IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL LOCAL DIVISION,

DURBAN

(Exercising its Admiralty Jurisdiction)

CASE NOs: A11/2016

A56/2016

A64/2016

Name of ship: **MV "SMART"**

In the matter between:

THE NATIONAL PORTS AUTHORITY, A DIVISION OF TRANSNET (SOC) LTD	APPLICANT /DEFENDANT
And	
THE OWNERS AND UNDERWRITERS OF THE MV "SMART"	FIRST RESPONDENT PLAINTIFF IN A11
THE OWNERS, BEARERS OF RISK AND INSURERES OF THE PLAINTIFF'S CARGO FORMERLY IN THE MV "SMART"	SECOND RESPONDENT PLAINTIFF IN A56
MINMETALS LOGISTICS ZHEJIANG CO LTD	THIRD RESPONDENT PLAINTIFF IN A64

Date of Hearing	:	27 June 2017
Date of Judgment	:	18 July 2017

JUDGMENT

D. Pillay J:

Introduction

[1] On 19 August 2013 the MV *Smart* grounded as it departed from Richards Bay Harbour. It was a Capesize bulk carrier with a gross register tonnage of 77 240 metric tons, an overall length of 273 metres and fully laden with 147 650 metric tons of steam coal. The vessel was wrecked and its cargo lost. Arising from this incident the applicant, the National Ports Authority, A Division Of Transnet (Soc) Ltd (TNPA) applies for a stay of three actions in this Division:

a. The owners and the underwriters of the MV *Smart* (the owners), the first respondent's claim in delict against TNPA includes damages totalling in excess of USD107 million for the loss of the vessel, the wreck removal and the loss of use of the vessel. The owners also seek indemnification from TNPA.
b. The Owners, Bearers of Risk and Insurers of the Plaintiff's Cargo formerly in the MV *Smart* (the cargo interests) the second respondent, claim in delict damages against TNPA to recover USD14 284 399.25 as the market value of the cargo at the time.
c. Minmetals Logistics Zhejiang Co Ltd (the charterer) the third respondent has an action against TNPA in both contract and delict. It also seeks indemnification against liability to the owners from TNPA.

[2] Additionally, the respondents have three arbitrations underway in London arising from the incident. The owners' arbitration is for a declaration that it is not liable to the cargo interests on the basis that the incident fell within the exception to

the Hague-Visby Rules, that is, it was without fault on the part of the owners, that it was caused by the unsafe conditions of the port, the perils of the sea or an error in navigation. The owners' arbitration against the charterer is based on a contractual breach of warranty about the safety of the port. The damages claimed is substantially similar to those claimed in their action against TNPA. Likewise the cargo interests' arbitration lies against the owners for the market value of their lost cargo of approximately USD14 million, the amount they also claim from TNPA.

[3] TNPA seeks a stay of these actions in this Division pending the determination of the respondents' arbitrations in London. The charterer has a counter-application for a stay of its action against TNPA.

The Issue

[4] This application turns on the interpretation and application of s 7(1)(b) of the Admiralty Jurisdiction Regulation Act 105 of 1983 (the Admiralty Act) which provides:

> 'A court may stay any proceedings in terms of this Act if it is agreed by the parties concerned that the matter in dispute be referred to arbitration in the Republic or elsewhere, or if for any other sufficient reason the court is of the opinion that the proceedings should be stayed.' (my emphasis)

[5] The 'or' in s 7(1)(b) must be read disjunctively.[1] No agreement to arbitrate with TNPA exists. Neither is TNPA party to the London arbitrations. Therefore the first ground for a stay does not apply. What constitutes 'sufficient reason' is at the heart of the debate in this application. The Afrikaans version of the Admiralty Act refers to 'gegronde rede' (sound reasons). Determining what is 'sufficient reason' is a factual enquiry. 'Sufficient reasons' requires that 'a strong case and exceptional circumstances' or 'rare and compelling circumstances' must exist.[2] Abusive, vexatious or oppressive proceedings brought in bad faith are examples of sufficient

