



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT  
OF APPEAL**

FROM: The Registrar, Supreme Court of Appeal  
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STATUS: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.*

***Martrade Shipping and Transport GmbH v United Enterprises Corporation and MV Unity (Case no 1085/2019) [2020] ZASCA 120 (2 October 2020)***

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Today the Supreme Court of Appeal (the SCA) handed down judgment in an appeal by Martrade Shipping and Transport GmbH (Martrade Shipping) against an order of the KwaZulu Natal Division of the High Court, Pietermaritzburg. The matter concerned the interpretation of a court order regarding security and the release of the MV ‘Unity’ from arrest.

On 23 December 2016 the KwaZulu-Natal Division of the High Court, Durban (Henriques J) directed Martrade Shipping to provide counter-security for certain maritime claims made by Union Enterprises in ongoing arbitration proceedings in London (the high court order). The high court stipulated a 15-day time period in relation to the provision of security in the first paragraph of its order. It provided that in the event of non-compliance with the first paragraph of the order within 30 days, the arrest of the MV Unity would lapse. Security in a form determined by the registrar was provided outside of the 15-day time period provided in the first paragraph of the order. Union Enterprises brought an application in the high court to set aside the registrar’s determination and to declare that the arrest of the MV Unity had lapsed. The high court (Maharaj AJ) granted the orders.

Martrade Shipping appealed against the order of Maharaj AJ declaring the provision of security out of time and that the arrest had lapsed. The appeal was heard by a full court (Bezuidenhout, Gyanda and Chili JJ) of the KwaZulu-Natal Division, Pietermaritzburg. On 28 June 2019, the full court dismissed the appeal.

On further appeal to the SCA, the central question to be determined was the proper interpretation of the high court order. The SCA found that the order was ambiguous. In these circumstances it held that a sensible interpretation of the order was to be preferred to one that would lead to impractical, un-businesslike or oppressive consequences, or that would undermine the purpose of the order. The purpose of the order, it held, was to balance the interests of the parties in the ongoing arbitration proceedings and to ensure the effectiveness of any orders made in those proceedings. It held that the 15-day period provided in the first paragraph of the order was to enable the parties to agree upon the form of security to be provided. The 30-day period in the second paragraph of the order was the period within which the security was to be furnished. Therefore, since the security was provided within this latter period, Martrade Shipping had complied with the order.

In the result, the appeal by Martrade Shipping was upheld and the SCA substituted the high court's subsequent order with one dismissing the application brought by Union Enterprises with costs. It also ordered the latter to pay the costs of the appeal.