NU AERO (PRIVATE) LIMITED
versus
CHAKANYUKA KARASE
and
CIVIL AVIATION AUTHORITY OF ZIMBABWE

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 4 & 16 November 2015

Urgent Application

T Zhuwarara with T Tandi, for applicant
T Mpofu with Mr Mandiki and Mr Mutumbwa, for 1st respondent
Mr Chirimuuta, for second respondent

TSANGA J: The applicant, Nu-Aero trades as Flyafrica - Zimbabwe. Nu-Aero is jointly owned by Flyafrica Limited (49% share ownership) and Nu.com (51% share ownership). The major shareholder in Nu.com is the first respondent Chakanyuka Karase. At the time that the applicant commenced its operation in August 2014, Mr Karase was appointed as Chief Executive Officer and Accountable Manager of Nu-Aero-Zimbabwe. On 27 October 2015, the applicant's 'Air Operating Certificate' (hereinafter referred to as the AOC) was withdrawn. This followed its surrender by Mr Karase purportedly acting in his capacity as the airlines accountable manager. In a letter dated 21 October 2015, the reasons he gave for surrendering the AOC to the Civil Aviation Authority of Zimbabwe (hereinafter referred to as CAAZ) related to financial integrity / ability of the airline, and, to operational capacity. He emphasised therein that the suspension was to remain in force until he, as accountable manager, advised CAAZ to lift the voluntary suspension and had confirmed to his satisfaction that the financial capacity of the company was such that it could sustain smooth and safe operations. He further exhorted CAAZ not to take instructions from what he described as "non Zimbabwean and non Nu-Aero (Private) Ltd t/a Fly Africa Zimbabwe persons" as he said he had noticed in the recent past.

The applicant brought an urgent chamber application in which it alleged that the AOC was surrendered maliciously by Mr Karase as a result of the discovery that his son, with his complicity, had defrauded the company of US$ 136 303.42. His son had been reported to the police for fraud. The applicant therefore sought an urgent temporary interdict against Mr Karase, whom it said acted un-procedurally and unlawfully in surrendering the AOC as he had no authority to enter into or make contracts without the consent of at least one other director. More significantly, applicant pointed out that at the time he surrendered the licence he had since been given notice of termination of his contract as the accountable manager. Mr Mekias Munyaradzi had been appointed in his stead. Mr Munyaradzi was therefore the one who deposed to the affidavit on behalf of applicant, acting on a board resolution authorising him to do so in his capacity as manager.

CAAZ, the second respondent cited in the urgent application, was said by applicant in its founding affidavit, to be cited merely as a nominal respondent. Save for reinstating the AOC, according to applicant's affidavit, no substantive relief or costs were sought against it. However, despite this assertion of nominalism in citation, it was also averred in the same affidavit that the suspension of the AOC did not comply with Part 1.3.3.3 (a) paragraph c of part 1.3.3.3 of the *Civil Aviation (Air Regulations) (Amendment) Regulations* SI 140 of 2010 which obliges CAAZ to afford a party the right to be heard before a suspension is effected.

Urgency in this matter was said to arise from the grounding of the applicant's planes following the suspension of its licence. In terms of the harm and prejudiced suffered, applicant highlighted that its passengers who had bought tickets for the purposes of coming and/or leaving Zimbabwe had been inconvenienced. In addition, Mr Karase's action was said to have the effect of sending scores of its employee's home if the situation remained as it is. Applicant also asserted that it would continue to suffer irreparable harm if the matter was not heard on an urgent basis and the relief sought granted.

The interim relief applicant sought was couched as follows:

> "Pending the determination of this matter, the Applicant is granted the following relief:
>
> 1. The letter dated 21 October 2015 sent by the 1st Respondent to 2nd Respondent surrounding the Applicant's Air Operator's Certificate be and is hereby set aside.
> 2. The 2nd Respondent is hereby ordered to disregard the letter and reinstate the Applicant's Air Operator's Certificate.
> 3. The 1st Respondent is interdicted from making an unilateral decision or actions in relation to Applicant's business.

