

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application for Leave to Appeal in terms of Section 13 (3) of the Judicature Act No. 2 of 1978, as amended, against the Order dated 01st December 2025 delivered by the High Court of the Democratic Socialist Republic of Sri Lanka in the exercise of its Admiralty Jurisdiction in Action in Rem 01/2025.

A claim for loss of or damage to goods carried in a ship.

ORGANO PROTEINS (PVT) LTD.,
IDA Edayar Muppathadom Aluva,
Ernakulam,
Kerala – 683110,
India.

PLAINTIFF

CA/LTA/18/2025
Action in Rem No.01/2025

Vs.

MV “YM FOUNTAIN”
(IMO No.9278090)

DEFENDANT

AND NOW BETWEEN

ORGANO PROTEINS (PVT) LTD.,

IDA Edayar Muppathadom Aluva,
Ernakulam,
Kerala – 683110,
India.

PLAINTIFF-PETITIONER

Vs.

MV “YM FOUNTAIN”
(IMO No.9278090)

DEFENDANT-RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Dr. Dan Malika Gunasekara with Rosalie Anandappa and Sheran Perera instructed by Samithri Kahatapitiya for the Plaintiff-Petitioner.

Chandaka Jayasundara, P.C. with Rehan Almeida instructed by Sachitra Abegunawardane for the Defendant-Respondent.

Written Submissions: By the Plaintiff-Petitioner filed on 27/04/2026.
By the Defendant-Respondent filed on 27/04/2026.

Supported on: 23/02/2026.

Order on: 13/05/2026.

Dr. Sumudu Premachandra J.

1] This Petition, dated 18/12/2025, seeks Leave to Appeal to an Order from the Commercial High Court regarding an Admiralty Action (Action in Rem 01/2025) initiated on 31/01/2025.

2] The original claim involves damage to goods carried in a container (BMOU 6836704) aboard the vessel M.V. "JAZAN" under Bill of Lading No. YMJAN755256845, dated 14/12/2023. Following the arrest of the defendant vessel M.V. "YM FOUNTAIN" on 31/12/2025, it was released on bail via a Letter of Undertaking for US\$2,635,000.00 on 03/02/2025, which was later replaced by a Bank Guarantee on 04/03/2025.

3] The legal dispute escalated when the owners of the M.V. "YM FOUNTAIN" filed an answer on 01/04/2025, including a counter-claim for US\$1,613,296.09 and a motion for counter-security totalling US\$2,560,000.00 for alleged wrongful arrest. After the filing of written submissions on 16/07/2025, the High Court delivered the "Impugned Order" dated 01/12/2025. This Order directed the Petitioner to deposit US\$2,000,000.00 as security, citing a failure to provide sufficient documentary proof linking the Defendant vessel to the liability under the Admiralty Jurisdiction Act No. 40 of 1983.

4] The Plaintiff-Petitioner prays that this Court be pleased to;

- a) Issue Notice of this application on the Defendant-Respondent;
- b) Grant Leave to Appeal from the Order dated 01/12/2025 made by the High Court of the Democratic Socialist Republic of Sri Lanka in the exercise of its Admiralty Jurisdiction in Action in Rem No.01/2025 (marked X3);

- c) Set aside the Order dated 01/12/2025 made by the High Court of the Democratic Socialist Republic of Sri Lanka in the exercise of its Admiralty Jurisdiction in Action in Rem No.01/2025 (marked X3);
- d) Stay the enforcement of the Order dated 01/12/2025 (marked X3);
- e) Stay the proceedings of the case Action in Rem 01/2025 pending the outcome of this Appeal;
- f) Grant costs;
- g) Grant such other and further relief as Your Lordships Court shall seem meet.

5] The Petitioner argues that the learned High Court Judge erred by prematurely determining issues of ownership and liability, specifically regarding "The Alliance Agreement", before a full trial. They contend the Order for US\$2,000,000.00 in counter-security is unsustainable and misapplies legal precedents regarding "mala fides" (bad faith). Consequently, the Petitioner is seeking a stay of proceedings in the original action and formal notices on Leave to Appeal.

6] The Petition was supported by an affidavit along with documents, particularly "X": Case Record in Action in Rem 01/2025, "X1(a)" and "X1(b)": Writ of Summons and Warrant of Arrest, "X2": Written Submissions filed by the Petitioner (16/07/2025), "X3": The Impugned Order (01/12/2025) and "P7" and "P8": Bill of Lading and "The Alliance Agreement."

