IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case Number: 4610/2011

14366/2010

In the matter between:

Indwe Aviation (Pty) Limited	**Applicant**
and	
The Petroleum Oil and Gas Corporation of South Africa (Pty) Limited	**First Respondent**
The Minister of Defence	**Second Respondent**

JUDGMENT DELIVERED ON 1 JUNE 2011

Baartman,J

[1] This is an application for interim relief pending the finalisation of an appeal against my judgment delivered on 4 February 2011 under case number 14366/10 (**the main application**). I deal below with

circumstances of that judgment to the extent relevant to this application.

BACKGROUND

[2] It is convenient to set out the history of the contractual relationship between the parties as it has unfolded in litigation thus far before dealing with the specific interim relief sought in this application.

[3] The Petroleum Oil and Gas Corporation of South Africa (Pty) Ltd (**the first respondent**) is a wholly owned subsidiary of CEF (Pty) Ltd, a company of which the State is the sole shareholder. The first respondent owns, operates and manages the State's assets in the petroleum industry. The first respondent operates 2 off-shore platforms approximately 100 nautical miles off the coast of George. These platforms are involved in the drilling for and production of gas and crude oil. For a number of years, the first respondent has transported its personnel and equipment to and from the platforms via helicopter services.

[4] At the times relevant to the main application, Indwe Aviation (Pty) Ltd (**the applicant**) had provided those aviation services using 2 leased Sikorsky helicopters. On 30 June 2010, the first respondent instructed the applicant to cease operations because it had engaged the South African Defence Force (**SANDF**) to perform the relevant aviation services as from 1 July 2010. It was common cause that the contract between the applicant and the first respondent was due to run only until 30 June 2010. However, in the main application, the applicant asserted the right to have negotiated a 1-year contract for the provision of the aviation services it had performed under the previous contract. Therefore, the applicant launched an urgent application for interim relief that Blignault J heard and in his judgment of 19 July 2010 found that:

"... the applicant has established, at least prima facie, that the alleged agreement to negotiate a further agreement is not too vague to be enforceable....

In the circumstances I am of the view that applicant has established a prima facie case that respondent (referring to the first respondent in the present matter) was in breach of the agreement to negotiate the further agreement." (My addition and emphasis.)

[5] Pending the finalisation of the main application, Blignault J directed that the applicant be allowed to continue rendering the aviation services in accordance with terms and conditions that had been applicable to the aviation services contract that ended on 30 June 2010.

[6] As indicated above, the applicant leased the Sikorsky helicopters with which it provided aviation services to the first respondent. One of the two helicopters was a Sikorsky S-61 ZS RFU. In this judgment, I deal with the lease agreement between the applicant and the Sikorsky owner (**the owner**) only to the extent necessary.

[7] On 7 July 2009, the lease agreement between applicant and the owner was extended for an additional 1 year, while the annual increase of 10% was waived for a period of 2 years to enable the applicant to provide a better pricing to the first respondent. I have accepted in the main application, as I do here, that the favourable lease conditions were premised on the anticipation of a new 4-year aviation service contract between the applicant and the first respondent. The applicant and the first respondent did not conclude the anticipated 4-year aviation services contract, which in turn meant that the owner was unwilling to extend the favourable contract terms to the applicant. That attitude had financial implications for the applicant; it alleged that the financial viability of the rates at which it

provided aviation services to the first respondent had been compromised.

[8] The applicant, in terms of its obligations under the lease agreement, had to replace both the main rotor head and gearbox of the Sikorsky S-61 ZS RFU by 2 December 2010. The applicant estimated the replacement costs at USD 400 000. If the applicant failed to replace these components by December 2010, the Sikorsky S-61 ZS RFU would have to be grounded. To make matter worse, these parts were not locally available and the applicant had to place an order with the relevant supplier and pay 50% of the estimated price in October to meet the 2 December deadline.