4. In the absence of a valid resolution executed by at least two directors of the Applicant authorising him to act, the 1st Respondent is interdicted from interfering with Applicant's normal business activities."

The terms of the final order sought were expressed as follows:

"That you show cause, to this honourable Court why a final order should not be made in the following terms:-

1. That pending the Applicant's members convening and finalising an extra ordinary General meeting pursuant to the Applicant's Articles of Association and Shareholders Agreement the first Respondent shall not carry out any work or make any decision, announcements or commitments for or on behalf of the applicant.
2. That the 1st Respondent to pay the costs of this application on a legal and practitioner scale."

Both the first respondent Mr Karase and the second respondent CAAZ filed their notice of opposition to the application. The applicant also filed an answering affidavit.

Points raised *in limine*

At the hearing five points were raised *in limine* by the first respondent's counsel Mr *Mpofu*. His first point was that Mr Karase is a director in the applicant company and that as such he was unaware of any board resolution that had been made to institute the proceedings in question. He argued that the law is clear that there can be no valid resolution without the involvement of a director. He relied on the case of *Madzivire* v *Zvaravadza* 2006 ZLR (1) 514 in support of this contention. The position highlighted in that case is that directors of a company only act validly when assembled at a board meeting. Moreover, a director must be given notice of a meeting of directors which intends to pass a resolution of authority. The contention on behalf of Mr Karase was that he was not notified. Furthermore, Mr *Mpofu* pointed out that according to the Shareholders Agreement, a meeting of shareholders is only correct if there are two directors, one from Nu.Com and another from Flyafrica Limited. Since there was non-compliance with this requirement, he argued that the meeting could not have passed a valid resolution.

Mr *Zhuwarara* who argued on behalf of applicant, stressed that it was Mr Karase who was the cause of the other directors acting in the manner they did in passing the board resolution without his involvement. He further pointed out that Mr Karase himself acted without such authority, which he was now insisting be observed by the applicant. Mr *Zhuwarara* also took the view that the Shareholder's Agreement was more appropriately the subject matter of the return date and not the interim order. He further pointed out that with Mr Karase having been suspended as a board director following his letter, there was no need for

the company resolution to have had the participation of a suspended company director. In response, Mr *Mpofu* questioned the legitimacy of this argument on the basis that if minority shareholders are unhappy, what they issue is a derivate action and if shareholders are unhappy they issue a shareholders action protecting their rights as shareholders. He re-emphasised that the Board which passed the resolution was an invalid board and that they could not proceed as minority shareholders on the notion that they could dispense with a majority shareholder.

Whilst a case such as this where there are allegations of fraud and breach of fiduciary or mismanagement would indeed call for a derivative action if the harm suffered is to the corporation[1], there would of course be conditions to be fulfilled in bringing such a claim. If harm suffered is to shareholders, they can bring a shareholders action, generally deemed appropriate in addressing issues such as deprivation of voting rights, rights to inspect corporation books and suits to compel declaration of dividends among others.

To proceed by way of derivative action, it would have to be shown that fraud has been perpetrated and that there has been refusal to act in terms of rectification[2] and the court would also need to be satisfied whether it is in the best interests of a company to pursue such proceedings. Thus whilst Mr *Mpofu*'s argument that pursuance of a derivative action is an option available to aggrieved minority shareholders, it has to be borne in mind this is not a course of action that is granted by the courts as matter of course. What this court has to bear in mind is that this is an application for urgent interim relief where the primary considerations which the court has to have regard to are whether or not a the applicant has a prima facie right, the irreparability of the harm that is likely to be suffered if the relief is not granted and whether the balance of convenience dictates that the interim relief be granted, and, the absence of any other remedy. Where the harm suffered is perceived as meriting urgent intervention, I cannot see how a company can be faulted for seeking urgent interim relief on the grounds that a derivative action is what they should have pursued.

