Neutral Citation Number: [2025] EWHC 1210 (Admiralty)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
ADMIRALTY COURT

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

Date: 16/05/2025

Before :

THE HON. MR JUSTICE BRYAN
sitting with Commodore Robert W. Dorey MA RFA FIMarEST AFNI
an Elder Brother of Trinity House as Nautical Assessor

- -

Case No: AD-2023-000012

Between :

MONFORD MANAGEMENT LIMITED **Claimant**
(The Owners of the KIVELI)

- and -

AFINA NAVIGATION LIMITED **Defendant**
(The Owners of the AFINA I)

AND

Case No: AD-2023-000023

Between :

AFINA NAVIGATION LIMITED **Claimant**
(The Owners of the AFINA I)

- and -

MONFORD MANAGEMENT LIMITED **Defendant**
(The Owners of the KIVELI)

- -

Christopher Smith KC(instructed by **HFW LLP**) for the **Owners of the KIVELI**

Nigel Cooper KC (instructed by **MFB Solicitors**) **and Tatham & Co** for the **Owners of the AFINA I**

Hearing date: 16 May 2025

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Approved Consequentials Judgment

MR JUSTICE BRYAN :

A. INTRODUCTION

1. The parties appear before the Court today on the handing down of judgment, and hearing of consequential matters, in this collision action (neutral citation [2025] EWHC 1185 (Admiralty) – the "Judgment")) whereby I considered, based on the findings that I made, that KIVELI's fault was 4 times as great as that of AFINA I in relation to the collision between KIVELI and AFINA I and accordingly my apportionment of liability is 80% to KIVELI and 20% to AFINA I.

2. Following circulation of the judgment in draft, the parties have been able to reach a very large measure of agreement on the matters which arise as a consequence of the Judgment, including an agreed draft Order addressing consequential matters including the incidence of costs and a payment on account of costs on the part of KIVELI. I am satisfied that it is appropriate to make an Order in the terms proposed in the draft Order, and I do so.

3. The only outstanding matter for determination today is KIVELI's application for permission to appeal against the Judgment on the grounds set out in its draft amended Grounds of Appeal (the "Grounds") and supporting KIVELI Skeleton Argument, which is opposed in AFINA I's Skeleton Argument and Supplemental Skeleton (the later served after exchange of skeleton arguments and when AFINA I saw the Grounds for the first time). I have also received extensive oral submissions today from each of Christopher Smith KC (on behalf of KIVELI) and Nigel Cooper KC (on behalf of AFINA I).

4. I address the Grounds on their merits in due course below. It suffices to foreshadow at the outset that I consider that the Grounds have no prospect of success, still less any real prospect of success, and there is no other compelling reason for the appeal to be heard, in circumstances where there is, and can be, no appeal against the Court's findings of fact as to the egregious faults of, and inadequacy of the navigation of, KIVELI's Chief Officer, and there is no basis on which it can be said that the Court failed to apportion liability in a way which was open to it on the facts (80:20 KIVELI:AFINA I), in circumstances where KIVELI's Chief Officer was in breach of the Collision Regulations (whether it was a head-on or crossing situation) from C-22 to the moment of Collision in not turning to starboard at any material time, and instead, disastrously, and causatively, turning to port, whereby KIVELI's bow rammed into the port side of AFINA I, whereas (as is common ground) there would have been no collision at all if KIVELI had turned to starboard (as she should have done if it was a head-on situation) or maintained her course ahead or turned to starboard (as she should have done if, contrary to my findings and the views of the Nautical Assessor, it was a crossing situation).

B. THE GROUNDS

5. There are 4 grounds of appeal in respect of which permission to appeal is sought:-

    (1) The Judge erred in concluding (at §238) that at C-22 a head-on situation existed so as to engage Rule 14. He should instead have concluded (in so far as there was a risk of collision at C-22) that a Crossing Situation existed.

(2) In so far as a Head On Situation existed at C-22, the Judge erred in concluding that it still existed at all times thereafter (§§152 – 155, 240, 247, 248 and 327). The Judge should, instead, have concluded that it no longer existed at C-7:45.

(3) The Judge erred in concluding that (in so far as there was a risk of collision) a crossing situation did not exist. The Judge should, instead, have concluded that a crossing situation existed, that AFINA I was the give way vessel, and that she was obliged to keep clear of KIVELI (which she failed to do) and to avoid crossing ahead (which she did do).

