstly that the normal Anton Piller requirements had been met. Furthermore, Hofmeyr<sup>6</sup> in his work speaks about **Thring J** equating applications under the section with applications for an Anton Piller order in “*The Urgup*”. I do not read **Thring J** to have suggested anything of the sort. All that he said was that in his view the purpose of the sub-section was to provide a litigant or a prospective litigant with relief which is more akin to an Anton Piller order. He was concerned with an application, said to have been brought in terms of section 5 of the Admiralty Act for discovery and for documents to be made available. It was for that

<sup>4</sup> *The MV “Urgup”: The Owners of the MV “Urgup” v Western Bulk Carriers (Australia) (Pty) Ltd* 1999 (3) SA 500 (C)

<sup>5</sup> “*The Urgup*” (*supra*) at 508 I

<sup>6</sup> **Admiralty Jurisdiction, Law and Practice in South Africa** (2006), p131

reason that he referred to the object of an Anton Piller order which he considered to be to preserve specific evidence whose concealment, loss or destruction is feared by an applicant. So also with reference to Uniform Rule 36(6) he recorded that the inspection of property or examination in terms of that rule was designed, at least in part, to secure a result similar to that envisaged by an Anton Piller order viz the preservation of existing evidence which may be relevant. If it is suggested that **Thring J** was of the view that the requirements for the grant of an Anton Piller order should be met or that an application under section 5(5) (a) (iv) is to be equated with an Anton Piller application, I am constrained to record that I find no warrant for such a suggestion in the judgment in question.

- [13] Returning to the concept of “*exceptional circumstances*”, reference may be had to the judgment in this division of “*The Ais Mamas*”<sup>7</sup>. After examining various authorities in which the concept of exceptional circumstances were dealt with, **Thring J** concluded that “*to be exceptional within the meaning of the subparagraph, the circumstances must be ‘markedly unusual or specially different’; and that, in applying that test, the circumstances must be carefully examined.*” In “*The C Tashin*”, the judge recorded that it would have been unwise for him to have approached the matter on the basis that the applicants had to show firstly that the normal Anton Piller requirements had been met and that in addition they needed to show further exceptional circumstances before section 5 (5) (a) (iv) of the act could be invoked. He concluded that the need to preserve evidence that may be lost or destroyed may constitute the very “*exceptional*

---

<sup>7</sup> *Seatrans Maritime v Owners, MV Ais Mamas* 2002 (6) SA 150 (C)

*circumstances*” required by the section. To round off the views on this aspect, reference may be made to the view of Hofmeyr<sup>8</sup>, namely

*“ It is submitted that in regard to s 5(5)(a)(i) that regardless of whether or not Thring J in The Urgup was correct in equating applications under this section with applications for an Anton Piller order, unless the applicant can establish a prima facie cause of action or defence on the merits and can show that unless an order is made there is a real possibility that specific evidence may be lost, the applicant will not easily be able to persuade a court that its intervention in terms of the section is ‘necessary or desirable for the purpose of determining any maritime claim’.*

*In regard to the apparently divergent approaches adopted in the Ais Mamas and The C. Tashin in regard to the meaning of ‘exceptional circumstances’ and Froneman J’s approach that the need to preserve evidence may constitute the exceptional circumstances required by s 5(5)(a)(iv), it is submitted that an order under s 5(5)(a)(i) will in any event not be made unless there is a need to preserve evidence. In stipulating in s 5(5)(a)(iv) that exceptional circumstances must exist before an order can be made where a maritime claim has been or may be brought elsewhere than in the Republic, the legislature must have intended that circumstances over and above the need to preserve evidence should exist. The real difficulty lies in determining what the nature of the circumstances must be in order to qualify as exceptional for the purposes of the section.”*

I am in agreement with the view of the author that an applicant will have to establish that there is a real possibility that specific evidence may be lost and that the legislature must have intended that circumstances over and above the need to preserve the evidence should exist.

[14] Clearly no hard and fast rule can be laid down as to what constitutes exceptional circumstances. Each case must be considered on its merits. In the present case, we are concerned with the taking on commission of evidence which the applicant contends may be lost in the sense that it may not be available if the order is not granted. I am in respectful agreement with the view expressed by **Jones J** in *“The*

---

<sup>8</sup> **Admiralty Jurisdiction, Law and Practice in South Africa** (2006), p131

*Askania Nova*” that in deciding this issue regard must be had to the whole series of events, or as counsel for the applicant put it, ‘the factual matrix’, which led to this application.