Returning to the issue of the company resolution, the *Madzivire* case *supra* supports contentions by both parties. The key point in that case is that a company cannot be represented in a legal suit by a person who has not been authorised to do so. Mr Karase clearly was not authorised by any board when he took the action of surrendering the license.

[1] See for example *L. Piras & Son (Pvt) Ltd & Anor* v *Piras* 1993 (2) ZLR 245 (S); *Matanda & Ors v CMC packaging (Pvt) Ltd & Ors* 2003 (2) ZLR 221 (H)

[2] In the South African case of *TWK Agriculture Ltd* v *NCT Forestry Co-operative Ltd o& Ors* 2006(6) SA 20 N it was stated that where it would be an exercise in futility, a member has standing to bring a derivative action even though he first failed to propose a resolution that a company institute action.

He acted contrary to accepted norm that the decisions for a company are made by the Board. As pointed out in the *Madzivire case*, the mere fact that a person is a managing director does not clothe him with the authority to represent the company. It is true that an executive director is the focus of corporate accountability. Also an accountable manager is generally in a situation where he has hands on knowledge about the business and its relationship with it partners. Yet this cannot justify unilateralism. As corporate governance operates, the Board must approve significant corporate decisions. It is hard to imagine that any board would not have a right to be consulted on a decision which goes to the very core of its existence as a company and its mandate. The reality is that accountability for corporate decisions such as this one which go to the heart of its business lie with the Board giving its authority. It was Mr Karase who therefore skirted the board by approaching CAAZ without observing the necessary procedures. However whether the licence was withdrawn solely because of the letter relates to the merits.

But that is not all that complicates the picture. The issue is whether he had capacity to write the letter as Accounting Manager. It is also a Board's responsibility to replace officers if necessary. It was the Board who appointed Mr Karase in the consulting capacity and who allege that they did not renew his contract. Mr Karase effectively argued that there were no changes following an earlier email notifying him that the Board needed to be advised that his contract was terminating at the end of September 2015 and if there would be any changes. His position that he remained in charge is made despite the fact that on 8 October 2015, as indicated in the applicant's evidence placed before the court, applicant had written to CAAZ advising it that Mr Karase's term of office expired on 1 October 2015 and that it was not renewed. It further advised in that correspondence that Flyafrica - Zimbabwe was in the process of looking for a qualified replacement. It also intimated that Captain Munyaradzi its current Director of Flight Operations, was currently holding office of Accountable Manager and that the temporary appointment was in accordance with their CAAZ approved Operations Manual. CAAZ date stamped 15 October 2015, as its acknowledgment date of that letter. Applicant's argument is that Mr Karase acted without authority therefore has merit.

The challenge to the validity of the company resolution on the grounds that Mr Karase as Board Director was never notified of the meeting is supported by the *Madzvivire* case *supra*, in that a director has a right to be advised. Yet it is vital that his exclusion be examined contextually. Mr Karase's exclusion from the board meeting which passed the resolution to bring this action has to be placed in the context of the overall facts of this matter. The

applicant's argument that the circumstances that entailed this necessity were precipitated by Mr Karase himself is with merit. It cannot be denied that the factual circumstances that necessitated the adoption of a resolution to institute these proceedings without his presence at that board owe themselves to his own conduct. He is the one who muddied the waters with his unilateral actions which he took even against written evidence that he was no longer the Accountable Manager. The applicant had little choice in proceeding with the meeting without him. Applicant's actions were neither arbitrary nor capricious. Well knowing the circumstances under which Board resolution was adopted, the point *in limine* merely seeks to inhibit rather than foster dialogue on the true merits of the application before the court. Furthermore, there is nothing that shows that Mr Karase himself adhered to accepted company procedures in his approach to CAAZ. The first point in limine is accordingly dismissed.