(4) In so far as there was a Head On Situation the Judge erred in concluding that KIVELI was four times more at fault than AFINA I and in apportioning liability 80%/20%.

C. APPLICABLE PRINCIPLES

6. The applicable principles on permission to appeal are well-established, and well-known, and were common ground between the parties. Permission to appeal should only be granted if "the court considers that the appeal would have a real prospect of success" or if "there is some other compelling reason for the appeal to be heard" (see CPR52.6(1)(a), (b)). This is the same test as applies in cases of summary judgment under CPR Pt 24; i.e., that there is a realistic as opposed to a fanciful prospect of success. "Likewise if an appeal has no real prospect of success, the court will prevent the litigant from pursuing it. The main practical difference is that (for obvious reasons) more appeals are weeded out by this process, than first instance claims or defences" (White Book paragraph 52.6.2).

7. Mr Cooper KC, on behalf of AFINA I, also draws my attention to the following further principles that emerge from the authorities, as noted at paragraph 52.21.5 of the White Book, which Mr Smith KC, on behalf of KIVELI, does not dispute:-

> "Where a judge's evaluation of facts is challenged, it is properly understood to be very difficult for an appellate court to place itself in the position of the trial judge who would have had to take account of both written and oral evidence. As Lord Hoffmann explained it in *Biogen Inc v Medeva Plc* [1997] R.P.C. 1 at 45, an appellate court must be cautious in reversing a trial judge's evaluation of facts, just as it must be in reversing a primary finding of fact. In essence, the finding of fact challenged must be plainly wrong if it is to be overturned on appeal: *Clin v Walter Lilly and Co Ltd* [2021] EWCA Civ 136; [2021] W.L.R. 2753 at [83]–[87]. The reasons for this approach, and authorities, are summarised in Lewison LJ's judgment in *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5; [2014] E.T.M.R. 26 at [114]–[115] and again in *Volpi v Volpi* [2022] EWCA Civ 464; [2022] 4 W.L.R. 48 at [2]–[4] and [52]. Authoritative guidance on the approach that appellate courts should take when called upon to assess a trial judge's evaluation of facts was given by the Supreme Court in *Re B (A Child) (Care Proceedings: Threshold Criteria)* [2013] UKSC 33; [2013] 1 W.L.R. 1911, *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 W.L.R. 2477; *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 W.L.R. 2600; *R. (R) v Chief Constable of Greater Manchester* [2018]

> UKSC 47; [2018] 1 W.L.R. 4079 and *Perry v Raleys Solicitors* [2019] UKSC 5; [2020] A.C. 352…
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> …
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> A judge's reasons should be read on the assumption that the judge knew (unless they have demonstrated to the contrary) how they should perform their functions and which matters they should take into account (Re C (A Child) (Adoption: Placement order) (Practice Note) [2013] EWCA Civ 431; [2013] 1 W.L.R. 3720, CA, at [39] per Sir James Munby P; Piglowska v Piglowski [1999] 1 W.L.R. 1360, HL, at 1372 per Lord Hoffmann). An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that they misdirected themselves."

D. PRELIMINARY POINTS

8. Before turning to the issues raised by the Grounds there are a number of preliminary points that need to be borne in mind when considering the Grounds (both overall, and in the context of the individual grounds):-

    (1) None of KIVELI's Grounds of appeal assist her, unless KIVELI can establish that the consequence of what it says were errors made by the Court is that the Court failed to apportion liability in a way which was open to it on the facts (given that KIVELI accepts that the Court correctly stated the law in relation to apportionment). KIVELI is not in a position to do that. Even were KIVELI correct that the situation prior to the Collision was properly to be treated as a crossing situation (contrary to the findings of the Court and the views of the very experienced Nautical Assessor), the egregious faults on the part of KIVELI's Chief Officer mean that KIVELI bears principal responsibility for the Collision and it was her failures which carried the overwhelming majority of the causative potency for the Collision.