[1] *MV Iran Dastghayb Islamic Republic of Iran Shipping Lines v Terra-Marine SA* 2010 (6) SA 493 (SCA) para 22.
[2] *Reichhold Norway ASA and another v Goldman Sachs International* 1999 (2) Lloyd's Rep 567 (CA) at 682.

reason for a stay,[3] as might be convenience.[4] There must be 'very strong reasons' for granting a stay and the benefits that are likely to result must clearly outweigh 'any disadvantage to the plaintiff'.[5] Therefore deciding the question of a stay involves judicial discretion exercised in appropriate but rare circumstances.[6] In this instance my exercise of discretion is facilitated by the facts being substantially common cause or not seriously in dispute; to these facts I must apply the narrow interpretative point raised about s 7(1)(b). Able counsel have also assisted me to expedite my judgment.

[6] In exercising its ordinary jurisdiction the court may stay proceedings on the following grounds: abuse of proceedings, *lis pendens*, pending criminal proceedings, unpaid prior costs awards, arbitration agreements, insolvency and other status limiting events.[7] TNPA invokes none of these grounds. In the context of maritime law a stay of proceedings has two additional dimensions: an international, multi-jurisdiction, multi-party perspectives and multiple proceedings arising from the same incident. In this context s 7(1)(b) is a procedural tool in the hands of the admiralty court to enable it to manage its expanded admiralty jurisdiction and powers efficiently.

The Application

[7] TNPA contends that if the owners succeed at arbitration their claims against TNPA would either be extinguished if they recover their award or be reduced by the amounts recovered. If the charterer succeeds at arbitration in proving that the owners are liable for the loss of the vessel on account of the negligence of the master and crew, then the charterer's action for indemnity would fall away and it would not persist in its claim for damages against TNPA; then the owners too would be hard pressed to persist in their action against TNPA. The owners would be released from liability to the cargo interests if their arbitration finds that the port being unsafe or a peril of the sea did not cause the loss of the cargo but an error in the navigation of the vessel by the master and crew did. This finding would weigh

[3] Shaw *Admiralty Jurisdiction and Practice in South Africa* at 54-55
[4] Heys Hofmeyer *Admiralty Jurisdiction Law and Practice* at 32.
[5] *Reichhold Norway* at 678.
[6] *Reichhold Norway* at 682.
[7] Hofmeyer *Admiralty Jurisdiction Law and Practice in South Africa* 2 ed 70-71

against the owners and cargo interests persisting with their actions against TNPA. The cargo interests' arbitration could dispose of the owners' indemnity action against the TNPA and reduce the owners' claim by approximately USD15 million. If the cargo interests succeed in their arbitration and recover damages from the owners they would not need their action against TNPA. TNPA submits that 'the practical, fair and frankly common sense solution' is to grant the application.[8]

[8] TNPA contends further that the owners are persisting with their action at this stage because they have the ulterior and improper motive of wanting to procure evidence to use in the arbitrations; this constitutes an abuse of process of this court; in exercising its discretion at the very least the court should take into account the owners' strategy. So TNPA urged.

The Opposition

[9] The owners resist the application on the grounds that first, it is an indefinite long-term stay of an action in South Africa against a South African defendant susceptible to no other jurisdiction in delict arising exclusively from events in this jurisdiction and subject to South African law. Second, the basis for the application has no precedent in South African law and is not justified on the facts. Third, the owner has a right to institute the action and to its speedy resolution. Fourth, whether the owner or the charterer is successful in the arbitrations and whether the owner is fully indemnified by the payment of an award or not, the litigation between TNPA and the owner will inevitably proceed in South Africa. Fifth, the findings of fact in the arbitrations would not narrow the factual disputes in the actions because they are irrelevant and inadmissible. The action and the arbitration are based on fundamentally different legal issues. There is therefore no quantified or sustainable benefit for TNPA from granting a stay other than the expense of three separate actions in South Africa, which in comparison to the amounts of the claims is insignificant. Sixth, a stay may stall the arbitrations. Last, the owners would be prejudiced by the delay if a stay is granted.