[15] Counsel for the applicant submitted that viewed as a whole, the following matrix of facts constituted exceptional circumstances justifying the grant and confirmation of the order.

15.1 The vessel, being a fully laden bulk carrier, sank rapidly without any apparent explanation for the sinking.

15.2 The sinking was so rapid that salvors could not come on board in time.

15.3 There is a paucity of evidence as to the cause of the sinking other than evidence from the crew.

15.4 Other sources of evidence which the respondent suggested would be available are in fact likely not to be available. I deal with this in a later paragraph.

15.5 The owner of the vessel has not given any indication that it will assist the applicant in any way and does not indicate whether it will do anything to secure the attendance of the crew at the arbitration. In this connection, it was pointed out that the members of the crew who left the country before the provisional order could be served on them did so at a time when the owner had indicated that it was considering the applicant’s request to interview the crew separately. Therefore it was submitted that the owner must have known that the crew were leaving and failed to convey this to the applicant.

15.6 The employer of the crew, Seabound Maritime Inc, a Greek company is silent as to whether it will procure the attendance of the crew at the arbitration.

- 15.7 There is little evidence other than the eyewitness accounts of the master and officers to assist the applicant and the arbitrator in due course in order to determine the cause of the sinking. More particularly
- 15.7.1 the vessel's classification society records are unlikely to be of any assistance in determining what the condition of the vessel was at the time that the charterparty between the applicant and the owner was concluded and during the voyage;
  - 15.7.2 the vessel was lost with all of the material documents including the log book;
  - 15.7.3 there is no certainty that the vessel's flag state, Panama, will carry out an investigation into the loss of the vessel and, if such an investigation is carried out, that the report will be made available to third parties such as the applicant;
  - 15.7.4 the master and officers all reside in Uruguay and are currently employed by Seabound Maritime Inc, the vessel's technical and commercial manager. The manager will not be a party to the arbitration proceedings and there is no means of knowing whether, when the arbitration takes place, the owner will be able to procure the co-operation of Seabound Maritime and the master and officers for the purpose of giving evidence at the arbitration;
  - 15.8.5 the steps taken by the owner to remove the master and officers from the jurisdiction of this honourable court and to place them beyond the reach of the applicant gives rise to a real apprehension on the part of

the applicant that the owner will not procure the attendance of the master and officers at the arbitration.

[16] The respondent avers that other sources of evidence of the sinking are available to the applicant, namely

16.1 Voice recordings made by Cape Town Radio, a division of Telkom SA Limited (“Telkom”) which records and monitors all ship to shore communications off the South African coast.

The applicant’s answer is that its representatives have been in touch with Cape Town Radio and have asked for a full record of the communications. They have been advised however that Telkom will not release the communications unless an application is brought to this court obliging them to do so and that Telkom is likely to oppose such an application. The applicant avers further that even if Telkom does not oppose the application, experience has shown that the record of communications is often incomplete. Further and in any event, it is unlikely that the communications between the ship and the shore will throw any light on the condition of the vessel prior to the sinking.

16.2 The evidence in possession of the Maritime Rescue Co-Ordination Centre, Cape Town (“the Centre”), whose personnel were directly involved in the rescue of the crew.

The applicant has been in communication with the Centre and has obtained their report which provides no assistance in determining what the cause of the sinking was.

16.3 The vessel's flag state via the Panama Maritime Authority has indicated that they will be conducting an investigation into the loss of the vessel and that it is often the case that such flag state reports are released and made available to third parties.

The applicant's answer is that there is no guarantee that the Panama Maritime Authority will conduct an investigation and that even if it does, it has no knowledge as to the nature and ambit of the investigation. It also has no knowledge as to whether the authority will agree to release a report of an investigation done by it to a third party cargo owner.

[17] There is another aspect which the applicant has highlighted in reply and that is that the applicant has been advised that there are no steps that an English arbitrator can take in terms of the English Arbitration Act 1996 or in terms of the Rules of the London Maritime Arbitration Association to compel foreign witnesses to attend arbitration proceedings in England to give evidence. Evidence may be adduced by way of a statement signed by a person in terms of the English Civil Evidence Act of 1968, but the requirement of such a statement as evidence as the witness *"cannot be called because he is beyond seas"*. Accordingly, such a witness cannot be cross-examined.