[9] Due to a payment dispute between the applicant and the first respondent, the applicant was unable to place the order timeously. The merits of that dispute fall beyond the scope of this judgment. However, due to the failure to have carried out the repairs, among others, the Sikorsky S-61 ZS RFU was withdrawn and the lease agreement cancelled. The applicant alleged that there was no additional Sikorsky helicopter available in South Africa to replace the withdrawn one but it tendered to continue the aviation services with alternate aircraft. The applicant informed the first respondent of the withdrawal and indicated it was able to provide the aviation services with "...2 fully off-shore compliant helicopters from its holding company, namely a Bell 212 and a Kia 32A."

[10] The applicant proposed that the remaining Sikorsky would be used as the primary aircraft and that in the event of an emergency, the replacement helicopters would offer the same seating capacity as the Sikorsky. The applicant further alleged that the 2 replacement helicopters were of the same quality as the withdrawn Sikorsky S-61 ZS RFU and that the respondent's operations would suffer no prejudice.

[11] The first respondent had reservations about the safety of the proposed replacements and was concerned that its off-shore operations would be severely compromised and prejudiced by the use of the alternate aircraft. Therefore, the first respondent insisted that the applicant provide the aviation services using 2 Sikorsky helicopters. The first respondent insisted that the contract between it and the applicant had only made provision for the use of Sikorsky helicopters. I agree that the contract only provided for the use of Sikorsky helicopters; this appears from a plain reading of the contract entered into between the parties which forms part of the record of these proceedings.

[12] On 7 January 2011, the first respondent notified the applicant of its intention to cancel its contract on the basis that the applicant's withdrawal of the services of the Sikorsky S-61 ZS RFU amounted to a material breach of their agreement. The first respondent called upon the applicant to remedy the breach. On 24 January 2011, Mr Brink (**Brink**), the first respondent's representative, informed the applicant that the SANDF would take over the required aviation services from the applicant on 25 January. The applicant considered that conduct to be in contempt of the interim order granted by Blignault J. Therefore, on 28 January 2011, the applicant, under case number 1875/11, launched a contempt application against the first respondent. The contempt application is still pending. However, on 28 January 2011, the parties agreed that the applicant would continue to render the aviation services on the terms embodied in the order granted by Erasmus J on 3 February 2011. That order provided that:

*"...Pending the hearing of this application, but subject to the first respondent's right to dispute the applicant's right/entitlement to employ the Bell 212 Helicopter (**the Bell 212**), in rendering the services contemplated in paragraph 1(b) of the order issued by the*

*Honourable Mr Justice Blignault under case number 14366/10 on 21 July 2010 (**the Order**)...*

.... For purposes of the applicant's services under paragraph 2.1 above, as well as services rendered by applicant during January 2011 (inclusive of 25/28 January 2011), it is ordered that the applicant will make use of the Bell 212.

First Respondent's liability for rates and charges in respect of services rendered by applicant under paragraph 2 above, as well as services rendered by applicant in January 2011 (inclusive of rate and charges for the period 25/28 January 2011), shall extend to services rendered by applicant with the Bell.

The First Respondent's rights are reserved to recover monies, if any, in respect of the applicant's use of the Bell helicopter to deliver the services as contemplated in paragraph 2–3 above, and any payment made to the applicant pursuant thereof...."

[13] On 4 February 2011, I dismissed the main application; with my leave, that finding is on appeal to the Supreme Court of Appeal. By 8 February, the applicant was of the view that the order by Erasmus J had survived the dismissal of the main application. The first respondent was of the view that it had not. On 10 February 2011, the applicant put forward revised rates at which it was prepared to continue providing aviation services to the applicant and on 11 February 2011, the applicant withdrew it services.

[14] In response, the first respondent obtained the assistance of the SANDF to provide the necessary aviation services. Therefore, the applicant cited the Minister of Defence as the second respondent in this application. It was common cause that the second respondent is currently providing aviation services to the first respondent through the use of ORYX helicopters.