[8] Para 97 of the applicant's heads of argument.

[10] Regarding prejudice and injustice, the owners anticipate that the arbitrations would be long running. Two of the three arbitrations started in September 2013; three and a half years later they reached no further than discovery. The owners are but one of the parties and do not have exclusive control of the arbitrations. If these arbitrations took as long as eleven years as the arbitration in *The Ocean Victory: Gard Marine and Energy Limited* v *China National Chartering Company Ltd and another; and two related matters* [2017] UKSC 35 did then trial preparation in their action is likely to begin only in 2024. This would be contrary to the interests of justice. Furthermore the issues in the actions raise novel points of law which the owners anticipate might lead on to appeals to the Supreme Court of Appeal and the Constitutional Court. Piling this delay onto the actions is also not in the interests of justice.

[11] The delay could lead to a loss of evidence as witnesses become unavailable or their capacity for recollection fades. The owners would be precluded from issuing subpoenas when that might be the only way of preserving the evidence of third party witnesses. Subpoenaing witnesses would not be a cost to TNPA.

[12] If the respondents had not instituted actions against TNPA they ran the risk of the Prescription Act 68 of 1969 barring them from doing so. The purpose behind prescription is to discourage claims being pursued after the prescribed time to avoid injustice, uncertainty and the unavailability and unreliability of witnesses. So objectively there is some cogency in litigating expeditiously.

[13] The charterer has not secured the owners' claim in the arbitration. The limited security of USD7 million forthcoming from the arrest of an associated ship will not satisfy an arbitration award. If the owner fails in its arbitration against the charter party TNPA cannot assume that the owners would abandon their claim against it.

[14] The owners accept that the court has the power to order a stay if it determines that the owners' actions constitute an abuse of process. What constitutes an abuse of process depends on the circumstances of each case. A rough guideline is that:

> 'an abuse of process takes place where the procedures permitted by the Rules of the Court to facilitate the pursuit of the truth are used for a purpose extraneous to that objective.'[9]

[15] The owners' demand for discovery is a legitimate and inevitable exercise of power enabled by the rules of court. Because the discovered documents could have an alternative and additional use in the arbitration it is not an abuse of process.

[16] The cargo interests supported the owners' opposition to the application. Although they have a contractual claim against the owners they also have a delictual claim against TNPA for allegedly knowing about but failing to warn against the heavy swells and closing the port.

[17] The charterer's arbitration commenced at an early stage. Its action was instituted cautiously to avoid prescription. However it has taken no further steps other than to launch a counter-application supporting a stay of its action pending its arbitration.

Analysis

[18] Generally permitting parallel proceedings and risking inconsistent decisions in multiple forums on substantially the same dispute is undesirable.[10] However, in this instance although the single event triggering the actions and arbitrations is the shipwreck of the MV *Smart*, and even though the ultimate question common to all the proceedings is what or who caused the MV *Smart* to ground, the actions of all the respondents are founded on different causes. It is common cause or not disputed that the only forum having jurisdiction over the actions against TNPA is this court,[11] that the actions in this court offer the only opportunity in which all the claims between all the parties against TNPA can proceed, that this court is the most convenient forum to determine all the disputes between all the parties, and that the findings in the arbitrations are not binding on this court, but that they would impact significantly

[9] *Beinash* v *Wixley* 1997 (3) 721 (SCA) at 734G.
[10] MV *Iran Dastghayb*) para 31; *Astrazeneca UK Ltd v Albemarle International Corp and another* [2011] 1 All ER (Comm) 510; [2010] EWHC 1028 (Comm) para 108.
[11] MV *Iran Dastghayb*.

on the actions. Therefore underpinning the definition of 'sufficient reason' is the search for the most efficient procedural arrangements for the ventilation of all the causes in the arbitrations and actions without compromising any rights, procedural or substantive, of any of the parties.

