

1980 February 29

[SAVVIDES, J.]

SYMEON THEOPHANOUS AND ANOTHER,
Plaintiffs,

v.

1. DOROTHEA SHIPPING CO. LTD.,
2. THE SHIP "AYIA MARINA",
Defendants.

(Admiralty Actions Nos. 455-456/78).

*Admiralty—Shipping—Seamen—Foreign seamen—Contract of service
—Wrongful dismissal—Actions in rem for wages and other emolu-
ments—Arrest and sale of ship—Judgment for wages accruing
both before and after issue of writ, for wages in respect of leave,
for repatriation, subsistence and maintenance expenses and for
ten days double wages—Section 25(2) of the Merchant Shipping
(Masters and Seamen) Law, 1963 (Law 46/63)—Karakiozopoulos
and Others v. Ship "Ayia Marina", and Vlachos and Others v.
Ship "Ayia Marina" (1980) 1 C.L.R. 19 and 113, respectively,
followed.* 5
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The plaintiffs in these actions, as members of the crew of the
defendant ship "AYIA MARINA", by means of the above
actions, claimed against the defendants balance of wages and
other emoluments, repatriation and maintenance expenses,
compensation for termination of employment and wages in
respect of leave to which they were entitled but they did not get. 15

The facts and the legal issues arising therefrom appear in
Karakiozopoulos and Others v. Ship "Ayia Marina", and *Vlachos
and Others v. The Ship "Ayia Marina"* (1980) 1 C.L.R. 19
and 113, respectively, and they will not be repeated herein 20
because they were adopted by the Court, mutatis mutandis, for
the purposes of these actions.

Cases referred to:

Karakiozopoulos and Others v. Ship "Ayia Marina" (1980)
1 C.L.R. 19; 25
Vlachos and Others v. Ship "Ayia Marina" (1980) 1 C.L.R. 113.

Admiralty actions.

Admiralty actions by the members of the crew of the defendant ship "Ayia Marina" for their wages, war-zone bonuses and other emoluments, repatriation and maintenance expenses and compensation for termination of employment.

P. Sarris, for the plaintiffs.

M. Vassiliou, for the intervener-mortgagee.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The present actions are part of a series of actions brought by the members of the crew of the defendant ship "AYIA MARINA". Eleven of such actions were consolidated and heard together and judgment was given on 4.2.1980. (*Karakiozopoulos and others v. The ship "AYIA MARINA"**). Three other actions under numbers 451, 452 and 453/78 (*Vlachos and others v. The ship "AYIA MARINA"****) were also heard together and judgment was delivered on 26.2.1980. In view of the fact that the present actions presented common questions of law and fact, they were also heard together.

The writ of summons in the present actions was originally issued against Dorothea Shipping Co. Ltd., of Limassol as defendant No. 1 and the ship "AYIA MARINA" as defendant 2, which, for the purposes of these actions will be referred to as "the defendant ship". On the date of the hearing the action against defendant 1 was withdrawn and dismissed. No appearance was entered by the owners of the defendant ship nor did they take any part in defending these proceedings. By leave of the Court granted to the mortgagee of the defendant ship, he was joined as an intervener and in such capacity he defended the actions for safeguarding his own interests under the mortgage.

On the date of the hearing the following statements were made by counsel appearing in these actions:

In Action No. 455/78—"Both counsel state that the following facts are admitted, subject to the legal issue as to whether they are entitled to:

(a) In case the Court finds that the plaintiff is entitled to

* See (1980) 1 C.L.R. 19.

** See p. 113 in this Part *ante*.

arrears of wages, the wages account prepared by the master of the ship and produced as *Exhibit 'A'*, is a correct statement. Both the balance of wages till the day when this was issued, that is, the 20th November, 1978 and also as to the monthly remunerations of the plaintiff, with the reservation that as from 17.10.1978 when the ship was arrested he is not entitled to the extra remuneration of 10,000 Drachmas per month and any amount appearing for such period in *Exhibit 'A'* will be deducted. 5 10

- (b) It is further agreed that the normal wages of plaintiff in this action are 40,000 Drachmas per month and the period of his employment as appearing in *Exhibit 'A'*. Also, that the contract of employment dated 31.8.1978 will be put in by consent as *Exhibit 'B'*. 15
- (c) It is also agreed that the repatriation expenses of the plaintiff from here to Greece amount to £33.800 mils.
- (d) It is further agreed that the plaintiff left Cyprus on 3.11.1978.

The above admissions are made subject to the legal argument as to whether he is entitled to the amounts he claims and in case it is so found by the Court that *Exhibit 'A'* has to be readjusted concerning the date of departure. 20

It is further agreed that the preparatory evidence of Captain Voumvlinoopoulos given in Actions Nos. 402/78 etc. will be considered also as evidence in connection with this case and also the evidence given by the defendant-intervener Roussos and that of Koutroumbas in Actions 451/78, 452/78 and 453/78 is adopted in these proceedings and will be deemed as evidence given in this action as well. 25 30

Both counsel further state that they adopt their addresses in Actions 451/78, 452/78 and 453/78 and they have nothing further to add”.

In Action No. 456/78—“Both counsel state that they wish to make the following statement concerning admitted facts subject to the legal issue as to whether the plaintiff is entitled to such amounts: 35

- (a) Repatriation expenses of plaintiff from here to Greece, £33.800 mils.

(b) Accommodation expenses whilst in Cyprus, £130.—.

(c) Plaintiff departed from Cyprus on the 4th November, 1978.