    (2) KIVELI does not have any realistic prospect of overturning the Court's conclusion that responsibility for the Collision rests 80% with KIVELI and 20% with AFINA I. As already noted, KIVELI cannot, and does not challenge the Court's findings of fact as to the inadequacy of the navigation of the Chief Officer of KIVELI (see paragraph 7 of KIVELI's Skeleton Argument). I have concluded that KIVELI's Chief Officer was knowingly sailing in breach of the Collision Regulations from C-22 and had both nibbled to port whilst manoeuvring towards AFINA I and then made a last-minute disastrous turn to port which was the immediate cause of the Collision. In such circumstances I do not consider there is any realistic prospect of the Court of Appeal interfering with the Court's apportionment, given the preceding full analysis of the factual evidence (almost all of which was agreed in terms of events), whilst the findings in relation to KIVELI's Chief Officer are not challenged, and the detailed consideration (and considered application) of the Collision Regulations whether a head-on or crossing situation (as supported by the views of the Nautical Assessor), leads to the same outcome on apportionment.

(3) All of the 4 Grounds are ultimately no more than a re-cycling of the arguments advanced on KIVELI's behalf at trial, and which are comprehensively addressed, and rightly dismissed, in the detailed Judgment (which entirely accords with the views expressed by the Nautical Assessor). KIVELI does not identify why there is a realistic prospect of persuading the Court of Appeal to interfere with the Court's conclusions, which I am satisfied were conclusions that were open to the Court on the evidence and the arguments before it.

(4) Inherent in all of KIVELI's Grounds of Appeal is a submission that the Court was wrong to adopt a construction of Rules 14 and 15 which avoids the risk of confusion on board vessels as to the appropriate action to take in a fine crossing situation. Such submission is heretical to the well-established purpose of the Collision Regulations, and the avoidance of collisions. What the Judgment provides is no more than further certainty to both rules and further goes to reduces the risk that a vessel will turn to port in circumstances where she should not and where, as this case illustrates, the consequences may be catastrophic. It is difficult to see on what basis the Court of Appeal would see fit to reach a different conclusion to the Court where the effect of KIVELI's arguments (both in relation to Rule 14 and Rule 15) would be to increase uncertainty as to the action to be taken by mariners to avoid collisions, and increase the danger of vessels failing to change to starboard, the very antithesis of the whole purpose of the Collision Regulations.

(5) Whilst KIVELI seeks to give the impression that the factual issues which it wishes to challenge are few, and seek to portray that the findings are based on documents such that the Court of Appeal (assisted by assessors – see Practice Direction 52C paragraph 26(B)(1) would be in equally as good a position to consider the relevant evidence, that is simply unrealistic and untrue. It is quite clear that from Grounds 3 and 4 (particularly as developed orally before me by Mr Smith KC), that KIVELI wants to re-open the entire factual evidence from C-22 not just in relation to the relative positions of the vessels to each other but also in relation to what each vessel could in fact see, their relative position to other vessels and the actions of the Chief Officer on board AFINA I (notwithstanding an express disavowal of any intention to do so). All such matters were for this Court, and the Court of Appeal would not have the benefit of hearing the evidence of KIVELI's Chief Officer, or an in-depth analysis of the agreed animated plot and radar flip books as the Court had had (see, in particular, the amended Grounds of Appeal at paragraph 8.3). As the commentary to CPR Part 52.6 makes clear, where the basis of a permission to appeal application is a challenge to a trial judge's findings of fact, an appeal court would need to be satisfied that those findings were either unsupported by the evidence before the Judge or that the decision was one that no reasonable judge could reach (see above). KIVELI does not even begin to suggest that that this is the case. The Court heard from the Chief Officer of KIVELI and heard detailed submissions on what conclusions could be drawn from the radar flipbooks and the animated plot as well as the NMEA spreadsheet. I am satisfied that there is no basis on which it could be concluded that the Court's findings of fact were not supported by the evidence or were ones which no reasonable judge could reach. What KIVELI envisages is, I am satisfied, no less than a root and branch re-argument of all factual issues from C-22 right through to C-7.5 and

then onwards to the Collision, which is not an exercise that an appellate court would perform, or even be in a position to perform.

E . OVERARCHING POINTS

9. There are also overarching points that apply in relation to the Grounds (both overall, and in the context of the individual grounds).

10. First, KIVELI has no real prospect of success in demonstrating that the Court's analysis, and construction of the Collision Regulations and Rules 14 and 15, in particular, is wrong having regard to:-

    (1) The language of the Rules.