7] By the Impugned Order, the High Court directed the Petitioner to furnish counter-security in the sum of USD 2,000,000 in response to the Respondent's allegation of wrongful arrest. The Petitioner contends that this Order is legally

untenable and premature, as it was made in the absence of any prima facie finding of mala fides or of the threshold requirements for gross negligence firmly established under admiralty law.

8] The dispute originates from a claim for damages arising out of cargo allegedly carried aboard the vessel M.V. "JAZAN." The Petitioner proceeded to arrest the M.V. "YM FOUNTAIN" on the basis of the "sister-ship" doctrine under Section 3(4) of the Admiralty Jurisdiction Act No. 40 of 1983. The Respondent contested the validity of this arrest, asserting the absence of common beneficial ownership between the two vessels.

9] Subsequently, the Respondent instituted a counter-claim (Claim in Reconvention) amounting to USD 1,613,296.09 and sought counter-security totalling USD 2,560,000. A central evidentiary issue arises from Bill of Lading No. YMJAN755256845 (marked P7), dated 14/12/2023, issued by Yang Ming (Netherlands) B.V. as an agent for Yang Ming (UK) Ltd trading as Yang Ming, thereby raising questions as to the identity of the "carrier" and the relevant person liable in personam.

10] The Petitioner's principal legal submission is grounded in the well-established "wrongful arrest" doctrine articulated in ***The Evangelismos*** (1858) 12 Moo PC 352, 14 ER 945 (annexed as "B2"). The history of this case shows that the vessel *Evangelismos* was arrested after being mistaken for another ship that caused a collision in the River Thames. However, the court ruled that wrongful arrest alone does not entitle a ship owner to damages. There must be malice or such gross negligence as to imply malice. This authority prescribes that damages for wrongful arrest may only be awarded where the arresting party

has acted with mala fides or crassa negligentia, the latter being a form of gross negligence implying malice.¹

11] In the Sri Lankan context, the Petitioner relies on the Supreme Court decision in ***MV “KALYANI” and Another v Mutiara Shipping Company NY*** (1998) 2 Sri L.R 105, wherein Justice Fernando clarified that a “wrongful arrest” must amount to an abuse of the court’s process rather than a mere unsuccessful claim. In that FERNANDO, J., held that the High Court has the power to order the Plaintiff to give security for the Defendant's counter-claim for damages for malicious arrest. His Lordship noted;

“Accordingly, in terms of section 2 (1) (a), a defendant is entitled to counterclaim for damages for wrongful arrest of a vessel where there was either mala fides or gross negligence, which implies malice.”

“. . . . the power of the court, consistently recognised and exercised over a long period of time to award damages for malicious arrest, is ancillary or incidental to its power to arrest a vessel, and can be exercised in the same proceedings. Such a claim for damages can be made without awaiting the termination of the proceedings.”

12] In concerning the Defendant Respondent’s version; After the Defendant-Respondent (the "Respondent") secured the release of its vessel by providing security, it filed a claim in reconvention for damages arising from a "malicious, wrongful and unlawful arrest.

¹ ***The Kate*** (1864) ***Br. & L.*** 218, ***The Strathnaver*** (1875) 1 AC 58, ***The Collingrove***, ***The Numida*** (1885) 10 PD 158, and ***The Kommunar*** (No.3) [1997] 1 Lloyd’s Rep 22.

13] On 01/12/2025, the learned High Court Judge ordered the Plaintiff-Petitioner (the "Petitioner") to furnish counter security in the amount of USD 2,000,000.00. The Respondent argues that the power to order counter security is an inherent judicial authority used to prevent injustice and "abuse of process."

14] They relied on ***M.V. Kalyani v Mutiara Shipping Company NY*** [1998] 2 SLR 105]; which established that courts possess discretionary power to Order security for counterclaims. Factually, the Respondent contends that the Petitioner's arrest of the vessel was a "gross misdirection" because there was no in personam link between the Petitioner and the actual owner of the vessel.

15] The Respondents drew attention to the Alliance Agreement (marked P8). The Respondent asserts that the Petitioner is not a party to this agreement and that the Bill of Lading relied upon was not issued by the vessel's owner. Consequently, the Respondent argues that the Petitioner willfully misconceived the contractual nexus, fulfilling the prima facie requirement for demonstrating a wrongful arrest that warrants counter security.