[19] Turning to precedents in *MV Iran Dastghayb v Terra-Marine* SA (*MV Iran Dastghayb*) the first case in which a court considered the meaning of 'sufficient reason', the Supreme Court of Appeal placed the onus on 'a party resisting a stay of those proceedings … of showing why it should be permitted nevertheless to pursue those claims here.' [12] Receiving no more than 'a speculative hypothesis' from such party,[13] it held that the outcome of an action *in rem* that was identical to and dispositive of an arbitration *in personam* was sufficient reason for a stay.[14] Nevertheless, the court imposed a condition on the party seeking the stay to provide security for the final arbitration award.[15]

[20] The TNPA accepts that the court will not lightly order a stay but contends that the applicable test is less stringent than that which was applied in *Reichhold Norway ASA and Another* v *Goldman Sachs International* 1999 (2) Lloyd's Rep 567 (CA). Reichhold sued Goldman Sachs for damages in the English High Court. Goldman Sachs applied to stay the London action. Reichhold then commenced arbitration against Jotun in Norway in terms of an arbitration clause in the agreement for the sale of shares from Jotun to Reichhold. In opposing this stay Reichhold insisted that it was entitled to choose whom to sue and when without interference from the court; only in 'exceptional circumstances' could the court interfere.[16] The court below granted the stay. The Court of Appeal dismissed the appeal on the basis that the stay delayed the action only for a year to await the outcome of the arbitration in Norway and in anticipation that the action would then fall away.[17]

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[12] *MV Iran Dastghayb* para 19.
[13] *MV Iran Dastghayb* para 26.
[14] *MV Iran Dastghayb* para 36.
[15] *MV Iran Dastghayb* para 2 of Order.
[16] *Reichhold Norway* at 679.
[17] *Reichhold Norway* at 681, 686.

[21] *MV Iran Dastghayb* and *Reichhold Norway* are distinguishable from this case on both the facts and the law. On the facts the arbitrations are not dispositive of the actions; furthermore the claims are not secured adequately or at all. In *Reichhold Norway* the stay was granted for a limited period of a year. On the information available to that court it was able to anticipate the time by which the arbitration would be concluded and assess that a 'delay of that kind can be compensated by an award of interest.'[18] Nevertheless the court recognised as a matter of law that individuals are:

> 'entitled to untrammelled access to a court of first instance in respect of a bona fide claim based on a properly pleaded cause of action, subject only to the sanction or consideration that he is in peril of an adverse costs order if he is unsuccessful, in respect of which the opposing party may resort to the usual remedies of execution and/or bankruptcy is such order is not complied with.'[19]

[22] However, on the law both cases were decided without any reference to a constitutional right of access to a court and what limitations, if any, constrained the right. And so it is to the constitutional right that I now turn.

[23] Section 34 of the Constitution of the Republic of South Africa 1996 provides:

> 'Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum'.

[24] 'Everyone' enjoys this right including *peregrine,* which the owners are.[20] A fair hearing be it in public in a court of law or in private arbitration implies both 'the twin notions of procedural and substantive fairness',[21] each interacting dialectically with the other. Granting a stay is a procedural step that could implicate the

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[18] *Reichhold Norway* at 679.
[19] *Reichhold Norway* at 680.
[20] *Kiliko And Others v Minister Of Home Affairs And Others* 2006 (4) SA 114 (C) par 28: 'The State, under international law, is obliged to respect the basic human rights of any foreigner who has entered its territory, and any such person is under the South African Constitution, entitled to all the fundamental rights entrenched in the Bill of Rights, save those expressly restricted to South African citizens'.

[21] See *Stopforth Swanepoel & Brewis Inc v Royal Anthem (Pty) Ltd and others* 2015 (2) SA 539 (CC) para 19, 25.

substantive rights and fairness in several ways. Topping the list is the right to have disputes resolved expeditiously.[22] 'Justice delayed is justice denied' is a legal maxim[23] that the Constitutional Court reinforces for sound practical reasons. Delay prolongs the uncertainty of the outcome. Witnesses become unreliable or unavailable.[24] Recovering judgment debts and arbitration awards are put at risk.

