

SUPREME COURT OF SEYCHELLES

Reportable

MA 58/2024

(Arising in CS 26/2024)

In the matter between

ABDUL JALIL MOHAMAD*(rep. by Mr Basil Hoareau)***Applicant**

and

DOBIN SAMSON*(rep. by Mr. Kieran Shah)***Respondent****Neutral Citation:** *Mohamad vs Samson* (MA58/2024) (09 January 2025)**Before:** Judge Esparon**Summary:** Application for interlocutory injunctions.**Heard:** 05th December 2025**Delivered:** 09th January 2025**ORDER**

Application for interlocutory injunctions- Order granted.

RULING**Introduction**

[1] This is an application seeking from this Court the following orders;

- (i) an interlocutory mandatory injunction, compelling the Respondent to comply with the obligation and duties under the contract (hereinafter the agreement), entitled nominee agreement- entered into between the Applicant and respondent whereby it was agreed that the respondent would hold fifty- one shares (hereinafter ‘the majority shares’) in the company, incorporated as Euro Aviation Limited (hereinafter the company’) as nominee and for and behalf, of the Applicant- by complying with all instructions provided by the Applicant in respect-

- (a) of the majority shares, and all rights and powers relating to the majority shares; including in relation to the transfer of the majority shares and part thereof from the Respondent; and/ or
 - (b) of powers of the Respondent as a director of the company
- (ii) an interlocutory prohibitory injunction, prohibiting the Respondent from breaching the terms and conditions of the agreement and failing to comply with all instructions provided to the Respondent in respect-
- (c) of the majority shares, and all rights and powers relating to the majority shares; including in relation to the transfer of majority shares or part thereof from the Respondent; and/or
 - (d) of the powers of the Respondent as a director of the Company;
- (iii) an interlocutory prohibitory injunction prohibiting the Respondent from acting against the interest of the company, and of the Applicant as a shareholder of the company; and
- (iv) an interlocutory prohibitory injunction, prohibiting the Respondent from transferring, dealing with, or otherwise disposing or compromising in any manner whatsoever, of the majority shares, other than in accordance with the written instructions of the Applicant.

The pleadings

[2] The Application is supported by the Affidavit of the Applicant Abdul Jalil Mohamad who avers inter- alia in his Affidavit the following;

‘3) I aver that-

- (a) On the 19th January 2016 a company under the name Euro Aviation Limited (hereinafter ‘the company’) was incorporated under the Companies Act, 1972. It is now shown to me, produced and exhibited hereto as AM1 a copy of the company;

- (b) the company at all material times had and has a share capital consisting, of One Hundred (100) shares (hereinafter ‘ the shares ‘) with a nominal value of Seychelles Rupees one Hundred Thousand (SR 100) each;
- (c) I legally and beneficially holds forty-nine of the shares;
- (d) the remaining fifty-one (51) of the shares (hereinafter ‘the majority shares’) are legally held, and registered in the name of Mr. Dobin Samson (hereinafter ‘the Respondent), as my nominee, and for and on behalf, of myself;
- (e) on or around the 12th January 2016 myself and Respondent entered into a contract-entitled nominee agreement – whereby it was agreed that the Respondent would hold the majority shares in the company, as my nominee and for and on behalf of myself (hereinafter ‘the agreement’). It is now shown to me, produced and exhibited hereto as AM2 a copy of the agreement;
- (f) it was an express term of the agreement inter alia, that-
 - (a) the Respondent would hold the majority shares as my nominee, and for and on my behalf;
 - (b) I was the beneficial owner of the majority shares, and of the company;
 - (c) the respondent would at all times attend and deal with documents and matters relating to the company in accordance with my written instructions, directions and decisions ;
 - (d) all rents, profits, emoluments and other receipts and revenues of any nature or kind arising in respect of the company or the majority shares would belong to myself;
 - (e) the Respondent would promptly deliver to me all instruments with respect to the company, along with all records and information relating to the company, that the Respondent would come into possession of ; and

- (f) the Respondent would do all such acts and take such steps as would be necessary and appropriate to give effect to the agreement.