    (2) The common ground between the parties as to the approach to be taken by the Court to the construction of the Collision Regulations.

    (3) The legislative context – in particular, a comparison with the previous Rule 18.

    (4) The purpose of the Rules – in particular, the need to provide a test for the inter-relationship between Rules 14 and 15 (which is to be understood by professional and amateur seafarers alike).

    (5) The authorities. In this regard-

        (a) The Court's reasoning is consistent with the decision of the Supreme Court in *The Ever Smart* [2021] UKSC 6, as well as the reasoning in *The Maloja II* [1993] 1 Lloyd's Rep. 48.

        (b) Whilst KIVELI suggests that there is a difference in reasoning between the Court and the decision of Teare J in *The Apollo* [2023] EWHC 328 (Admiralty), the reality is that there is no real difference for the reasons that the Court has given in the Judgment, namely, the point was obiter in that case, the factual situation in that case was obviously a crossing situation and the two vessels concerned were clearly not on reciprocal or nearly reciprocal courses within the meaning of Rule 14(a), and in consequence (and in contrast to the present case), the argument before Teare J on the inter-play between Rules 14 and 15 was limited, and in consequence such statements as were made, were made without the level of legal and textual analysis undertaken by this Court.

    (6) The commentaries, in particular, *Farwell*, *Hirst* and *Cockcroft & Lameijer*, which are consistent with the findings of the Court (and in many cases express the very same views), as quoted in the Judgment.

    (7) The practical guidance, and opinion evidence, provided by the Nautical Assessor all of which has been accepted by the Court, and all of which supports the findings made by the Court.

11. Secondly, and irrespective of the Court's conclusions on the proper construction and effect of Rule 14, the Court has reached the clear conclusion that whether the situation as between KIVELI and AFINA I from C-22 is to be treated as a crossing situation or a head-on situation the root cause of the Collision was the actions (or rather inactions) of the Chief Officer of KIVELI. The reality is that the contrary is not really even arguable, still less is there any real prospect of the Court of Appeal reaching a contrary conclusion. In this regard:

    (1) The Court's conclusions that the Chief Officer was knowingly navigating in breach of the Collision Regulations cannot be challenged.

    (2) Even if the situation was a crossing situation so as to engage Rules 14 and 15 (contrary to the findings of the Court and the views of the Nautical Assessor)– the Court has found that:

        (1) The Chief Officer of KIVELI fundamentally failed to (i) keep a good lookout and (ii) to comply with KIVELI's obligations as stand-on vessel (see the Judgment at [291] – [294] and [312] - [313]);

        (2) The Collision would not have occurred if KIVELI had complied with her obligations as stand-on vessel;

        (3) KIVELI failed to comply with her obligations under Rule 14 in relation to CAPE NATALIE, with which the Chief Officer admitted KIVELI was in a head-on situation. Again, the Court's conclusion that had KIVELI turned to starboard to avoid CAPE NATALIE (see the Judgment at [307]), the collision would have been avoided cannot sensibly be challenged.

12. Thirdly, the findings of fact which underly the Court's conclusion as to the root cause of the Collision cannot realistically be challenged.

13. Fourthly, the principles to be applied by the Court when considering apportionment were common ground.

14. Fifthly (and fundamentally) in the light of the findings of fact made by the Court (which cannot be challenged and are not challenged,) the Court's apportionment of liability remains good under those principles even if the Court were wrong to conclude that the situation was a head-on situation rather than a crossing-situation (see the Judgment at [326] – [328]).

F. THE GROUNDS

F.1 GROUND 1

The Judge erred in concluding (at §238) that at C-22 a head-on situation existed so as to engage Rule 14. He should instead have concluded (in so far as there was a risk of collision at C-22) that a Crossing Situation existed.

15. Ground 1 has no real prospect of success for the reasons already identified above in Section E.

16. In particular, so far as KIVELI seeks to suggest at paragraph 1.2 of the Grounds that the Court has not followed the observations of Teare J in *The Apollo* the same is distinguishable

and did not involve the level of argument or analysis as in the present case, nor is the decision in any way inconsistent with the decision of the Supreme Court in The Alexandra I at [56]. In any event I am satisfied that the Court's conclusions are justified for the reasons explained at [136] – [142] of the Judgment.

