



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: *N/A*
- (4) Date of hearing: 14 March 2021

CASE NO: 56163/2020

In the matter between:

GRYPHON AIRLINES SA (PTY) LTD

APPLICANT

And

THE INTERNATIONAL AIR SERVICES COUNCIL

1ST RESPONDENT

MINISTER OF POLICE

2ND RESPONDENT

JUDGMENT

NYATHI AJ

INTRODUCTION

- [1] The Applicant conducts the business of international and domestic air services.
- [2] The First Respondent is INTERNATIONAL AIR SERVICES COUNCIL ("the Council"), a statutory body established under the International Air Services Act 60 of 1993 (the Act") to administer the international air services envisioned by national legislation.
- [3] The Second Respondent is THE MINISTER OF TRANSPORT OF THE REPUBLIC OF SOUTH AFRICA, a member of the national executive being responsible for the administration of, inter alia, the South African aviation industry.
- [4] The First Respondent opposes the application, while the Second Respondent does not.
- [5] The First Respondent seeks an order reviewing and setting aside the decision of the First Respondent of the 16 October 2020, in terms of which the First Respondent allegedly declared two of the Applicant's international air services licenses invalid.
- [6] The facts in this application are common cause between the parties, at issue is the interpretation to be attached to the legislative provisions regulating the licencing of air services providers.

- [7] In South Africa, the aviation industry is regulated on the basis that once the First Respondent has approved an application for an international air service license, the intended operator then must file an application for the grant of an air service operating certificate ("AOC") with the Commissioner for Civil Aviation via the Civil Aviation Authority ("SACAA").
- [8] Section 18 (2) provides that a licence thus issued shall be valid for an indefinite period.
- [9] The various conditions of the licence are contained in section 20. Non-compliance with several of the conditions in this subsection individually result in the licence lapsing.
- [10] Section 20(1)(d) of the International Air Services Act 60 of 1993 ("the Act") provides that the operation of an air service shall not be interrupted for a period exceeding 3 months.
- [11] The Applicant's services have been interrupted since 16 September 2018 when it ceased its operations. The Applicant ceased its air services operations on 16 September 2018 and their Air Operating Certificate ("AOC") which expired on 30 September 2018 was not renewed by the South African Civil Aviation Authority ("SACAA"). By the end of December 2018, the Applicant would have ceased its air services operations for a period exceeding three (3) months.
- [12] The Respondent contends that the Applicant's licences became invalid by the operation of law in December 2018.

[13] It is a basic principle of legislative interpretation that legislation must be read as a whole. In *Nasionale Vervoerkommissie van Suid Afrika v. Salz Gossow Transport (Edms) Bpk* 1983 (4) SA 344 (A) the court held that, when interpreting certain provisions, a statute must be studied in its entirety.

[14] Keeping the above principle in mind, one cannot read section 18 (2) alone to the exclusion of section 20, which carry the conditions in terms of which the licence is granted.

[15] In its founding affidavit the Applicant states and confirms the fact of its cessation of operations in 2018. The Applicant only started making enquiries regarding the status of its licences sometime in 2020.

[16] Having regard to the foregoing, It is my conclusion that the validity of the Applicant's licences lapsed due to its own inattention by operation of law.

The application is dismissed with costs.



J.S. NYATHI
Acting Judge of the High Court
Gauteng Division, Pretoria

Date judgment delivered: 19 April 2021

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