4) I further aver that it was an implied term of the agreement, inter-alia –

- (a) I was the legal owner of the majority shares;
- (b) the Respondent would not act contrary to, and against, my interest in respect of the majority shares including;
 - that the Respondent would not personally carry on any fixed- based operation business in Seychelles whilst the majority shares remain registered in the Respondent's name and /or the Respondent remains a director of the company; and
 - that the Respondent would not be involved, or concerned in any manner whatsoever, with any business carrying on fixed-base operation business in Seychelles, belonging to any person or legal entity, while the shares remain registered in the Respondent's name and or the Respondent remains a director of the company;
- (c) the Respondent would at all times, in his capacity as a director of the company, complies with all lawful instructions and orders provided to the Respondent by myself, subject to such orders not being against the interest of the company;
- (d) the Respondent would at all times use any powers and rights in respect of the majority shares, in good faith and for the benefit of myself, in accordance with my instructions;
- (e) that the Respondent would comply with all lawful instructions and orders provided to the Respondent by myself;
- (f) that the Respondent would fully cooperate with me regarding matters and issues relating to the majority shares of the company;
- (g) that the Respondent would not act contrary to, and against, the interest of the company, including;
 - that the Respondent would not personally carry on any fixed- based operation business in Seychelles whilst the majority shares remain registered in the

Respondent's name and /or the Respondent remains a director of the company;
and

- that the Respondent would not be involved, or concerned in any manner whatsoever, with any business carrying on fixed-base operation business in Seychelles, belonging to any person or legal entity, while the majority shares remain registered in the Respondent's name and/or the Respondent remains a director of the company; and

(h) the Respondent in his capacity as a director of the company, would act in the best interest of the company.

7) On the basis of this agreement-

(a) the Respondent simultaneously with the execution of the agreement, executed a blank share transfer in respect of the majority shares, which was undated and with the name of the transferee being left blank; and

(b) The Respondent gave possession of the blank share transfer instrument to me' and I have the absolute right to have all or part of the majority shares transferred to me or to a third party.

11) It is averred that, and moreover the suit has been instituted on the basis inter alia that-

11.1 the Respondent has breached the agreement, as set out below-

(a) By letter, dated 31st December 2023 and addressed to me, the Respondent attempted to unilaterally revoke and cancel the agreement and to illegally and fraudulently claim the majority shares as his absolute property;

(b) the Respondent has ceased to comply with, and discharge, his obligation in accordance with the terms of the agreement, by failing to comply with my lawful instructions, in relation to the use of the powers and right in respect of the majority shares and/or in his capacity as a director of the company;

(c) the respondent has acted contrary to and against, my interest in respect of the majority shares, in that-

- (i) the Respondent has failed to cooperate with me regarding the issues and matters relating to the majority shares of the company;
- (ii) the Respondent has intentionally and maliciously caused the fixed base operation business, which the company is conducting in Seychelles , to be temporarily ceased or suspended ;
- (iii) the Respondent has caused his wife, step daughter and son to incorporate, on the 24 January, a company under the name Executive Limited (hereinafter 'Executive Jet with the objects of Executive jet being similar to, and worded exactly as, the objects of the company;
- (iv) the Respondent is involved in, and concerned with, the fixed-base operation business which executive jet is conducting or intends to conduct in Seychelles, in in direct competition with the company;
- (v) in the alternative to paragraph (iv) above, the Respondent is the ultimate beneficial owner of all or majority of shares in Executive jet, to carry on a fixed based operation business in Seychelles in direct competition with the company so to avoid and evade obligations under the agreement and
- (vi) the Respondent is illegally and fraudulently attempting to acquire the majority shares from the plaintiff.

(d) The defendant has acted contrary to, and against, the interest of the company and in that respect subparagraphs (i) to (v) of paragraph (c) are repeated;

11.2 the breach of contract has caused moral damages to me in the sum of SR 250,000

11.3 Further the breach of contract by the Respondent has caused damage to the company, which at the time of the filing of the plaint on 23 February 2024, was in the sum of USD 80,000.