[15] In this application, the applicant seeks to render the aviation services pending the finalisation of the appeal in the main application with one Sikorsky and a Bell 212 helicopter instead of the two Sikorksy helicopters it used prior to the withdrawal of the Sikorsky S-61 ZS RFU. I deal in more detail with that relief below.

THE RELIEF SOUGHT

[16] Advocate Nudigate SC, the applicant's counsel, submitted a draft order from which the applicant's revised relief appears:

"[DRAFT] ORDER

(1) Pending the outcome of an appeal before the Supreme Court of Appeal against the orders and judgment of the Honourable Ms Justice Baartman handed down under case no. 14366/2010 on 4 February 2011:

(1.1) First Respondent is interdicted and restrained from utilising or engaging the services of Second Respondent or any other third party to perform the air transportation and auxiliary services (the "services"), performed by Applicant as at 30 June 2010 and during the period 26 July 2010–11 February 2011, save that this order does not preclude Second Respondent from performing any statutory functions or performing any statutory duties under, inter alia, the Defence Act, No. 42 of 2002.

(1.2) Second Respondent is interdicted and restrained from performing the services referred to in paragraph 1.1 above, save that this order does not preclude Second Respondent from performing any statutory functions or performing any statutory duties under, inter alia, the Defence Act, No. 42 of 2002.

(1.3) First Respondent is directed to allow Applicant to continue providing the services as per the terms and conditions pertaining on 30 June 2010, subject to the provisions of paragraph 1.4 below.

(1.4) Pending determination of Applicant's contempt application under case no. 1875/2011 (and in event of such application being determined in Applicant's favour pending the aforesaid judgment of the SCA), Applicant may render the service by employing Sikorsky S-61 and Bell 212 helicopters as in service immediately preceding the order of the Honourable Ms Justice Baartman on 4 February 2011.

(1.5) First Respondent is interdicted and restrained from taking any further steps in respect of the tender issued under tender no. CTT5401 on or about 6 April 2011 for the provision of aviation services.

(2) In the alternative to the relief sought in paragraph 1 above, an order directing that pending the outcome of an appeal before the Supreme Court of Appeal against the orders and judgment of the Honourable Ms Justice Baartman handed down under case no. 14366/2010 on 4 February 2011:

(2.1) The order of Blignault J issued under the aforesaid case number on 21 July 2010 be revived and/or continue to stand and/or operate, subject to the provisions of paragraph 2.2 below.

(2.2) Pending determination of Applicant's contempt application under case no. 1875/2011 (and in event of such application being determined in Applicant's favour pending the aforesaid judgment of the Full Bench), Applicant may render the service by employing Sikorsky

S-61 and Bell 212 helicopters as in service immediately preceding the order of the Honourable Ms Justice Baartman on 4 February 2011.

(2.3) First Respondent is interdicted and restrained from taking any further steps in respect of the tender issued under tender no. CTT5401 on or about 6 April 2011 for the provision of aviation services.

(3) First and Second Respondents shall, jointly and severally, bear the costs of this application, including the costs of two counsels."

Basis of opposition to the relief

[17] The first respondent opposed the relief sought on the basis that:

(a) the court had in the main application found that the applicant was not entitled to declaratory or other relief. Therefore, so the argument went "...any rights which the applicant may have had, have now effectively been extinguished."

(b) the applicant's decision on 11 February 2011 to withdraw its services amounted to a waiver or abandonment of its right to apply for interim relief.

(c) the applicant cannot establish that it will suffer irreparable harm if the interim relief is not granted because it withdrew its services despite the prospect of harm.

[18] The second respondent's attitude appears from email correspondence received after the applicant submitted its revised draft order:

"Our view, on behalf of the Minister is that there are no grounds, and certainly on the requirement of an interim interdict that was made against the Minister that she should be slapped with an interim

interdict even on the revised terms suggested in the draft. If the Judge is inclined to make an interim interdict order, it should not involve the Minister at all. The requirement of an interim interdict has not been met in so far as the Minister is concerned. We did not understand the argument to be that the requirements of an interim interdict which apply in relation to Petro SA apply equally to the Minister. In our view, any interim order against the Minister in this case would be inappropriate and despite its wording, prevent the Minister from engaging with Petro SA at all in respect of any emergency that may arise. We would therefore reject the draft order on the basis that there were no arguments supporting a finding that a right requires protecting as against the Minister."

