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

CASE NUMBER: 2025-064608

Reportable: **NO**

Circulate to Judges: **NO**

Circulate to Magistrates: **NO**

Circulate to Regional Magistrates: **NO**

In the matter between:-

MOHAMED HOLDINGS (PTY) LTD

(Registration No 2021/619061/07)

Applicant

and

B EMS CLOSE CORPORATION

(Registration No 2006/133117/23)

1st Respondent

THAPELO SAMUEL BUTHELEZI

(ID: 7[...])

2nd Respondent

MPHO MONAMETSI

3rd Respondent

SOUTH AFRICAN CIVIL AVIATION AUTHORITY

4th Respondent

JUDGMENT

FMM REID J

[1] The applicant approaches this Court on an urgent basis to prevent the 1st and 2nd respondents to sell a specific aircraft to a third party, on which aircraft the applicant has already paid a deposit to the value of R480,000.00 (Four Hundred and Eighty Thousand Rand) in the form of a BMW motor vehicle.

[2] In addition to hearing the matter on an urgent basis, the specific relief sought by the applicant reads as follows:

“2. An order is sought for an interim interdict whereby the First and Second Respondent be interdicted and restrained from utilising, disposing, alienating, moving, transferring, interfering and/or selling the aircraft to a third party, until the Applicant has an opportunity to serve and file papers initiating proceedings to determine any dispute in relation to the written agreement dated the 6th of November 2024 and such proceedings have been finalised;

3. The Applicant is authorised to unilaterally apply to the South African Aviation Authority for the amendment of certificate of registration and thus transfer the 1995 Eurocopter MBB-BK 117 B-2, Registration Z[...] with Manufacturer Number 7[...], from the First Respondent to the Applicant; alternatively

3.1. The Third and Fourth Respondent is authorised and ordered to register the Applicant as the owner of the 1995 Eurocopter MBB-BK 117 B-2, Registration Z[...] with Manufacturer Number 7[...], without any further co-operation from the First Respondent; alternatively:

3.2. The First and Second Respondent do all that is necessary to have the 1995 Eurocopter MBB-BK 117 B-2, Registration Z[...] with Manufacturer Number 7225, transferred to the Applicant in accordance with the written agreement entered into on the 6th of November 2024;

4. *That the Applicant serve and file papers initiating proceedings to determine the dispute referred to in prayer 2 above within 10 (ten) days of the determination of this interim application...*

[3] The applicant's ground for urgency is to be found in the applicants' reason to believe that the aircraft is to be sold. The applicant states in the founding affidavit that:

"50. There is a clear and established right. The Applicant has fulfilled its part of the agreement, but the aircraft has not been transferred. The harm apprehended is real. I have good reason to believe that the Respondents' conduct may result in the aircraft being disposed of to another party."

(own emphasis)

[4] No further detail is provided on what the "good reason to believe" is based. During argument Ms McKenzi argued that more detail cannot be provided as to the suspected sale to a third party, as the suspected sale is with an unknown third party and the applicant would not have any knowledge thereof. This does not pass the muster for the establishment of a reasonable suspicion. The applicant should have disclosed the basis of the reason to believe, how it formed, why it is believable and why it is reasonable.

[5] Adv Kiangi, on behalf of the 1st and 2nd respondents, argued that the respondents have no intention to sell the aircraft. The respondents' argument is that the applicant did not perform in terms of the agreement by failing to pay the outstanding amount of R2,200,000.00 (Two Million Two Hundred Thousand Rand) in addition to the BMW motor vehicle that was received as a deposit.

[6] In any event, the Addendum to the Purchase Agreement dated 6 November 2024 explicitly states the following:

"SELLER RESERVES THE RIGHT TO SELL THE AIRCRAFT TO ANY INTERESTED PARTY IF HE WISHESS SO DURING THE CONTRACT

PERIOD."

(Addendum written in capital letters)

[7] The documents presented to this Court, as well as the oral arguments, indicate a lack of urgency in the absence of establishing a reasonable basis on which the aircraft is considered to be sold. Furthermore, it *prima facie* seems that the seller may be acting within its rights of the Addendum, should it decide to sell the aircraft during the contract period.

[8] On this basis this Court finds that the applicant failed to establish urgency, and the application is doomed for failure.

Costs

[9] The regular principle is that the successful party is entitled to its costs. I find no reason to deviate from this principle.

[10] As such, the applicant should be ordered to pay the costs of the 1st and 2nd respondents.

Order:

[11] In the premise I make the following order:

- i) The application is struck for want of urgency.
- ii) The applicant is to pay the costs of the 1st and 2nd respondents.

FMM REID
JUDGE OF THE HIGH COURT
NORTH GAUTENG DIVISION JOHANNESBURG

DATE OF HEARING: 15 JUNE 2025

DATE OF JUDGMENT: 24 JUNE 2025

APPEARANCES:

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