16] I now consider the facts before me. This Order only considers whether to grant leave or not.

17] On Ordering counter claims, the decision, ***The Evangelismos***, prevailed over 150 years and is still a good law. In ***The Evangelismos*** (1858) 12 Moo PC 352 Privy Council case established the high threshold for proving wrongful arrest of a vessel. In the test to be applied in a claim for wrongful arrest, the ship owner must prove the arrest was brought with mala fides (bad faith) or crassa negligentia (gross negligence). In considering the requirement of malice, a simple error, lack of success in the underlying claim, or excessive claims do not automatically make an arrest wrongful; it must be "so unwarrantably brought... that it rather implies malice". The court noted;

“It is urged by the Appellant that damages ought to have been awarded in addition to costs, according to the practice of the Admiralty Court, because the arrest was improper. On the other hand, it is said that the arrest of the ship was the foundation of the action, and therefore was not an illegal or improper act. Their Lordships think that there is no reason in this case for giving damages. Undoubtedly, if the arrest of the ship is an act of mala fides, or of that crassa negligentia from which the law implies malice, the Court of Admiralty would be justified in giving damages, as in an action brought at common law damages might be obtained. In the Admiralty Court however the proceeding is very convenient, because in the action in which the main question is disposed of damages may be awarded. The real question in this case comes to this: - Is there, or is there not, reason to say that the action was so unwarrantably brought, or brought with so little colour, so little foundation, that it implies malice on the part of the plaintiff, or that gross negligence which is equivalent to it? Their Lordships are of opinion that there is nothing whatever to establish the Appellant’s proposition. It is true the identity of the vessel was not proved; but there were circumstances which afforded ground for believing that the Evangelismos was really the vessel which came into collision with the Hind...”

18]The test to be applied is;

“is there or is there not, reason to say, that the action was so unwarrantably brought or brought with so little colour or so little foundation that it rather implies malice on the part of the Plaintiff, or gross negligence which is equivalent to it.. (page 359).”

19] **The Kate**, (1864) Br. & L. 218; 167 ER 343, Dr Lushington stated:

“The defendants are not in my opinion entitled to damages, because the circumstances of the case do not shew on the part of the Plaintiffs any mala fides or crassa negligentia, without which, according to the case of The “Evangelismos” unsuccessful Plaintiffs are not to be mulcted in damages.”

20] **The Strathnaver**, (1875) 1 App Cas 58 (PC), where it was held that no damages were payable as ‘there was simply an error in the judgement in bringing the suit’. Despite the fact that the wrong vessel had been arrested, the court found that there was no mala fides or crassa negligentia, and damages were therefore not payable by the arresting party.

21] In **The Cathcart**, (1867) LR 1 A & E 314.; damages were awarded for the wrongful arrest where the vessel was arrested by the claimant of a mortgage bond before the debt was due. The court found that the Plaintiffs had full knowledge of the facts and should have had regard to the terms of the mortgage agreement, from which it was clear that the debt was not due.

22] In the case of **Centro Latino Americano De Comercio Exterior SA v Owners of The Ship Kommunar, (The ‘Kommunar’)** (No 3) [1997] 1 Lloyd’s Rep 22 (QBD) it was held that where the arresting party held no honest belief in its entitlement to arrest the ship, mala fides must be found to exist. This decision interpreted the test of **The Evangelismos** as follows:

“Two types of cases are thus envisaged. Firstly, there are cases of mala fides which must be taken to mean those cases where on the primary evidence the arresting party has no honest belief in his entitlement to arrest the vessel. Secondly there are those cases in which objectively there is so little basis for the arrest that it may be inferred that the arresting party did not believe in his entitlement to arrest the vessel or acted without any serious regard to whether there were adequate grounds for the arrest of the

vessel. It is in the latter sense that the phrase *crassa negligentia* and gross negligence are used and are described as implying malice or being equivalent to it.”