[19] I deal with the objection grounds as well as the requirements for an interim interdict below.

The requisites for the granting of an interim interdict

[20] The requirements for an interim interdict are the following:

(a) A *prima facie* right;

(b) A well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted;

(c) The balance of convenience should favour the granting of an interim interdict;

(d) The applicant has no other satisfactory remedy.

(See **The Law of South Africa, First Reissue, second edition** vol.11, page 400 para 403)

[21] The second respondent's attitude in respect of the enquiry as to whether the applicant had met the requirements for an interim interdict appears from the submissions of Advocate Arendse SC, the second respondent's counsel, to have been the following:

*"The applicant filed urgent interim interdictory relief against the first respondent … pertaining to a dispute on a contract between the parties. The Minister of Defence and Military Veterans (**The Minister**) has no interest in that dispute and makes no submissions in respect of the contractual dispute between the applicant and the first respondent. The Minister will only address a limited issue to the dispute and it is whether a court should interdict her from performing and exercising her legislative functions to offer assistance to organs of state if it is in the public interest or an emergency."*

A prima facie right

[22] The applicant relied on a contractual and constitutional right, alternatively the legitimate expectation, to good faith negotiations with the first respondent in respect of the conclusion of a 1-year contract. Advocate Rosenberg SC, the first respondent's counsel, submitted that this court had already found that the applicant was not entitled to the declaratories, sought nor to any order directing the first respondent to enter into or conclude good faith negotiations with it for the conclusion of a 1-year contract for the provision of aviation services. He relied on the matter of **Plettenberg Bay Entertainment (Pty) Ltd v Minister van Wet en order en 'n Ander** 1993 (2) SA 396 (C) for the submission that this court does not have a discretion to grant an interdict for the protection of a right that the court has already found the applicant was not entitled to.

[23] The court in the Plettenberg Bay matter was seized with an application for an interim interdict allowing the applicant in that matter to operate a casino pending an appeal of that court's dismissal of the same interim relief in that main application. The facts of that case appear from page 398 paragraphs g–i to have been the following:

"In die hoofaansoek het applikant aansoek gedoen vir 'n interdik hangende die afhandeling van 'n aksie vir a finale interdik tot

dieselfde effek. Ooreenkomstig die welbekende vereistes vir die toestaan van 'n pendente lite interdik, moes applikant sy reg, ter beskerming waarvan die interdik sou dien, minstens op 'n prima facie basis bewys. Die reg waarop applikant in hierdie verband gesteun het, was sy reg om 'n casino te bedryf. Die beweerde basis van hierdie reg was die oorgangsbepaling wat vervat is in art 7 van die Wysigingswet op Dobbelary 144 van 1992. ... Namens respondente is die hoofaansoek bestry uitsluitlik op die basis dat applikant nie daarin geslaag het om sy casino-bedrywighede binne die kader van art 7 tuis te bring nie, dat die casino dus op applikant se eie weergawe onwetting was en dat applikant derhalwe geen reg uitgemaak het om die casino te bedryf nie. In my uitspraak in die hoofaansoek het ek die respondente gelyk gegee in hiedie standpunt en het ek derhalwe applikante se aansoek om 'n pendente lite aansoek van die hand gewys ten spyte daarvan dat ek aanvaar het dat die applikante voldoen het aan die ander bekende vereistes vir 'n pendente lite aansoek, soos balans van gerief en onstentenis van 'n ander remedie. Kortom was my beslissing in die hoofaansoek dus gefundeer op die basis dat applikante geen reg uitgemaak het om 'n casino te bedryf nie."