[25] In this instance a stay would suspend the owners' and the cargo interests' pre-trial procedural rights to discovery and to subpoena witnesses in the actions. In so far as the enforcement of their pre-trial rights in the actions also assists their causes in the arbitrations the latter could also be delayed. Undoubtedly therefore a stay of the actions is a suspension and limitation of the right to access to justice. Is the limitation reasonable and justifiable in the circumstances of this case?

Reasons

[26] Weighing the submissions for and against the stay I find against staying the actions for the reasons that follow.

[27] For all the reasons advanced by the owners and cargo interests, the arbitrations are not dispositive of the actions. The causes of action in the arbitrations differ from the actions against TNPA. In the arbitration the owners allege that the charterer breached its obligations under the charter party to take the MV *Smart* only to safe ports. Richards Bay was not safe. The arbitration is seized with determining the meaning of safe port.[25] In contrast, in their action the owners have to prove a single incident of negligence that caused the casualty rather than the general unsafe conditions of the port. The defence of 'error in navigation' and other defences under The Hague-Visby Rules that arise in the arbitration between the owner and the cargo interests do not apply to the owners' action against TNPA. A failure at arbitration of a

[22] *National Director of Public Prosecutions and another v Mahomed* 2008 (1) SACR 309 (SCA) para 31.
[23] Attributable without verification to either William Ewart Gladstone or William Penn https://en.wikipedia.org/wiki/Justice_delayed_is_justice_denied (accessed 15 July 2017).

[24] *Mohlomi* v *Minister* of *Defence* 1997 (1) SA 124 (CC) para 11
[25] *The Ocean Victory: Gard Marine and Energy Limited* v *China National Chartering Company Ltd and another; and two related matters* [2017] UKSC 35

'safe port warranty' contractual case hardly forecasts a failure in the delictual action. Conversely, in the action an apportionment of fault, the defence of vicarious liability of the pilot as the servant of the owners in terms of s 76 of the National Ports Act, 2005 and 'good faith' to determine the liability of TNPA in terms of s 85 of that Act could arise.

[28] The arbitrations could narrow down the issues in the actions. But the arbitrations are non-binding. Their findings would only lead to a narrowing down of the actions if the litigants agree. Naturally if the respondents lose at arbitration they would hardly be inclined to admit those findings in their actions.[26] Conversely if they win TNPA is unlikely to admit them into the actions. The findings in the arbitrations may be such that the litigants may even be hard pressed to admit them in the actions, but they cannot be compelled to do so. Nor can this application to stay be used to engineer or manipulate the admission of the arbitration findings into the actions, as might happen if witnesses become unavailable.

[29] Simultaneously, a refusal to make admissions when it is reasonable and sensible to do so would have adverse consequences for any party who adopts this stance. Having assessed this risk the owners and cargo interests have reconciled themselves to tendering the costs of TNPA if they have to withdraw their actions. Far riskier for them are the opportunity costs of delaying the actions: first, evidence could become unreliable or unavailable; second, discovery and the tactical advantages it extends to the arbitrations would not be available; and third, debt recovery could be impaired.

[30] The novelty of the issues at arbitration may result in appeals and reviews. TNPA wants a stay until all those processes are determined. This will delay the actions indefinitely. The parties have some control over the scheduling of the arbitrations but they will have less control over the scheduling of their appeals and reviews. Unlike in *Reichhold Norway* no one involved in these cases can estimate when the arbitrations will be finalised. Compensation for a stay in the form of interest

[26] *Hollington v F Hewthorne & Co Limited and another* 1943 KB 587 (CA).

is also out of the question for as long as the risk of debt recovery is real and the *in duplum* rule applies.[27]

[31] As justification for the stay TNPA points to the delay in the owners and cargo interests launching their actions. The cargo interests delayed instituting their actions for less than three years in order to investigate and collect evidence and reports to support their claim against TNPA. The respondents had by law three years to institute their actions. That delay, necessary as it was, is reason enough to avoid unnecessary delays. More prejudicial would be a further delay of the actions four years after the incident for an indefinite period.