17. Further, contrary to the submissions made by KIVELI in paragraph 1.3 of the Grounds of Appeal, the Court's conclusion as to the natural and ordinary meaning of the Rules 14(a) and (b) and as to the inter-relationship between them gives a meaning to Rule 14, which is straight-forward for an officer on watch to apply and does not depend on the distance between the vessels and which lights are visible at any particular moment or indeed an assessment by that officer of which lights the other vessel can or should be seeing. In contrast, KIVELI's construction of Rule 14 would create difficulties for an officer on watch in determining where the boundary lies between Rules 14 and 15 and which side-lights the other vessel is or should be seeing so as to determine which is the governing Rule. The difficulties created by KIVELI's construction were highlighted by the extensive work which had to be done to determine the relative positions of the vessels and which side lights they might have seen and when, which is wholly divorced from the real-world application of the Rules that both professional and amateur sailors experience, and which is only assisted by the construction set out in the Judgment (in contrast to KIVELI's construction).

18. The same points can be made in relation to KIVELI's challenges to the Court's conclusions that the requirements of Rule 14(b) need only be satisfied by one of the vessels and that Rule 14(c) only applies to one vessel. I am satisfied that the Court's conclusions on both these issues are clearly right and reflect what should be the behaviour of a reasonably competent mariner sailing in accordance with the Collision Regulations. Whilst it is submitted that the Court has failed to give sufficient weight to the matters set out in paragraphs 1.6 to 1.7 of the Grounds, this ignores the detailed analysis in the Judgment in relation to the fact that the vessels were on reciprocal or nearly reciprocal courses from C-22.

19. In this respect, KIVELI's yet again seeks to focus on what side-lights each vessel could see which is rightly characterised by AFINA I as an "isolationist approach to Rule 14" by insisting on looking at the evidence relating to the side-lights to the exclusion of the rest of the evidence, an approach which is contrary to the language of Rule 14(a) (and indeed Rule 14(b) and (c)), the spirit and purpose of the Collision Regulations, and paragraphs 2 and 3 of the Nautical Assessor's answers and the tables therein which both illustrate that the vessels were on reciprocal or near reciprocal courses.

F.2 GROUND 2

In so far as a Head On Situation existed at C-22, the Judge erred in concluding that it still existed at all times thereafter (§§152 – 155, 240, 247, 248 and 327). The Judge should, instead, have concluded that it no longer existed at C-7:45.

20. Ground 2 has no real prospect of success. It is contrary to existing commentaries and case law (once a Rule 14 head-on situation arises it continues until action in accordance with Rule 14 is taken to remove the risk of collision), as addressed in the Judgment. It would also be to draw an invalid distinction with both Rules 13 and 15, where once an overtaking or a crossing situation exists, that situation persists until the risk of collision is past (see Rule 13(d) and *The Orduna* (1920) 5 Ll.L.Rep 241 @ 242rhc – 243lhc), which would make no sense, not least in circumstances in which Rule 14 takes precedence over Rule 15. I am

satisfied that there is no prospect of KIVELI being able to establish that notwithstanding that a risk of collision arose at C-22 in circumstances where the vessels were in a head-on or nearly head-on situation, a different rule then applied at C-7.5. Such a conclusion would be contrary to authority, contrary to the rationale of the continuing application of particular Rules until a risk of collision has ceased, and contrary to common sense.

21. As to KIVELI's (contrived) submission that somehow Rule 14 would otherwise continue to apply ad infinitum, it is misconceived. As has been found in the Judgment (consistent with existing commentaries and authority), once Rule 14 is engaged, it continues to apply until the risk of collision is past, for example because both vessels have turned sufficiently to starboard that there is no longer a risk of collision.

F.3 GROUND 3

The Judge erred in concluding that (in so far as there was a risk of collision) a crossing situation did not exist. The Judge should, instead, have concluded that a crossing situation existed, that AFINA I was the give way vessel, and that she was obliged to keep clear of KIVELI (which she failed to do) and to avoid crossing ahead (which she did do).

22. Ground 3 stands no real prospect of success, and takes KIVELI nowhere for the reasons already identified in Sections D and E above. First, there is no basis under the Collision Regulations or on the facts to conclude that the situation was a crossing situation rather than a head-on situation. Such a conclusion would be contrary to the proper construction of Rule 14, the findings of fact in the Judgment, and the views of the Nautical Assessor. Ground 3 is no more than an attempt to re-argue that which has been comprehensively argued, and lost, at trial, as comprehensively addressed in the Judgment. Secondly (and fundamentally) it would make no difference if the situation had been a crossing situation in terms of the causative potency of the failings of KIVELI's Chief Officer, and there would be no difference in apportionment from 80:20 KIVELI:AFINA I.

F.4 GROUND 4

In so far as there was a Head On Situation the Judge erred in concluding that KIVELI was four times more at fault than AFINA I and in apportioning liability 80%/20%.

23. Ground 4 has no real prospect of success for the reasons already identified in Sections D and E above.

24. Yet further, KIVELI does not and cannot suggest that the Court has failed to apply the correct principles of apportionment. KIVELI has identified no basis on which the Court's evaluation of respective fault is wrong or one that the Court could not reasonably have reached on the evidence. Taking into account the factors which the Court had to weigh on its assessment of culpability, there is no realistic basis challenging the finding that KIVELI was principally responsible for the collision in circumstances where the Court has found (and its conclusions have not been challenged):-

    (1) That the Chief Officer of KIVELI was knowingly navigating in breach of the Collision Regulations.

    (2) That the Chief Officer of KIVELI was not keeping a good lookout at C-22 or thereafter (and indeed was using his mobile phone and was singing shortly before the Collision).

(3) That whether Rule 14 or Rule 15 applied to the situation prior to the Collision, the Chief Officer of KIVELI failed to comply with KIVELI's obligations under either Rule and, in fact, did the one thing KIVELI should not have done, namely turn to port (and not at a time when the Chief Officer of the KIVELI was in the "horns of a dilemma" (as addressed in the Judgment)..

25. As for the actions of AFINA I, I am satisfied that proper account was taken of, and appropriately weight given to, the failures on the part of AFINA I, and of the criticisms of AFINA I's navigation made by the nautical assessor, namely that the turn was late and not consistent with the obligation of good seamanship (see [279] of the Judgment). I do not consider there is a real prospect that the Court of Appeal would interfere with apportionment even if it were to be the case that they would have made a different apportionment, given the role of the trial judge and the evidence that the trial judge heard.

26. In this regard I consider that the Court of Appeal would regard any such different apportionment (based on the apportionment it would have made), as an improper interference with the task of the Court as the primary finder of fact; and I also consider that, even if the Court of Appeal were to take a different view of apportionment, it would still apportion the majority of the blame to KIVELI and as such would not be likely to interfere with the Court's decision. The suggestion that on the unchallenged findings of fact made by the Court, repeated orally before me today by Mr Smith KC, that apportionment should be 50:50 is, I am satisfied, wholly unrealistic given the failings of KIVELI's Chief Officer and the causative potency of his turning to port without which there would have been no collision at all.

G. ANY COMPELLING REASON FOR AN APPEAL TO BE HEARD

27. I am equally satisfied that there is no compelling reason for an appeal to be heard.

28. The Court has carefully explained its reasons for taking a different approach to Rule 14 than what is said to be the approach of Teare J in *The Apollo,* in what was not a head on situation, and Teare J had not had the benefit of the detailed arguments addressed in this case. It does not even follow that Teare J would have said what he said had he had the benefit of the detailed submissions before me, and the extensive references to applicable commentaries, which are all consistent with the findings made in the Judgment.

29. Equally, and contrary to the submissions of KIVELI, there is nothing in the *Ever Smart* that is contrary to the findings made in the present case, and the observations relied upon from the *Ever Smart* are entirely consistent with the findings made in the present case as to the role of Rule 14(b) as a "trigger" (which it is), as opposed to as a "defining provision" (as argued by KIVELI).

30. The reality is that KIVELI cannot satisfy the Court that it has a real prospect of success in relation to its Grounds and in such circumstances there is no compelling reason, and no justification, for exposing both parties to the cost of an appeal (and AFINA I to unrecoverable costs on a solicitor and own client basis following an unsuccessful appeal by KIVELI), in circumstances where KIVELI has no real prospect of success of overturning the Judgment.

H. CONCLUSION

31. Accordingly, for all the above reasons, the application for permission to appeal is refused.