[24] As indicated above, Blignault J found that the applicant had established a *prima facie* right in the interim application. However, in a supplementary note, the first respondent has submitted that it would be illogical to confine the Plettenberg Bay principle to cases where the relief claimed in the main application was *pendent lite* or interim in nature. That, so the argument went, would undermine the principle. I disagree. In dismissing the main application where the test was different, I found that the applicant had not met the requirements for a final interdict. In my view, that is an important distinction between the present matter and the Plettenberg Bay matter. I am also persuaded that to hold that a court in the circumstances of this matter did not have discretion would be at odds

with our Constitutional dispensation which did not exist when the Plettenberg Bay matter was decided.

[25] Therefore, I am of the view that this court is not precluded from enquiring whether on these papers the applicant has established the existence of a substantive right which right can be *prima facie* although open to some doubt.

[26] The second respondent, who did not file any papers in the main application, has done so in this application and has said that:

" ...However, my immediate concern following my discussion with my colleague, Ms. Peters was that the first respondent had claimed that they needed emergency assistance due to the fact that the contract with the applicant was due to expire at the end of June 2010.... What I had to consider was my statutory duties and functions in relation to a strategic partner in government which was crying out for assistance.

... accordingly, I confirm that the assistance provided by the SANDF to the first respondent is on an ad hoc nature, and that no formal arrangement to date has been concluded between the parties as the issue remains under discussion given the dispute between the applicant and the first respondent, and certain statutory constraints that may preclude a formal contractual relationship between the applicant and the SANDF."

[27] The applicant has alleged that instead of it being an emergency, the first respondent was merely seeking to avoid the consequences of its obligation to negotiate a 1-year contract with the applicant. That right has on these papers been established at least *prima facie* although open to some doubt. I have in the main application found that the first respondent held the negotiation process with the applicant to ransom while it sought the assistance of the second respondent, its preferred

service provider. The second respondent has inadvertently confirmed that finding.

Irreparable harm

[28] In an attempt to prove that it will suffer irreparable harm, the applicant alleged the following:

(a) Because it rendered a unique service to the first respondent, the applicant had acquired specialised equipment tailor-made to the first respondent's requirements. The first respondent was the applicant's only client.

(b) Therefore, at least in the short term, the applicant lacked the time and capacity to adapt its equipment and general operations to suit the general commercial market. Without the required adaptation, the applicant would have difficulty sourcing alternative commercial work.

(c) Consequently, in the absence of interim relief, the applicant faced imminent closure with ensuing job losses.

(d) As indicated above, the applicant leased the helicopters it used to perform the aviation services and is, in terms of those contracts, liable for certain monthly expenses such as insurance payments.

(e) In addition, the applicant indicated that the first respondent had put its required aviation services, which the applicant rendered until 11 February, out to tender. It follows that the first respondent could potentially enter into a contract with a third party thereby denying the applicant its opportunity to engage in good faith negotiations with a view to concluding a 1-year contract as contemplated by the board resolution of 25 May 2010.

[29] As indicated above, the first respondent contends that the applicant's withdrawal on 11 February contradicts its claim of irreparable harm.

The circumstances that led to the applicant's withdrawal appear from correspondence, dated 10 February 2011, in which the applicant's attorney of record informed the first respondent that:

"...*(3) Our client is of the view that, since that handing-down on the 4th of February 2011 of judgment by Baartman, J, a contractual relationship no longer exist between our respective clients. We have furthermore advised our client that the noting of an appeal against the aforesaid Judgment does not serve to resuscitate the order of Blignault, J made on 21 July 2010.*

(4) We record that since the 5th of February 2011 our client has been providing aviation-and ancillary-services to your client at the latter's special request. Our instructions in this regard are that the parties have not agreed on the terms upon which such services are being provided and our client has, accordingly, instructed us to inform you, as we hereby do, that it is only prepared to continue to providing these services on the terms set out in the Schedule attached hereto.