(11.4) the company is continuing to suffer additional damages, and

(13) I aver that if interlocutory injunctions are not granted, myself and the company will suffer irreparable damage as set out below-

(a) If the Respondent disposes of the majority shares or any part thereof to a third party I would lose all my rights, interest and ownership in respect of the shares;

(b) the company is losing business and is continuing to incur damages and the goodwill and reputation of the company being affected-as the company cannot provide any services to its clients- which cannot be quantified; and

(15) I further aver that the Respondent would not suffer any damage by granting of the interlocutory injunctions being sought herein and in any event any inconvenience, that may be caused to the Respondent, by the granting of the interlocutory injunctions, may be compensated in damages'.

[3] The Respondent Dobin Samson has filed an Affidavit in reply where he avers inter-alia the following;

'2) I deny that the nominee agreement has any implied term as alleged or at all.

4) I deny that I breached the Nominee agreement as alleged or at all.

5) I am free to withdraw from the Nominee agreement at all times and did so on the 31st

December 2023, I have never laid any claim of ownership to the majority shares and the Applicant was free to choose another nominee for the said shares.

- 6) I have not competed for the said business and have no intention to do so.
- 7) The Euro aviation agreement with the Seychelles Civil Aviation Authority has expired in or about April 2024.
- 8) My reason for terminating the Nominee agreement is as follows;
 - a) I have not been remunerated for my services by the company or the Applicant.
 - b) I do not wish to be a party to malpractice
 - c) The Applicant misrepresented to me at inception that he was going to make investment including capital investment in the company, but did not do so;
 - d) I am not satisfied on the genuineness of tax returns of the company to the Seychelles Revenue Commission, after I obtained documents which the applicant had withheld from me.
 - e) The nominee agreement was signed much later after the company incorporation which was backdated and only registered on 11th January 2024. When the company was incorporated it was meant to be a joint venture between the Applicant and myself because as a foreigner the Applicant could not carry the business.
- 9) I aver that the Application should be rejected or decided after the hearing of the case'.

Submissions of Counsels

- [4] In his submissions counsel for the Applicant has relied on Section 6 of the Courts Act and section 304 of the Seychelles Code of Civil Procedure in terms of the law and further relied

on the case of American Cyanamid V Ethicon (1975) A.C 396 where the Court laid down guidelines that the Court should take into account when determining such an application for an interlocutory or interim injunction.

- [5] As regards to the issue of a serious question to be tried as laid down in the case law cited above, counsel submitted to the Court that the Applicant does not need to show a prima facie case, in the sense in convincing the Court on evidence before the Court, that the Applicant is more likely than not to obtain a final injunction at the trial.

- [6] As regards to the issue of inadequacy of damages as a result of the above case law cited, counsel for the Applicant has submitted to the Court that at this stage, the Court has to determine whether, if the interlocutory injunctions are not granted, an award of damages at the trial will not be an adequate compensation or remedy to the Applicant. It is submitted that although an applicant might face financial loss, yet damages would not be considered to be adequate remedy if it is not capable of precise calculation, such as loss of profit to a business and relied on paragraph 29/1/3 of the white book which cited the case of Woodworth V/S Smith (1970) 1 All E.R 1091, Merchant adventures Ltd V/S Grew Co. (1972) Ch.242 at p. 256 and Birmingham City Council V. In shops (1992) NPC 71.

- [7] Counsel for the Applicant further submitted that there is uncontroverted evidence that if the interlocutory injunctions are not granted, the Applicant would suffer irreparable damage, since the respondent has not challenged or taken issue in respect of the averments made in paragraphs 13 of the applicant's Affidavit and further as averred in the Affidavit of the Applicant that the Respondent has breached the said agreement.

- [8] Counsel for the Respondent further submitted that in relation to the balance of convenience that any inconvenience that may be caused to the Respondent by granting the interlocutory injunctions may be compensated by damages. Further according to counsel, the Respondent in his Affidavit in reply does not take issue with the averments made by the Applicant at paragraph 15 of his Affidavit and that the Respondent does not make any averments to the effect that the granting of the injunctions would cause any loss to him and that as a result the Respondent would not suffer any damages.