[18] On behalf of the respondents it was submitted that the facts before the court did not constitute exceptional circumstances which justified confirmation of the rule. Particular emphasis was placed on the negative effect of the order which had deprived the crew members of their freedom of movement, something which is guaranteed in terms of the Constitution. This is certainly an important aspect, but it must be borne in

mind that while the freedom to leave the country had been briefly curtailed, the freedom of movement of the crew members in the city was not curtailed.

[19] The respondent's case is that the inability of the applicant to interview the crew members merely amounts to an inconvenience and the fact that it would be necessary for witness residing outside the English jurisdiction to be available at an arbitration must have been within the contemplation of the parties when contracting with one another. This may be so, but no indication is forthcoming from the owner, the employers of the crew or the crew members themselves that the witnesses will be available to give evidence in an arbitration. The four crew members who were detained are all Uruguayan citizens. They have not indicated any willingness to attend arbitration proceedings. Each has filed a brief affidavit in which the following is recorded:

- The name and address in Uruguay of the witness;
- That the witness is employed by Seabound Marine Inc whose principal place of business is in Greece;
- There is no reason to believe that the witness will not remain in the employ of Seabound Marine for the foreseeable future and the witness may be contacted via the office of Seabound Marine at +30 210 422 4765.
- The passport number, telephone number and electronic mail address of the witness.

[20] No reason has been furnished as to why the owner did not allow the crew members to be interviewed and why a representative of the applicant could not be present when

the crew members were interviewed by the official by SAMSA. On the face of it, it would seem that taking the evidence from the witnesses concerned would have been in the interests of all parties.

[21] I am not aware of any reported judgment in which leave has been granted for evidence to be taken on commission pursuant to the provisions of section 5(5)(a)(i) and (iv) of the Act, let alone one where such an order has been coupled with an order restraining the proposed witnesses from leaving the jurisdiction of the court before their evidence has been taken. In *"The C Tashin"*, application had been made for an order that certain respondents be prohibited from leaving the jurisdiction of the court pending finalisation of the issue as to whether they should be compelled to give evidence as to the circumstances in which the vessel was lost at sea. The first part of the order sought was granted, but the second was refused with the court expressing its concern as to the invasion of the crew members' rights to freedom and movement, dignity and privacy. In this regard the judge said

*"There is no indication on the papers when their evidence will be heard, who will hear the evidence, in which manner it will be heard and how long the process will take. In the absence of these particulars and more detailed allegations to justify the invasion of the crew members' rights for the convenience of litigation, I was and am of the view that the crew should not be restrained from going home to their families and friends as soon as possible to recover from what must have been a rather frightening experience at sea."*<sup>9</sup>

[22] The situation in the present case is quite different. The notice of motion makes provision for the following:

---

<sup>9</sup> *"The C Tashin"* (*supra*) at p132A-B

- The appointment of counsel as commissioner to take the evidence. The name of a counsel experienced in maritime matters is furnished and I was advised that he was in a position to accept the appointment immediately if required.
- For the applicant's attorneys, in consultation with the commissioner, to make proper arrangements for the taking of evidence, including the arrangement of a suitable venue, the time and date for the taking of the evidence "*which shall commence as soon as practically possible after the granting of this order so as to minimise the inconvenience, if any, to the respondents*".
- The appointment of a reputable transcription service.
- For the record of the evidence to be transmitted by the commissioner to the applicant.

[23] In my view, the applicant has made out a case that exceptional circumstances exist which justify the rule being confirmed. The exceptional circumstances comprise the whole series of events that led to the application, the conduct of the owner of the vessel and the crew members after the loss of the vessel, and that a case had been made out that it was likely that the crew members would not give evidence at the arbitration and that in the circumstances it was necessary to preserve the evidence which may be lost or not be available by having it taken on commission. The result of the rule being confirmed is that the freedom of movement of the crew members will continue to be curtailed. Technically speaking, there has been and will be an invasion of their right to dignity and privacy, but this invasion has been ameliorated to some degree by them being put up at a local hotel pending the taking of the evidence and they will be able to move about freely in Cape Town. The fact is of course that had

the owner agreed to the crew members being interviewed, there would have been no reason for them to be detained in Cape Town.