The second point *in limine* raised by Mr *Mpofu* was that Mr Munyaradzi who is alleged to have replaced Mr Karase on 8 October had in fact resigned in writing as Director of Flight Operations in September 2015. It was argued that his resignation was a unilateral act which did not depend on its acceptance for its validity and that notice, once given, is final and cannot be withdrawn. The case of *Bishop Jakazi* v *Church of Province of Central Africa* SC 10/13 was relied on as authority. The assertion that Mr Munyaradzi had resigned emanated from the fact that on 9 September 2015, he had sent an email addressed to the Chairman, (with reference to Mr Chakanyuka), which was in the following terms:

> Dear Mr Chairman
>
> This email serves to advise you that **I intend to add to the agenda of our next board meeting** the following item: (My emphasis)
>
> My resignation as Director of Nu-Aero so I can have enough time to concentrate on executing my duties DFO Flyafrica – Zimbabwe.

Mr *Zhuwarara*'s response to the point *in limine* was that the Board meeting referred to had not taken place and Mr Munyaradzi had not resigned. Mr *Zhuwarara* also argued that CAAZ had already recognised the change of leadership in appointing Mr Munyaradzi and was in the process of doing the needful to accept the change. He relied on the case of *Telecel* v *Mutasa* HH 331/14 for the position that a shareholder director who is aware of agreement cannot hide or confound situation so as to derive a benefit.

Tied to this issue was also Mr *Mpofu*'s argument that there is a dispute of fact relating to Mr Karase who is alleged to be not the accountable manager when his position was not

terminated. He emphasised that CAAZ has not given its consent to his appointment and that they are required to do so. As such he said that the reality is that the parties are logged in a dispute as to who is manager. The dispute to be resolved in his view is that Mr Karase is the manager or that there is a dispute of fact which accordingly would mean the issue could not be decided on the affidavits alone. Mr *Zhuwarara*'s response was that the gist of the matter before the court was an application for interim relief whereby a party only has to identify a *prima facie* right.

The letter in question in my view expresses an intention to put on the agenda the issue of resignation. Notably, in the *Jakazi* case which Mr *Mpofu* drew support from, the letter was unequivocal regarding the resignation being effective immediately. Furthermore, not only had the resignation been accepted in that case but a new Bishop had been appointed in place of the one who had resigned. While accepting that the principle is indeed that a notice of resignation when tendered cannot be revoked, the letter above was not a notice or letter of resignation. It merely sought to communicate the desire to place the issue on the agenda for the board's discussion. The evidence placed before this court did not suggest in any way that Mr Munyaradzi was recalled from resignation. I cannot see how the letter can be regarded as a resignation when all it communicates is merely an intention to have the issue played on the board for its consideration. Simply put he had not resigned. The point in limine is accordingly dismissed as lacking merit.

The third point *in limine* was that the material non-disclosure of relevant material which amounted to a fraud on the court. The assertion that the matter was not urgent was premised on the argument that the reasons for withdrawing the AOC were operational and related mainly to the safety of the public, which applicant was said not to have disclosed. Mr *Zhuwarara* strongly disputed this averment pointing out that it had included in its documents the material correspondence relating to the suspension.

In response Mr *Mpofu* maintained that it was vital for the information to be part of the affidavit as since and application stands or falls on the affidavit. He argued that these had not been stated in the applicant's affidavit of evidence giving the impression that CAAZ had acted hastily and capriciously at the instruction of Mr Karase when it had clearly had not. Mr Mpofu argued that a letter had been written to applicant on the 15 September indicating that monies owing to CAAZ had to have been paid by the 18 October otherwise their licence would be withdrawn. He argued that sum of US$1.4 million that it was owing would simply have continued to balloon if CAAZ had not taken the action which it took. He insisted that

the issue of an accountable manager is one of life and death as safety and security and was in the hands of an accountable manager. He argued that the application ought to be dismissed on the basis of non-disclosure. The fourth point was that the application asks court to override CAAZ's decision on who can fly and who cannot - the crux of their expertise and core business. The fifth point was that it was again dishonest of the applicant to have not drawn attention to the fact that it owed certain dues to CAAZ and had already been put on notice regarding its licence if it failed to pay by a given date.