23] In that, it was further held;

‘Even if the plaintiff’s claim fails or he is found to have wrongly invoked the jurisdiction he will not have to compensate the ship owner for the expenses and losses arising out of the arrest unless mala fides or crassa negligentia is proved. This is a rule of English law which can bear very harshly on ship owners’ who for some special reason may be unable to obtain release of their vessel by putting up security. It is not a rule which is found in the civil law systems. The more widely used procedure for obtaining security for a claim in personam in English law is the Mareva injunction, but there is an undertaking in damages required and the liability in respect of that undertaking arises upon the basis that, if the underlying claim fails, the plaintiff is liable for all losses caused by the injunction’”

24] Moreover, in **The Kommunar** (No 3) (supra), referring the decision in **The Evangelismos** as regulating the recovery of damages for wrongful arrest, identified the two following principles:

‘Firstly there are cases of mala fides, which must be taken to mean those cases where on the primary evidence the arresting party has no honest belief in his entitlement to arrest the vessel. Secondly there are those cases in which objectively there is so little basis for the arrest that it may be inferred that the arresting party did not believe in his entitlement to arrest the vessel or acted without serious regard to whether there were adequate grounds for the arrest of the vessel. It is, as I understand the judgement in the latter sense that such a phrase as “crassa negligentia” and “gross

negligence” is used and are described as implying malice or being equivalent to it.”²

25] Further, ***The Volant*** (1864) B. & L. 321, 167 ER 385 case discussed regarding the arrest of vessels and the provision of "counter-security" for security for damages/costs by the party arresting the ship. It established when a court might require a party (such as a Plaintiff or Counter-Claimant) to provide security for losses incurred due to the detention of a vessel. In this matter, based on the above principle, the learned trial court had ordered country security. The Petitioner, however, says this application is premature.

26] In Singapore, ***THE KIKU PACIFIC*** [1999] 2 SLR 595; considered the Defendants' counterclaim for wrongful arrest. They applied the test for wrongful arrest, which is mala fides or gross negligence, implying malice. The argument that malice could be inferred from a circumstance where there is no reasonable and probable cause would result in confusion and dilute the threshold required for an action in wrongful arrest to succeed. The Singapore Court of Appeal reaffirmed that, for wrongful arrest, there must be malice. Malice may be inferred from the circumstances, but it would not be sufficient to argue that the arresting party must be acting maliciously if it did not have a reasonable or probable cause for the claim.

27] ***The Collingrove, The Numida***, (1885) 10 PD 158, the court held;

“We do not, however, consider that the bare fact of the proceedings being discontinued entitled the defendant to damages, it is necessary for him to shew that the arrest of the ship was malicious, of the result of gross negligence.

² [1997] 1 Lloyds Rep 22 (QBD) 33.

28] In the case of The *Owners of Cargo Lately Laden on board The 'Euroexpress' v The 'Euroexpress' (Owners of) (Banque Indosuez & Anor, Interveners)* [1988] 3 MLJ 367, the Court of Appeal of Singapore held that the Claimants are entitled to arrest a vessel or other such property as is permitted to obtain security for the claim. It cannot be argued that the arrest is made in 'bad faith' merely because **there is good defence to the claim**. In our opinion, for an arrest to be in 'bad faith', there must be some element in the arrester's conduct, for example, where the arrest is in relation to a malicious claim, or is of itself malicious, apart from the proper enforcement of the claim. In our judgement, no such suggestion had or could have been advanced [Emphasis is added].

29] In ordering counter security, the burden of proof is on the person who says that there was malice or gross negligence. Gross negligence can be interpreted as a conscious, voluntary act or omission in reckless disregard of a legal duty. It is to be noted that in proving gross negligence, the threshold is a higher standard than ordinary negligence (carelessness), requiring evidence that the Defendant (in this case, Plaintiff) showed a severe lack of due care. In this manner, the Plaintiff must prove it is "more likely than not" that the Defendant acted with reckless disregard, often showing the danger was glaring.

30] In considering the malice, the Plaintiff (the Respondent) must prove that the Defendant (the Plaintiff in this matter) was motivated by an improper purpose. Malice involves acting with spite, ill will, or a direct, improper motive to harm the Plaintiff/ Defendant, rather than acting in good faith. The Plaintiff (in this matter, the Defendant-Respondent) must present evidence that the Plaintiff's actions cannot be explained by legitimate business or legal reasons, showing a deliberate intent to abuse the process.

31] Thus, we are of the view that the failure of a maritime claim does not automatically give rise to liability for wrongful arrest. Accordingly, the Petitioner's argument that the High Court erred in law, ordering counter-security

without first making a definitive determination on beneficial ownership, has made a prima facie case before this court.

32] Thus, the Leave is granted against the Order dated 01/12/2025. Costs in the cause.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL