



**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

- (1) REPORTABLE: NO  
(2) OF INTEREST TO OTHER JUDGES: NO  
(3) REVISED.

SIGNATURE

DATE: 28 February 2025

Case No. 2025-020033

In the matter between:

**JOHANNESBURG SCHOOL OF FLYING (PTY) LTD**

Applicant

and

**RAND AIRPORT HOLDINGS (PTY) LTD**

First Respondent

**RAND AIRPORT MANAGEMENT (PTY) LTD**

Second Respondent

**AIR TRAFFIC AND NAVIGATION SERVICES SOC LTD**

Third Respondent

**THE SOUTH AFRICAN CIVIL AVIATION AUTHORITY**

Fourth Respondent

**U FLY TRAINING ACADEMY CC**

Fifth Respondent

**CENTRAL FLYING ACADEMY (PTY) LTD**

Sixth Respondent

**SPRINGBOK AIR ACADEMY**

Seventh Respondent

**ACCOLADE FLYING WINGS**

Eighth Respondent

**SAFOMAR AVIATION OPERATIONS (PTY) LTD**

Ninth Respondent

**AFRICA AVIATION ACADEMY**

Tenth Respondent

**EAGLE1 FLIGHT ACADEMY**

Eleventh Respondent

**SUN QUEST AVIATION**

Twelfth Respondent

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## JUDGMENT

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### **WILSON J:**

- 1       The applicant, JSF, is a flying school which operates from the Rand Airport. JSF owns and controls the land and buildings it uses at the airport, but the airport's runways are owned and controlled by the first and second respondents, to which I shall refer collectively as "RAM".
- 2       On 10 February 2025, RAM told JSF that it would no longer be permitted to use the airport runways unless it paid just over R435 000 in arrear landing fees it claimed were due to it from JSF. The extent of JSF's liability to RAM for landing fees and other expenses associated with its use of the airport has long been a contested subject. Litigation on the issue resulted in a settlement agreement the parties signed on 18 July 2022. Under that agreement, JSF is liable to pay RAM landing fees structured in the manner the agreement sets out, and to purchase fuel for its aircraft at market-related prices from RAM.
- 3       That arrangement endured until 28 June 2024, when RAM increased the landing fees due under the agreement by 105%. JSF complained that this increase was unfair, unreasonable, and meant that landing fees due at Rand Airport had been inflated out of proportion with landing fees due at comparable airports. This, JSF complained, was contrary to the parties' tacit consensus, when they concluded the 2022 settlement agreement, that any increase in landing fees would be fair and reasonable, having regard to market conditions.

JSF also took the point that the first respondent's board had been improperly constituted when it authorised the increase.

- 4 The papers in this case disclose a lengthy correspondence on the nature of and justification for the price increase. While that dispute matured, JSF continued to pay RAM the landing fees due at the rate that applied before the price increase RAM sought to implement on 28 June 2024. JSF deposited the difference between the old and the new landing fees due to RAM into its attorney's trust account.
- 5 In response to the threat to ground its aircraft, JSF launched the application now before me, which was enrolled in my urgent court on 26 February 2025. JSF seeks an interim interdict restraining the implementation of RAM's threat. It asks that the interdict operate pending the outcome of an action to be instituted within 30 days to set aside the landing fee increases RAM seeks to impose.
- 6 In its answering affidavit, RAM essentially consents to the interdict JSF seeks, provided that JSF pays the full landing fees RAM says are now due while JSF's action to set those fees aside is pursued. RAM tenders to repay any amount the trial court might find to have been unlawfully charged within ten days of the trial action being finalised.
- 7 In light of RAM's tender, counsel for both parties – Mr. Hollander for JSF and Mr. Williams for RAM – accepted that the only issues outstanding between the parties were whether JSF's application can properly be entertained on an urgent basis, and whether, if it can, JSF should be permitted to continue to withhold the difference between the amounts due to RAM under the old and

the new landing fees until JSF's action is finalised. RAM also contends that it should not have to pay the costs of the urgent application, chiefly because it says that the arrangement it tenders has been available JSF all along. I address each of these issues – urgency, the landing fee payment arrangements, and costs – in turn.

## **Urgency**

8 This application is patently urgent. The relief JSF seeks is directed toward preserving its operations at Rand Airport beyond 1 March 2025. RAM says that the dispute about its landing fees has dragged on since mid-2024, and that JSF has unjustifiably delayed bringing this application. Even if that were true, at the time JSF launched this application, there could have been no dispute that it faced total paralysis on 1 March 2025 if RAM followed through on its threat. Whether JSF dawdled before approaching the court may have been relevant to costs, but it could not have changed the fact that RAM's 10 February ultimatum constituted an existential threat to JSF and its operations. Urgency could not seriously be disputed.

9 In any event, JSF did not drag its feet before approaching me for urgent relief. The urgency clock started ticking on 10 February, when RAM made its threat. JSF wasted no time once that threat was issued. I reject the submission that I should take into account the whole of the period between the price increase itself and the hearing. For much of that period, there was no suggestion that RAM would move to ground JSF's aircraft, and accordingly no urgency. JSF was in fact doing what any responsible litigant should do: it was attempting to resolve its dispute without having to approach the urgent court. It is trite that a

litigant who engages in good faith to resolve a dispute does not thereby forgo any claim to urgency that they might otherwise have (see, for example, *South African Informal Traders Forum v City of Johannesburg* 2014 (4) SA 371 (CC), paragraphs 37 to 38). In this case, JSF's urgency arose on 10 February 2025. The mere fact that it sought to resolve the dispute through engagement would not have dissipated any urgency it could have claimed before that date.

### **Payment arrangements pending JSF's proposed action**

10 This is an application for interim relief about a sum due under a contract that the parties acknowledge to be valid, and which places the parties under ongoing reciprocal obligations to provide a good or a service in return for payment. The contract also affords one party – in this case RAM – the right to adjust the price due from time-to-time. In these circumstances, it seems to me that the ordinary approach should be that JSF pays under protest the full amount demanded by RAM, including any disputed increment, until such time as the dispute is resolved. Payment under protest has long been acknowledged to give rise to a right to recover the amounts disputed in the event that it is agreed or found by a court that there was no right to those amounts in the first place (see, for example, *Commissioner for Inland Revenue v First National Industrial Bank* 1990 (3) SA 641 (A) at p 649). Ordinarily, payment under protest will be a practical and fair interim arrangement while a payment dispute works itself out.

11 There are, of course, circumstances in which that approach might not be appropriate – for example, where the parties agree otherwise; where payment under protest would make the operation of the agreement as a whole

impossible; where the price adjustment imposed is more likely than not to have been levied unlawfully; where payment under protest will make it practically impossible for the payer to challenge the lawfulness of the price adjustment; or where the payee is unlikely to be able to return the disputed amounts in the event that the payer turns out not to have been obliged to make them in the first place.

- 12 In this case, JSF says that it should not have to pay under protest for three reasons. First, it says that it has no guarantees that RAM will be able to repay the disputed landing fees at the end of a trial action that may take years to finalise. Second, JSF says that its case that the increase in RAM's landing fees have been unlawfully increased is strong enough to justify permitting it to withhold payment. Third, JSF says that there is no identified prejudice to RAM from permitting it to withhold payment.
- 13 It has not been demonstrated on the facts that RAM will not be able to repay any landing fees ultimately found to have been unlawfully levied. It has tendered to do so within ten days of the finalisation of JSF's proposed action. RAM also has substantial property at Rand Airport against which JSF will be free to execute if RAM does not make good on its undertakings.
- 14 Nor am I satisfied that JSF's case that the landing fee increases are unlawful is so strong as to justify relieving it of an interim payment obligation. JSF relies, in the main, on the importation of a tacit term into the 2022 settlement agreement that any adjustment in landing fees will be fair and reasonable. There is colour to JSF's case on this score. Because JSF is to some extent a captive user of the airport, the terms on which the parties contracted in 2022

might reasonably be asserted to have arisen against shared background expectations of reasonable and fair dealing. However, I do not think that there is enough on the papers before me to reach particularly strong *prima facie* findings that (a) both parties would have accepted that fair and reasonable pricing was part of the agreement they reached; (b) that both parties would have agreed on what fair and reasonable pricing entails; and that (c) fair and reasonable pricing rules out the price adjustment to which RAM claims it is entitled – especially since it appears to be common cause that the 2024 increase was the first one RAM had demanded in six years.

15 JSF also alleges that RAM's board was not properly constituted when it approved the landing fee adjustment, but that is likely to be no more than a dilatory point. Even if the board was improperly constituted, there is nothing to suggest either that a properly constituted board would not have approved the same adjustment or that a properly constituted board would not be able to ratify such an adjustment in future. So, while the case that RAM's board was not properly constituted is one of some strength, it is not clear to me that the point, if successful, would permanently reverse the landing fee increase of which JSF complains. I also have my doubts about whether JSF has the standing to challenge the way RAM reached the decision to increase landing fees at the airport.

16 There is, finally, no suggestion that requiring JSF to pay the augmented fees under protest would undermine the efficacy of the settlement agreement, or that it would prejudice JSF in any other way. Indeed, JSF says that it is setting aside the difference between the old and the new landing fees in its attorney's

trust account. It has also tendered to pay that difference into RAM's attorney's trust account. In other words, JSF will not have interim access to the money whichever way I rule.

17 Finally, something must be said about JSF's assertion that RAM can show no prejudice to forgoing the augmented landing fees pending the resolution of the proposed trial action. JSF does not say that RAM may not increase its landing fees *at all*. JSF says only that RAM has asked for too much. Once RAM's right to implement *some* increase is conceded, the proposal that it should receive none until the end of a contested trial action likely to take years seems to me to be prejudicial *per se*.

18 For all these reasons, I do not think JSF has shown that it should be relieved from the obligation to pay RAM under protest, in the expectation that it will get its money back if its trial action is successful.

### **Costs**

19 This litigation was made necessary because RAM threatened to ground JSF's aircraft. Given that JSF has obtained almost all of the relief it originally sought, including an interdict restraining RAM from doing so, there is no reason why RAM should not pay the costs of the application. I am not convinced that the interim arrangement embodied in the order I shall make was available to JSF all along, although I accept that elements of it were mooted in the correspondence that passed between the parties over the last eight months. It is possible that this arrangement would have been reached had that correspondence been allowed to continue. But it was, at bottom, RAM's

decision to break it off and issue its threat that made an approach to this court unavoidable. RAM must bear the consequences of that decision.

## **Order**

20 For all these reasons –

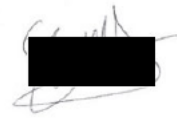
20.1 Pending the finalisation of an action to be instituted by the applicant against the first to twelfth respondents in this court by 31 March 2025 ("the action"), the first and second respondents are interdicted and restrained from grounding the aircraft of the applicant at the Rand Airport; issuing a grounding notice for the applicant's aircraft at the Rand Airport; or denying the applicant the use of the runways at the Rand Airport.

20.2 Pending the finalisation of the action, the applicant is to pay under protest the increased landing fees announced in the second respondent's letter dated 28 June 2024, which is annexed to the applicant's founding affidavit, and marked "FA5".

20.3 On the conclusion of the action the first and second respondents are directed, jointly and severally, the one paying the other to be absolved, to repay to the applicant such amounts as the trial court may determine the first and second respondents owe to the applicant, within ten days of the trial court's order, or such longer period as the trial court may determine.

20.4 If the action is not instituted by 31 March 2025, the orders in paragraphs 20.1 to 20.3 will lapse.

20.5 The first and second respondents are directed, jointly and severally, the one paying the other to be absolved, to pay the costs of this application, including the costs of two counsel, where employed. Counsel's costs may be taxed on scale "B".



**S D J WILSON**  
Judge of the High Court

This judgment is handed down electronically by circulation to the parties or their legal representatives by email, by uploading it to the electronic file of this matter on Caselines, and by publication of the judgment to the South African Legal Information Institute. The date for hand-down is deemed to be 28 February 2025.

HEARD ON: 26 February 2025

DECIDED ON: 28 February 2025

For the Applicant: L Hollander  
W de Beer  
Instructed by Ramsey Webber Inc

For the First and  
Second Respondents: D Williams  
Instructed by Wright Rose-Innes Attorneys

For the Ninth Respondent: Fluxmans Attorneys