[32] To mitigate the effects of the passage of time on memory loss taking statements of witnesses is not ideal. Without cross-examination the statements carry less weight. The preferred option of issuing subpoenas would not be a cost for the TNPA.

[33] The arbitrations are being stayed pending full disclosure in the actions. If this application is granted then the arbitrations would be frustrated. Furthermore a significant difference in the rules of discovery arises between Uniform Rule 35 read with Admiralty Rule 15 and requesting TNPA for specific documents. Uniform Rule 35 requires TNPA to disclose all relevant documents, which would include documents that are unknown to the respondents.

[34] The motives of the owners and the cargo interests in wanting to persist with the actions are at the best of times hard to discern in motion proceedings. TNPA's contention that the owners are abusing discovery procedures would be a relevant and worthwhile enquiry in this application if they had no discovery rights. They do have such rights, procedural in form, substantive in effect. Equally hard to discern is whether TNPA is seeking to avoid discovering by applying for a stay. Ironically some of the costs that the TNPA sought to avoid incurring in the pre-trial process it has already incurred in this opposed application. If TNPA wants a stay to avoid having to discover in the action it would be a sufficient reason to refuse the application. TNPA

[27] *Paulsen And Another V Slip Knot Investments 777 (Pty) Ltd* 2015 (3) SA 479 (CC).

has no right to a stay but an obligation to comply with Uniform Rule 35 read with Admiralty Rule 15 requests for discovery.

[35] The owners have limited security of USD7 million against the charterer secured only by way of an arrest of a vessel. If the owners' claim remains unsatisfied by the charterer it would proceed against TNPA for the balance. TNPA responds that the recovery of the claims from the charterer should not be a concern because the charterer is part of a state owned company in China that has over 240 000 employees internationally and an operational revenue in 2015 of USD65 billion. The charterer also has liability insurance.

[36] But the charterer has not undertaken to settle in full if the owners succeed at arbitration. Consequently at most the owners can entertain a *spes* that the charterer would be able to fulfil any awards against it. Aptly the short response to TNPA's optimistic projections is to be found in the Asian proverb: 'There's many a slip between cup and lip.'[28]

[37] Case management principles are not a basis for limiting substantive and procedural rights as granting the stay would. The Chief Justice's Norms and Standards issued in terms of s 8 of the Superior Courts Act 10 of 2013 read with s 165(6) of the Constitution stipulates that matters should be finalised speedily and as far as possible within one year from issuing summons. Case management is a practical tool employed by the court to encourage the efficient resolution of disputes within the limited resources available to the courts without compromising the rights of the litigants to access to justice. Therefore TNPA's reliance on case management in the interests of court administration as a ground for the stay is misplaced. Even though the clear trend is towards giving 'greater control by the courts over the course of proceedings,'[29]case management is rather a means to an efficient and expeditious end and not an end in itself.

[38] All that would be achieved by a stay is a deferral of the trial preparations. Costs may be avoided only if the findings of the arbitrations are allowed to limit or

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[28] http://www.english-for-students.com/there-is-many-a-slip-between-the-cup-and-the-lip.html (accessed 9 July 2017)
[29] *Reichhold Norway* at 681.

dispose of the issues in the actions. And there is no certainty of this happening. TNPA's application for a stay is not aimed at protecting any established right. Its purpose is primarily and ostensibly driven by considerations of costs and convenience. In contrast the prejudice to the owners' procedural and substantive fair trial rights is significant. In the circumstances the stay of the actions will be an unreasonable and unjustifiable suspension and limitation of the owners' and cargo interests' access to justice. Accordingly the stay is refused.