- [9] On the issue of the balance of convenience, counsel for the Applicant submitted to the Court that it is evident that the Applicant will suffer great disadvantage or hardship if the injunction is not granted than that if the injunctions is granted. That the Applicant's business is being and would be affected and thereby causing loss of goodwill and reputation. On this issue, counsel relied on the white book paragraph 29/1/3 which cited the case of Canada Group Ltd v/s Ford Motor Ltd (1972) F.S.R 103 and the case of American Cyanamid (supra) and submitted that on the basis of the balance of convenience, the interlocutory injunctions ought to be granted.
- [10] On the other hand, counsel for the Respondent submitted to the Court that the Respondent having signed and delivered a blank share transfer to the petitioner cannot cause any loss of interest issue to the Petitioner on the said shares and that the Petitioner is free to complete the transfer of the said shares held by the Respondent to a third party. That the Court has equitable powers to issue an injunction where there is no other legal remedy available to prevent irreparable damages and that the Applicant has exhausted all his legal remedies of which he remains able to transfer shares from the Respondent.
- [11] Counsel for the Respondent further submitted that the Respondent as Director of the Company owes his duty to the company and not to the petitioner and as such cannot be compelled to follow the instructions of the Applicant if it is not in the best interest of the company. Counsel further relied on the case of Dhanjee V/S Electoral Commission (2011) SLR 141 and submitted that granting the injunction would effectively cause more harm than good of which it will enable the Respondent to be bound by the injunction order effectively obliging him to sign any document in relation to the company notwithstanding it is being detrimental to the company.

The Law

- [12] Section 304 of the Seychelles Code of Civil Procedure provides that 'it shall be lawful for the Plaintiff, after the commencement of his action and before or after judgment, to apply to the Court for a writ of injunction to issue to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right, and such

writ may be granted or denied by the said Court upon such terms as to duration of the writ, keeping an account, giving security, or otherwise, as shall seem reasonable and just.'

- [13] Section 5 of the Courts Act provides that 'the supreme Court shall continue to have, and is hereby invested with full original jurisdiction to hear and determine all suits, actions, causes and matters under all laws for the time being in force in Seychelles relating to wills and execution of wills, interdiction or appointment of a curator, guardianship of minors, adoption, insolvency, bankruptcy, matrimonial causes and generally to hear and determine all civil suits, actions, causes and matters that may be brought or may be pending before it, whatever may be the nature of such suits, actions, causes or matters, and, in exercising such jurisdiction, the Supreme Court shall have, and is hereby invested with, all the powers, privileges, authority, and jurisdiction which is vested in, or capable of being exercised by the high Court of Justice in England.'

- [14] Section 6 of the Courts Act provides that 'the Supreme Court shall continue to be a Court of equity and hereby invested with powers, authority, and jurisdiction to administer justice and to do all acts for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided by the laws of Seychelles.'

- [15] The effects of the provisions of section 5 and section 6 of the Courts Act is that the Supreme Court being invested with all powers which is vested or capable of being exercise by the High Court of Justices in England and by virtue of that it is a Court of equity and as such has the power to do all act for the due execution of such equitable jurisdiction in all cases where no sufficient legal remedy is provided for by the laws of Seychelles including writ of injunctions. Section 304 of the Seychelles Code of Civil Procedure reinforces the powers of the Court in cases where there is the repetition or continuance of the wrongful act or breach of contract or injury of the like kind.

Analysis and determination

- [16] In the case of **Ex-Parte Rodionov (CS 121 2021)**, E. Carolus Judge Stated that 'in determining whether to grant an injunction or not, this Court is guided by the case of **American Cyanamid Co V Ethicon AC 396, 1975** that requires;

- i. A serious question to be determined in the main suit.
- ii. Inadequacy of damages to compensate the Applicant
- iii. The balance of convenience’.

[17] The Court in ex-parte Rodionov (supra) also relied on the case of **Nathalie Lefevre V Beau Vallon Properties and Ors (MA154/2018)** where Twomey then CJ stated the following regarding the factors to be considered in deciding whether or not to grant an injunction;

‘Injunctions are equitable remedies in nature and in such applications the Court is guided by three considerations;

- i) Where there is a serious issue to be tried,
- ii) Whether damages would be inadequate to redress the harm caused by the grant of injunction,
- iii) and on a balance of convenience it would be best to grant rather than deny the injunction. (see techno International VS Georges unreported CS 147 of 2002)’.

