

Neutral Citation Number: [2024] EWHC 1132 (Comm)

Case No: CL-2021-000501

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 April 2024

Before :

Mrs Justice Cockerill DBE

Between :

(1) OCM Maritime Nile LLC
(2) Maritime Kama LLC
- and -

Claimant

(1) Courage Shipping Co
(2) Amethyst Shipping Co
(3) Oryx Shipping Ltd
(4) Abdul Jalil Mallah

Defendant

Michael Ryan (instructed by **Reed Smith**) for the **Claimant**

Hearing dates: **10th April 2024**

APPROVED RULING 1

Mrs Justice Cockerill DBE
(12:13pm)

Wednesday, 10 April 2024

Ruling by MRS JUSTICE COCKERILL DBE

1. Mr Mallah, I have heard what you have to say in relation to your application to adjourn. I should just explain to you, as I was discussing with Mr Ryan earlier, the question of whether to adjourn any hearing is a serious one. It is a case management decision which I have to exercise in accordance with certain principles set out in CPR3. In line with the overriding objective I need to consider so far as possible putting you on an equal footing with the claimant, but also I need to consider factors such as saving expense and ensuring that the case is dealt with expeditiously and fairly.
2. There are a number of authorities where these points have been discussed. The decisions of the courts establish that it is a discretionary matter, which is largely a matter for the judge, and the judge should grant an adjournment if not granting the adjournment would amount to a denial of justice. The court should be particularly careful on such a decision where the consequences of the refusal of the adjournment are severe, so for example where it will lead to dismissal of the proceedings or, a case like this, where it's a committal application.
3. There are a number of cases in the European Court which suggest that a litigant whose presence is needed for the fair trial of his case but cannot be present for a reason which is no fault of his own will usually have to be granted an adjournment - regardless of how inconvenient it is to the tribunal or to the other parties. But the authorities also establish that there are limits to the situation in which an applicant can seek an adjournment and be granted an adjournment, in particular where the application is made late or where the reason why he does not have legal representation is something which he could deal with or the court can't be satisfied he could not have dealt with.

4. In this case I have given very careful consideration to whether I should grant you the adjournment you seek because I take very seriously the matters before me and the importance to you of legal representation in a situation which is similar to a criminal trial in terms of the potential outcomes.
5. However, I am not persuaded that this is an appropriate case to grant an adjournment. The application for an adjournment is one which you make and you must satisfy me that the test, effectively that it is the fair thing to do, that not to grant an adjournment would be a denial of justice, has been satisfied.
6. I know you have put certain matters before me, but what you have put before me is not sufficient to satisfy that test. You have said a number of things. You have said that you are deprived of legal representation and that in the short period you have not been able to find legal representation. But you have not put real detailed evidence before me to explain that. I would expect you to explain what you have done to try to get legal representation in circumstances where I have evidence that your legal representation was terminated about 5 months ago and that there has been a good deal of time since then and that you have had it explained to you that you do not necessarily need to pay for legal representation (because in contempt proceedings you are entitled to Legal Aid).
7. In addition to that, there is material which tends to suggest that you are in a position to pay for legal representation: the fact that you were previously paying for legal representation and you had legal representation for most of the timeline of the contempt proceedings and the fact that you continue to litigate and be legally represented elsewhere. Also the fact that you have apparently had other support, financial support, which has enabled you to fund lawyers. All of this is a matter that, in order to persuade me that you could not get legal representation, I would have needed to see evidence in relation to.

8. You have effectively said there are other matters which have prevented your dealing with the questions in more detail, the fact of detention in Denmark being the main one. This is, as Mr Ryan has pointed out, something you have only recently mentioned, and again you have given me no details. It does not seem to me from what you have said that that can possibly account for the full period of time.
9. So far as your brother's sad situation is concerned and your own state of health, I have a lot of sympathy for you, but again the explanation of the detail of that and why it would prevent you from doing anything to get legal representation is, I am afraid, lacking.
10. So even setting aside the previous history in this case, I would, weighing everything up, come quite clearly to the conclusion that you had not satisfied me on the burden which rests on you of showing me that this is a case where not granting the adjournment would result in a denial of justice. You are in a position where you have had quite a long time to get legal representation and you could have got Legal Aid. So far as the other matters are concerned, they should not, on the basis of the evidence I have seen, have affected that.
11. Mr Ryan also relies on the previous history in relation to this, which he says is significant, and I do not need to reach a conclusion on that because I would inevitably reach the conclusion that the adjournment should be refused simply on the basis of the lack of sufficient evidence to justify an adjournment. But it does seem to me that he is right that a further weight in favour of my decision to refuse your application for the adjournment lies in the fact that there is a history in this case of late applications to adjourn, ill-supported by detailed evidence, which do give rise to at least a suspicion that there is a desire for the hearing not to go ahead rather than an inability for the hearing to go ahead, which amounts to a denial of justice.

12. So I am refusing your application for an adjournment, Mr Mallah, and we will proceed to hear the substance of the contempt application. Do you understand?