[39] The court notes that the owners are prepared to go to trial in the actions as soon as the pre-trial proceedings are concluded and a court date is allocated even if the trial precedes the arbitration. However, if the arbitration is ready they may delay the trial in the actions after close of the pre-trial procedures. The cost of the pre-trial preparations are relatively insignificant in relation to the trial, which the owners anticipate would run for about 20 days, and even more insignificant in comparison to the amount of the claims.

[40] Ideally the court would look to avoiding outlaying resources for a long trial and would delay the actions if the arbitrations were on the brink of finalisation. Case management offers an opportunity to reassess the situation once pre-trial preparation is concluded and before trial dates are allocated. Either party may ask for a case management hearing at that stage if the court has not already convened one. Such a hearing would dispense with another formal application to stay unless the parties think otherwise. To balance the concerns of TNPA I will issue an appropriate directive regarding case management with my order.

The Charterer's Counter-Application

[41] The charterer's counter-application is also for a stay of its action against TNPA. If it succeeds in the arbitration it would not be seeking an indemnity in its South African action against the TNPA. In its arbitration the charterer's stance is that the Richards Bay port was safe at the time of the casualty. In contrast its South African action is premised on a condition of claim that the port was unsafe. It

contends further that the cost of the action for the charterer and the court would be considerable.

[42] The charterer refutes TNPA's contention for an 'all or nothing' stay of all the actions**.** It contends that if the actions of the owner and the cargo proceed whilst the charterer's action is stayed, and if the charterer loses at its arbitration it would uplift the stay of its action and join the consolidated actions of the other two respondents.

[43] I agree that they would not be prejudiced by the charterer's stay of action. Some time will have to lapse between the end of the arbitration and the trial being set down for the actions. This would enable the charterer to catch up with the actions of the others. TNPA would also not be prejudiced by the charterer's stay of action. If the charterer's action is not stayed then costs would be wasted which for the charterer would be substantial. More importantly however it would have to plead conflicting versions in each process.

[44] From the perspective of case management the court is unlikely to allow separate actions arising from the same incident. Consequently a consolidation of actions against TNPA is a practical and an efficient way of determining all the actions. Consequently all three respondents will have to be trial ready before the matter is enrolled unless there are compelling reasons to separate the actions.

Order

[45] The application of the National Ports Authority, a Division of Transnet (Soc) Ltd (applicant) to stay the actions of the Owners and Underwriters of the MV "*Smart*" (first respondent) and the Owners, Bearers of Risk and Insurers of the Plaintiff's Cargo formerly in the MV "*Smart*" (second respondent) is dismissed with costs, including the costs of two counsel when employed.

[46] The counter-application of Minmetals Logistics Zhejiang Co Ltd (third respondent) is granted with applicant paying its costs, including the costs of two counsel when employed.

Directive

[47] The parties are directed to approach the registrar of the court to convene a pre-trial conference before a judge within 30 days after the pre-trial preparations in the actions are concluded or the awards in arbitrations are issued, whichever occurs first.

APPEARANCES

Counsel for the Applicant	:	M Wragge SC (with J.D Macenzie & D.M Nyathi
Instructed by	:	Webber Wentzel Cape Town c/o Goodricks Attorneys Tel: (021) 431 7279/81 Ref: Mr G Fitzmaurice
Counsel for the First Respondent	:	S.R Mullins SC (with P.J Wallis)
Instructed by	:	Shepstone & Wylie Tel: (031) 575 7307 Ref: S Dwyer/T Edwards
Counsel for the Second Respondent	:	G.D Harpur SC (with J Thobela-Mkhulisi)
Instructed by	:	Norton Rose Fulbright S.A Inc Tel: (031) 582 5600 Ref: Mr M Hartwell
Counsel for the Third Respondent	:	M Fitzgerald SC (with D.J Cooke)
Instructed by	:	Edward Nathan Sonnenbergs Inc. Cape Town Tel: (021) 410 2500 Ref: Mr T Norton/Mr M Tucker
Date of Hearing	:	27 June 2017
Date of Judgment	:	18 July 2017