[18] Further in the case of **Danjee V/S Electoral Commission (2010 SLR 141)**, the Court interpreted the balance of convenience test to include the consideration of the following factors;

- i. Whether more harm would be done by granting or refusing the injunction,
- ii. Where the risk of injustice would be greater if the injunction was granted, than the risk of injustice if it was refused
- iii. Where the breach of the parties’ rights would outweigh the rights of others in society.

[19] As to the issue as to whether there is a serious issue to be tried, the Applicant has made averments in his Affidavit of alleged breach of the agreement as averred at paragraph 11 of his Affidavit. The Respondent on the other hand has denied that he has breached the nominee agreement and that he is free to withdraw the Nominee agreement at all times He has also averred that he has not competed for the said business.

[20] In the case of *American Cyanamid Co V Ethicon Ltd* 1975 AC 396, Lord Diplock stated the following at page 407;

‘It is not part of the Court’s function at this stage of litigation to try to resolve conflicts of evidence on Affidavits as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration’.

[21] Stuart Sime in his book ‘ *A practical approach to Civil Procedure*, Twenty Fifth Edition (oxford), states the following at the following paragraphs;

‘42.33 Therefore, the Court needs to be satisfied only that there is a serious question to be tried on the merits. The result is that the Court is required to investigate the merits to a limited extent only. All that needs to be shown is that the claimant’s cause of action has substance and reality. Beyond that it does not matter if the claimant’s chance of winning is 90 percent or 20 percent: *Mothercare Ltd V Robson Books Ltd* (1979) FSR 466 per Megarry V-C at 474; *Alfred Dunhill Ltd V Sunoptic SA* (1979) FSR 337 per Megaw LJ at 373’.

42.35 On the other hand, if there is no serious issue or question to be tried on the Substantive claim, for example if the claim is hopeless, the injunction must be refused (*National Commercial Bank Jamaica Ltd V Olint Corporation* (2009) 1 WLR 1405). *Morning Star Co-operative Society Ltd V/S Express News Paper Ltd* (1979) FSR 113 should be regarded as not having passed this hurdle’.

[22] In this matter, I have considered the averments in the Affidavit of the Applicant and that of the Respondent, the submissions of both counsel for the Applicant as well as the submissions of counsel for the Respondent and the case laws and authorities cited above and I find that there is a serious issue to be tried since I’m of the view that the claimant’s cause of action has substance and reality and that the claim is not a hopeless one.

[23] The second issue to be determined in this matter in deciding whether to grant such an injunction is as to whether damages would be inadequate to redress the harm caused by the grant of injunction. The test was stated in the following way by Lord Diplock in *American Cyanamid Co and Ethicon Ltd* at 408:

‘If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no (interim) injunction should normally be granted’.

[24] In the case of *Coventry V Laurence* (2014) AC, Lord Hoffman stated the following at [120];

‘Damages may be inadequate if:

- (a) the defendant is unlikely to be able to pay the sum likely to be awarded at the trial;
- (b) the injunction is to preserve goods which cannot be replaced on the market (*Hiward E Perry and Co Ltd V British Railways Board* (1980) 1 WLR 1375;
- (c) damages would be difficult to assess. Examples are loss of Goodwill (*Foseco International Ltd* (1975) FSR 507, disruption of Business (*Evans Marshall and Co Ltd V Bertola SA* (1973) 1 WLR 349, and where the defendant’s conduct has the effect of killing off a business before it is established (*Mitchelstown Co- operative Society Ltd V Societe des Produits Nestles SA* (1989) FSR 345;
- (d) Liquidated damages provided by a term of contract are lower than probable actual loss suffered through a breach of contract (*Bath and North East Somerset District Council V Mowlem plc* (2015) 1 WLR 785’.

[25] In the present matter, the Affidavit sworn by Applicant has averred at paragraph 13 of the Affidavit the following;

‘I aver that if interlocutory injunctions are not granted, myself and the company will suffer irreparable damage as set out below-

- (a) If the Respondent disposes of the majority shares or any part thereof to a third party I would lose all my rights, interest and ownership in respect of the shares;
- (b) the company is losing business and is continuing to incur damages and the goodwill and reputation of the company being affected-as the company cannot provide any services to its clients- which cannot be quantified;'

[26] In his reply, the Respondent has denied that he has competed for the said business and averred that he has no intention to do so and that the Euro aviation agreement with Seychelles Civil Aviation Authority has expired in or about 2024.