All these remaining points went to the root of the matter particularly as CAAZ had no points *in limine* and had filed its response in relation to these matters as merits. Since at the hearing I had requested the parties to proceed with articulating the points *in limine* as well as the merits on the basis that I would address the points in limine and if they were of substance would not proceed to the analysis the merits. Suffice it to say that having obtained a globular view of the matter the remainder of the points raised by Mr *Mpofu* dovetail the merits in a manner which make little sense for this court to isolate their analysis from the totality of the merits of the case as a whole. Having dismissed the first two points *in limine*, I deal with the rest of the points as issues relating to the merits of the application. For ease of flow, I will deal with the allegation of non-disclosure. I will then examine the argument about the role of the court with respect to the decision of CAAZ as an expert agency and the implications for the interim order sought. The issue of dues owing is not material since notably the deadline stipulated for action came and went without event so definitely it could not have been the reason why the AOC was suspended.

THE MERITS

The issue of non-disclosure

The letter in question, said to have been evaded in the engagement of the contextual detail pertaining to the application, is vital to reproduce in *toto* since much of the merits relating to the suspension of the licence hinge on its detail. It was written on 27 October by the Acting General Manager of CAAZ and addressed to "The Accountable Manager" at Flyafrica as follows:

> "This letter serves to notify you that in the public interest and in terms of the Zimbabwe Government Statutory Instrument 140 of 210 part 1.3.3.3.(a)(1) the civil aviation Authority of Zimbabwe has reached a considered position to suspend the operations of Flyafrica-Zimbabwe due to the following reasons:

1) Flyafrica does not have a substantive accountable manager as the Authority is in possession of conflicting letters and emails showing dismissal of Mr Karase and subsequent appointment of Mr Munyaradzi as Accountable Manager.
2) Aircraft Operational Control is not consistent with Statutory Instrument 140 of 2010 as it is in South Africa;
3) None of the operator's aircraft are based in Zimbabwe as per requirement of the Air Service Permit.
4) The organisation does not have a local head of maintenance for maintenance control and
5) Neither of the conflicting parties has submitted substantive evidence showing legitimacy of their correspondence.

In view of the above, the authority is convinced that Fly Africa – Zimbabwe operations have been compromised and **therefore the safety of the travelling public cannot be guaranteed. Flyafrica – Zimbabwe is however invited to submit their request to resume operations as soon as the above issues are resolved."** (My emphasis)

I underline the above to emphasise that the point suspension was said to be for safety reasons and also the point that the issues at stake were said to be rectifiable. Applicants core complaint on the merits was that it was not accorded due notice neither were the exact provisions and violations that CAAZ had identified spelt out in accordance with the applicable statutory instrument. It was argued that CAAZ conflates the issue of safety without spelling out exactly how the public is endangered. It was also argued that the licence was suspended and yet there is no impugning the applicant's machinery, operations or individuals in respect of public safety.

With applicant and first respondent's counsel having largely crystallised their issues it was Mr *Chirimuuta* who appeared on behalf CAAZ who needed to articulate his client's reasons for opposing the application. He was emphatic that the surrender of the AOC by Mr Karase was not ultimately the basis of the cancellation of the licence. He explained that after the licence was surrendered by Mr Karase on 21 October, CAAZ caused an investigation to be carried out essentially because the surrender of the licence had raised concerns. CAAZ therefore carried out an independent investigation and inspection, which is generally carried out when an AOC is operating. A report was accordingly produced on 27 October which highlighted the extent to which the operations of the applicant were non-compliant. CAAZ's position was that it is this report which caused it to take the action that it did with regard to the AOC.

In particular he said the report noted that there was no substantive accounts manager in contravention of part 9 9.2.2.2 of the applicable statutory instrument. Safety was highlighted as being one of the core responsibilities of an 'Accountable Manager'. Furthermore, he emphasised that the airline is registered in Zimbabwe and that its control must be registered in Zimbabwe. In the case of Flyafrica. He said theirs is registered in South

Africa. He was also equally emphatic that none of its aircraft is based in Zimbabwe, a requirement which he explained as serving to allow for monitoring of the aircraft as it would come back to base.