(5) Our client requires you to confirm to us, in writing, by no later than 16h30 tomorrow that your client accepts the above terms, failing which it will with effect from 17h00 tomorrow cease to provide the aforesaid services."

[30] Instead of accepting the applicant's demands, the first respondent sought and obtained the assistance of the second respondent. I have had the benefit of the history of the stormy contractual relations between the applicant and the first respondent as it appears from the papers filed in the main and the present applications. I am therefore persuaded that the applicant's withdrawal is consistent with the tactics on the part of both parties in their relationship; the first respondent secretively stringing the applicant along while holding out for a favourable response from the second respondent, and the

applicant threatening to bring the applicant's off-shore activities to a halt and so create an emergency in which to negotiate. It appears from the papers that the applicant was aware or at least suspected that the first respondent was again seeking to obtain the services of the second respondent when it demanded revised rates.

[31] The first respondent bears the onus of proving waiver. I am not persuaded that the conduct of the applicant, in the circumstances of this matter, was such as to leave no reasonable doubt that it intended to waive its right to seek interim relief. It follows that the applicant succeeded in establishing a well-grounded apprehension of irreparable harm.

The balance of convenience

[32] Nicholson J in the matter of **Ladychin Investments v South African National Roads Agency** 2001 (3) SA 344 (N) at 353 paras F–I said the following on the subject of the balance of convenience:

"Where the applicant cannot show a clear right then he has to show a right which, though prima facie established, is open to some doubt. In that event, the applicant will have to show that the balance of convenience favours him. The test for the ground of relief involves a consideration of the prospects of success and the balance of convenience – the stronger the prospects of success, the less the need for such balance to favour the applicant; the weaker the prospects of success the greater the need for the balance of convenience to favour him. By balance of convenience is meant the prejudice to the applicant if the interdict is refused weighed against the prejudice to the respondent if it be granted.

Even if there are material conflicts of fact, the Courts will still grant interim relief. The proper approach is to take the facts as set out by the applicant, together with any facts set out by the respondent, which the applicant cannot dispute and consider whether, having

regard to the inherent probabilities the applicant should on those facts obtain final relief at a trial."

[33] The basis on which the applicant alleged that it would suffer irreparable harm was not seriously disputed; instead, the first respondent sought to discount it based on the applicant's withdrawal on 11 February 2011, which withdrawal I have dealt with above. Advocate Rosenberg SC further submitted that the claim of irreparable harm was negated by the "leisurely pace" at which the applicant prosecuted its application for interim relief, approximately 6 weeks, when it had ample opportunity to be heard earlier. I share that sentiment; however, it is only one of the factors I have to take into consideration. In the circumstances of this matter, that fact does not have decisive persuasion.

[34] I have considered that at present the second respondent is providing aviation services to the first respondent on an emergency basis and that the applicant is able to resume service immediately. I have dealt above with the alleged prejudice that the applicant would suffer if it is not granted interim relief. In my view, the balance of convenience strongly favours the applicant.

The use of an alternative helicopter – Bell 212

[35] I have indicated above the circumstances that led to the introduction of the Bell 212 into the aviation services relationship between the applicant and the first respondent.

[36] The first respondent has filed an affidavit by Brink, apparently not an expert in the field, in which it raised several concerns about the safety of the Bell 212. The applicant had in turn filed an expert affidavit by Gideon Johannes Pieter Burger (**Burger**), from which it appeared that he was a duly licensed and certified helicopter pilot and, in particular, his pilot's licence authorised him to operate a Sikorsky S-61 ZS RFU and a Bell 212. He indicated that for the last

3 years, he had been employed by the applicant to undertake flights under the aviation services contract that had expired on 30 June 2010. Prior thereto, Burger had performed the services on behalf of the applicants' predecessor in title, CHC Helicopters, and in the process had accumulated 7 068 flying hours of which 3 500 hours were in respect of off-shore operations.