5 It is further agreed that the preparatory evidence of Captain Voumvinopoulos given in Actions 402/78, etc. will be considered also as evidence in connection with this case and also the evidence given by the defendant-intervener Roussos and that of Koutroumbas in Actions Nos. 451/78, 452/78, and 453/78 is adopted in these proceedings and will be deemed as evidence
10 given in this action as well.

Both counsel further state that they adopt their addresses in Actions Nos. 451/78, 452/78 and 453/78 and they have nothing further to add”.

15 In view of the statement by both counsel that the evidence adduced and the arguments advanced in Actions Nos. 451/78, 452/78 and 453/78 are adopted in the present actions, no further evidence was called in these actions other than the two documents put in by consent, the one being the wages account dated 20.11.78 issued by the master showing the balance of wages due
20 to plaintiff in Action No. 455/78 (*exhibit 'A'*) and a photocopy of the contract of service of the same plaintiff, (*exhibit 'B'*).

Plaintiff in Action No. 455/78 was, according to the wages account (*exhibit 'A'*) and his contract of service (*exhibit 'B'*), employed on the defendant ship as a second mechanic as from
25 2.8.1978, at the monthly salary of 40,000 Drachmas per month, plus an additional remuneration of 10,000 Drachmas per month for so long as an additional Third Mechanic was not employed. He was so employed till the 3rd November, 1978, when he left Cyprus. According to the wages account and the statements
30 made by both counsel at the hearing, the balance of wages till the 20th November, 1978 is 136,145 Drachmas.

The only item in respect of which a dispute arises, is as to whether the plaintiff is entitled to the additional remuneration of 10,000 Drachmas per month, after the 17th October, 1978,
35 when the ship was sold by public auction. No dispute arises as to his entitlement prior to the 17th October, 1978. According to the wages account (*exhibit 'A'*), the plaintiff was employed as from 2.8.1978 and his total period of employment is given

as three months and 18 days. On the same account the master has allowed the plaintiff the additional remuneration of 10,000 Drachmas only for a period of two months and 18 days. Taking into consideration the date of the employment of this plaintiff which is the 2nd August, 1978, the master has allowed him this extra remuneration till the 20th October, 1978. The master has not been cross-examined in this respect, and taking into consideration that the master has only allowed this extra remuneration up to the 20th October, 1978, I find that such date is approximately in line with the date admitted by the defendant, that is the date when the action was brought and the ship arrested and, in consequence, I find that plaintiff is entitled to the amount appearing in the wages account, in this respect.

Plaintiff in Action No. 456/78 was employed as a mate, assistant to the master of the ship as from 22.8.1978 at the monthly salary of 36,000 Drachmas. According to the wages account put in by the master when giving evidence (*exhibit 15*), the balance of wages due to him till 20.11.1978 amounts to 94,450 Drachmas.

As mentioned earlier in this judgment, counsel jointly stated at the hearing, that the evidence adduced and the arguments advanced in Actions Nos. 451/78, 452/78 and 453/78 should be considered as evidence in this action. In the light of such statements, the facts and legal aspect of the present actions are the same as in Actions 451/78, 452/78, and 453/78 (*Vlachos and others v. The ship "AYIA MARINA"**) in which judgment has already been delivered. For the reasons set out in the said judgments and which need not be repeated in this judgment but are adopted *mutatis mutandis* for the purposes of the present actions and should be deemed to form part of this judgment, I find as follows:

Both plaintiffs are entitled to wages both prior to the institution of the action as well as after the institution till the dates they departed from Cyprus. I also find that they are entitled to wages in respect of their leave. They are also entitled to their repatriation expenses in the sum of £33,800 mils each, such amount having been agreed upon. Plaintiff in Action No. 456/78 is also entitled to his subsistence and maintenance expenses, the amount of which has also been agreed upon at £130.—. Both plaintiffs are also entitled to 20 days wages each,

* See p. 113 in this Part *ante*.

under the provisions of section 25(2) of Law No. 46 of 1963, as a result of the unjustified failure of the owners of the defendant ship to settle their wages. In the wages accounts the wages of the plaintiffs are calculated till 20.11.1978, whereas, according to the joint statement of counsel for the parties, they left on the 3rd and on the 4th November, 1978, respectively. To the date of departure, however, twenty days wages have to be added (under section 25(2) of Law 46 of 1963), plus eight days wages for plaintiff in Action No. 455/78 and seven days wages for plaintiff in Action No. 456/78. This brings the date up to which they are entitled to wages, the 1st December, 1978.

In conclusion, I find that plaintiffs are entitled to judgment in the following amounts:

Plaintiff in Action No. 455/78.

15	(a) Wages till 20.11.78 according to <i>exh. 'A'</i>	136.145 Dr.	
	Plus 11 days wages as from 20.11.78 till 1.12.78 by 40,000 Drachmas per month	<u>14.665</u>	<u>150.810 Dr.</u>
20	(b) Repatriation expenses C£ 33.800		

Plaintiff in Action No. 456/78.

	(a) Wages till 20.11.78 according to <i>exhibit 15,</i>	94.450	
25	Plus 11 days wages as from 20.11.78 till 1.12.78 by 36,000 Drachmas per month,	<u>13,200</u>	<u>107.650 Dr.</u>
	(b) Repatriation expenses C£ 33.800		
	(c) Subsistence allowance C£130.000		

In the result, I give judgment for plaintiffs against the defendant ship as hereinabove, with costs to be assessed by the Registrar.

The amounts set out in Drachmas to be converted into Cyprus Pounds at the rate prevailing on 20.11.78 as agreed upon between counsel and so stated to Court.

The action against defendants 1 stands, as already, dismissed with no order for costs.

Judgment against defendant 2 as above with costs. Action against defendants 2 dismissed with no order as to costs. 5