[24] As will be seen from the order which I made, I attempted to restrict the invasion of the crew members' rights to freedom of movement, dignity and privacy by ordering that the taking of their evidence be completed within the shortest possible time. The order also made provision for the costs of their subsistence and accommodation to be paid by the applicant.

[25] The following order was issued on 6 August:

1. In terms of section 5(5) of the Admiralty Jurisdiction Regulation Act 105 of 1983 as amended ("the Admiralty Act") the applicant be authorised to take the evidence of the 1<sup>st</sup> to 20<sup>th</sup> respondents, being the master and officers of the MV *Ioannis NK*, more particularly:
  - 1.1 Ruben Giacosa
  - 1.2 Jorge Seixas
  - 1.3 Julio Romay
  - 1.4 Nicolas Saldiviawith regard to the circumstances surrounding the sinking of the vessel on 23 July 2009 and all matters related or incidental thereto.
2. Adv Lance Burger be appointed as commissioner to take the evidence concerned.

3. The applicant shall pay the fee of the commission, which shall be R15 000,00 per day or R1 500,00 per hour, which shall form part of the costs of the commission.
4. The commission shall sit and the evidence will be heard in the Blue Room, Huguenot Chambers, 40 Queen Victoria Street, Cape Town.
5. The commission shall sit on 11, 12 and 13 August 2009, during which period the taking of the evidence of the first, second, fourth and fifth respondents shall be completed.
6. The commission shall sit from 09h00 to 11h00, 11h15 to 12h45 and 14h15 to 16h30 on each day save that, should it be necessary to do so, the commissioner shall have the power to extend or alter these times so as to ensure that the taking of the evidence is completed on 13 August 2009.
7. The applicant shall appoint Veritas International Subscription Services to record and to prepare a transcript of the evidence which transcript shall be delivered to the commissioner.
8. The applicant shall arrange for the attendance of a Spanish/English translator at the commission for the purpose of translating the evidence to be given at the commission.

9. The provisions of Uniform Rules 38(4), (5), (6) and (7) shall apply to the taking of the evidence concerned.
10. The record of the evidence shall be transmitted by the commissioner to the applicant's attorneys of record and to the attorneys of record for the first, second, fourth, fifth and twenty-first respondents with his certificate to the effect that it is the record of the evidence given before him.
11. Subject to paragraph 12 below, the applicant shall in the first place pay the costs of giving effect to paragraphs 3, 7, 8, 10 and 16 of this order.
12. The costs of taking the evidence on commission, which shall include the costs of giving effect to the terms of this order and the expenses referred to in paragraph 16 below, shall be costs in the cause in the arbitration to be commenced by the applicant against the twenty-first respondent arising from the total loss of the cargo on board the *MV Ioannis NK*. In the event of the arbitrator not having the power to make such an order, or refusing to make such an order, the parties are given leave to apply to this court, on notice to the other parties, for an order as to who should be liable for the costs of the commission.
13. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents are hereby interdicted and restrained from leaving the jurisdiction of this court until such time as they have given evidence before the commissioner and/or have been excused by him.

14. The 21<sup>st</sup> and 22<sup>nd</sup> respondents are hereby interdicted and restrained from taking any steps to facilitate the departure of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents from the jurisdiction of this court until such time as these respondents have given evidence before the commissioner and/or have been excused by him.
15. The twenty-first respondent, personally or through its agent, shall advise the applicant of the whereabouts of the first to twentieth respondents upon request by the applicant to do so.
16. The applicant shall pay to the twenty-first respondent the costs of the accommodation and subsistence for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents with effect from 29 July 2009 to the completion of the commission, which costs shall be limited to:
  - 16.1 R1 660,00 per day, being the cost of a standard single room for each of the respondents at the Commodore Hotel, V & A Waterfront, Cape Town;
  - 16.2 R400,00 per day for each of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents with effect from 29 July 2009 to the completion of the commission.
17. The payments referred to in paragraph 16 above are without prejudice to the right of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 21<sup>st</sup> respondents to seek an order in terms of

17. The payments referred to in paragraph 16 above are without prejudice to the right of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 21<sup>st</sup> respondents to seek an order in terms of section 5(5)(a)(ii) of the Admiralty Act that the applicant furnish security for any other costs and expenses occasioned by the application and the carrying into effect of this order.
  
18. The twenty-first respondent shall pay the costs occasioned by its opposition to the confirmation of the rule *nisi* granted on 29 July 2009.



---

R B CLEAVER