[37] Burger had also previously been employed by the South African Air Force (**SAAF**) as an ORYX helicopter pilot and instructor. As indicated above, the second respondent was currently rendering aviation services to the first respondent with ORYX helicopters. Burger alleged that the ORYX helicopters were not suitable for the relevant off-shore operations in that they neither met the safety standards set by the Civil Aviation Authority (**CAA**) nor those of International Association of Oil and Gas Produces Standards (**the OGP standards**) for the aviation transport of passengers to and from ships as well as oil and gas platforms worldwide.

[38] According to Burger, ORYX helicopters are certified for military type off-shore operations but not for commercial industrial off-shore operations. In my view Burger, an expert, has authoritatively disposed of all the safety concerns raised by Brink. Burger asserted and in my view proved that the Bell 212 was a suitable replacement for the withdrawn Sikorsky. I do not find it necessary to deal in any detail with Burger's reasoning, which I accept, because the first respondent had already agreed to the use of the Bell 212 although only on an interim basis as recorded in the order by Erasmus J.

No alternative remedy

[39] The first respondent submitted that a damages claim would be a satisfactory alternative remedy available to the applicant. The applicant has denied that and has indicated that it was likely to cease its operations if unsuccessful in this application. I have already found

that the applicant's withdrawal of services was its bargaining tool in the negotiation process for improved rates.

[40] I am not persuaded that a damages claim, in the circumstances of this matter, is a satisfactory alternative remedy.

THE SECOND RESPONDENT

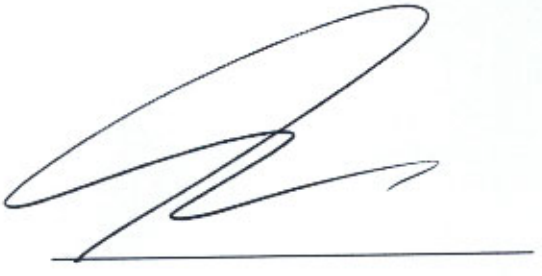
[41] The second respondent responded to an alleged emergency call from a "strategic partner in government" as she was obliged to do. In my view, no case has been made out for interim relief against the second respondent.

CONCLUSION

[42] I, for the reasons set out above, find that the applicant has established a *prima facie* right, although open to some doubt, for interim relief against the first respondent. The balance of convenience so strongly favours the applicant that I am persuaded to exercise my discretion in its favour.

ORDER

[43] I therefore grant interim relief as per the order annexed hereto marked 'X'.



BAARTMAN, J

IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

BEFORE THE HONOURABLE JUDGE BAARTMAN

CAPE TOWN: Wednesday, 01 June 2011

Case Number: 14366/2010
4610/2011

In the matter between:

Indwe Aviation (Pty) Limited	**Applicant**
and	
The Petroleum Oil and Gas Corporation of South Africa (Pty) Limited	**First Respondent**
The Minister of Defence	**Second Respondent**

ORDER

Having heard counsel for the applicant and the respondents and having read the papers filed of record:

IT IS ORDERED THAT:

[1] Pending the outcome of an appeal before the Supreme Court of Appeal against the orders and judgment handed down under case no. 14366/2010 on 4 February 2011:

(a) The first respondent is directed to allow the applicant to provide the aviation service envisaged in the order of Blignault J issued under case number 14366/2010 on 21 July 2010 subject to the provisions of paragraph (b) below.

(b) Pending determination of the applicant's contempt application under case no. 1875/2011 (and in event of such application being determined in the applicant's favour pending the aforesaid judgment of the SCA), the applicant may render the service by employing Sikorsky S-61 and Bell 212 helicopters as in service immediately preceding the order of 4 February 2011.

(c) The first respondent is interdicted and restrained from taking any further steps in respect of the tender issued under tender no. CTT5401 on or about 6 April 2011 for the provision of aviation services.

[2] The first respondent shall bear the applicant's costs of this application, including the costs of two counsel.

[3] The application against the second respondent is dismissed with costs such costs to include the costs of two counsel.

BY ORDER OF COURT

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COURT REGISTRAR

Western Cape High Court