[27] I have carefully considered the averments in the Affidavit filed on behalf of the Applicant and the Respondent on this issue as well as their respective submissions on the issue as well as the authorities cited above and I accordingly find that damages awarded would be inadequate to redress the harm caused by not granting of the injunction since this Court is of the view that in the event that Respondent disposes of the majority shares or any part thereof to a third party, the Applicant would lose all his rights, interest and ownership in respect of the shares. Furthermore according the Affidavit sworn on behalf of the Applicant, the company is losing business and is continuing to incur damages and the goodwill and reputation of the company being affected-as the company cannot provide any services to its clients- which cannot be quantified. Furthermore this Court is in doubt as to whether the defendant is unlikely to be able to pay the sum likely to be awarded at the trial since nothing is said in his Affidavit in reply.

[28] As to the issue of balance of convenience, I note that in the Affidavit in support of the Application, the deponent has given an undertaking to pay any damages that may be caused to the Respondent in the event the interlocutory injunctions are granted and the suit is eventually dismissed. In the case of *American Cyanamid Co v Ethicon* (supra) Lord Diplock stated at 408;

'If damages in the measure recoverable under such an undertaking would be an adequate remedy and the (claimant) would be in a financial position to pay them, there would be no reason upon this ground to refuse an (interim) injunction. It is where there is doubt as to

the adequacy of the respective remedies in damages available to either party or to both, that the question of balance of convenience arises’.

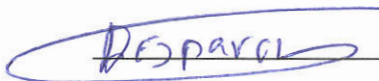
[29] As a result, this Court is of the view that in view of the undertaking by the Applicant, this Court should not venture to consider the balance of convenience in this matter. However out of an abundance of caution in view of the facts and circumstances highlighted above, it is evident that the Applicant and the said company will suffer hardship and irreparable harm or damage in the event the injunction is not granted of which the Applicant’s company will suffer loss of profit, goodwill and reputation and hence the balance of convenience lies in favour of the Applicant in granting the injunction.

[30] As a result of the above, I accordingly grant the Application and make the following orders pending the determination of this suit or pending further order of this Court;

- (j) an interlocutory mandatory injunction, compelling the Respondent to comply with the obligation and duties under the contract (hereinafter the agreement), entitled nominee agreement- entered into between the Applicant and Respondent whereby it was agreed that the Respondent would hold fifty- one shares (hereinafter ‘the majority shares’) in the company, incorporated as Euro Aviation Limited (hereinafter the company’) as nominee and for and behalf, of the Applicant- by complying with all instructions provided by the Applicant in respect-
 - (a) of the majority shares, and all rights and powers relating to the majority shares; including in relation to the transfer of the majority shares and part thereof from the Respondent; and/or
 - or
 - (b) of powers of the Respondent as a director of the company
 - (ii) an interlocutory prohibitory injunction, prohibiting the Respondent from breaching the terms and conditions of the agreement and failing to comply with all instructions provided to the Respondent in respect-
 - (c) of the majority shares, and all rights and powers relating to the majority shares; including in relation to the transfer of majority shares or part thereof from the Respondent; and/or

- (d) of the powers of the Respondent as a director of the Company;
- (iii) an interlocutory prohibitory injunction prohibiting the Respondent from acting against the interest of the company, and of the Applicant as a shareholder of the company; and
- (iv) an interlocutory prohibitory injunction, prohibiting the Respondent from transferring, dealing with, or otherwise disposing or compromising in any manner whatsoever, of the majority shares, other than in accordance with the written instructions of the Applicant.
- (v) In view of the undertaking of the Applicant, I accordingly order the Applicant to furnish security for damages that may be caused to the Respondent since the interlocutory injunctions has been granted in the event the suit is eventually dismissed, that is security equivalent to the sum of 25,000 USD or its equivalent in Seychelles Rupees preferably by a bank guarantee within one month of this order in default of which this order shall lapse and shall no longer be in operation.
- (vi) I accordingly order the Registrar of the Supreme Court to serve a copy of this order on the Registrar General being the Registrar of companies of Independence House, Victoria, Mahe, Seychelles.

Signed, dated and delivered at Ile du Port on the 09^h January 2025


Esparon J