He also spoke to the point in the letter that there was no local head of maintenance and that even the maintenance manuals were not compliant. He reemphasised the letter's contents that neither of the parties, that is neither the applicant nor Mr Karase had produced substantive evidence relating to the dispute of 'Accountable Manager'.

He explained that cumulatively it was these the factors that led to the suspension of the licence, emphasis being on the safety implications of the totality all the above for an airline with no 'Accountable Manager'.

He stated that in addition that the applicant was aware fully aware of the above details relating to the exact nature of the complaints that led to CAAZ to suspending the licence. He also stressed that primarily they had acted in line with point 1.3.3.3 (c) the Civil Aviation (Air Regulations) (Amendment) Regulations SI 140 of 2010 which provides as follows:

> "Notice and opportunity to be heard. **Unless safety in air transport requires immediate action** , prior to a final determination under this section 1.3.3, the authority shall provide the person with an opportunity to be heard as to why such certificate or licence should not be amended , modified , suspended or revoked in accordance with section 79 of the Civil Aviation Act." (My emphasis.)

From the above paragraph an opportunity to be heard was thus material unless safety in air transport dictates otherwise. It was CAAZ's argument that safety in air transport had dictated its course of action.

Mr *Zhuwarara* down played the safety claim on the basis that CAAZ had in a previous letter to applicant dated 20 August 2015, as part of its report on 'station and base inspections' raised these issues relating to the above. The nature of the complaints were such that if not attended to they would have led to the applicant being found unworthy of the AOC. His point was that CAAZ had given applicant 90 days to rectify observed anomalies. He therefore argued that this time frame had not expired and the time of suspension of the AOC and that it should have been observed. He challenged the assertion by CAAZ in its letter of 27 October that the safety of the public was at stake since from his client's observations, these were the very same issues that had been earlier raised and applicant had been given time to rectify.

The issues raised by CAAZ go to the root of whether the applicant has a prima facie right against CAAZ for the suspension of its licence. If, as CAAZ the asserts, the letter was

not the basis upon which it founded its ultimate decision to suspend the licence, then applicants first point in the interim order that the letter be withdrawn serves no useful purpose. I say this because behind the request for its withdrawal is that CAAZ disregards the letter in order to reinstate the licence. It is the existence of a dispute relating to who is the rightful manager that added to observations that had been made earlier regarding non-compliance that appear to have created the situation of heightened danger for the safety of the public that had been central in the suspension of the AOC. From documents filed by the applicant its Bank had frozen the applicant's account pending the sorting out of the management dispute.

In my view, the applicant has not made out a *prima case* against CAAZ. Whilst the letter by Mr Karase was damaging, it was in the sense exposing the depth of the problems that applicant was facing. This was against the added backdrop of what emerged to CAAZ as being compounded its management *impasse*, which it could not simply over look in terms of safety implications Also the AOC has merely been suspended and not withdrawn. There are directives from CAAZ that what the applicant needs to do is to put its house in order. Local rules and regulations must be observed by applicant instead of crying foul against CAAZ knowing full well its house is not in order. Without attending to the issues which also include managerial concerns, the suspension will not be uplifted.

Role of the court with respect to CAAZ as an expert agency

The applicant's core assertion was that an investigative process and a hearing should have been undertaken in line with point 1.3.1.2 of the applicable statutory instrument namely, SI 140 of 2010.

The applicable provision on the need for investigations is formulated as follows:

> **"INVESTIGATIONS - GENERAL**
>
> a) Under the Civil Aviation Regulation, the General Manager of the Civil Authority may conduct investigations, hold hearings, issue subpoenas, require the production of relevant document records, and property, and take evidence and disposition."

He argued that the minimum requirements as stipulated above were simply not adhered to in terms of the requisite regulations and that the suspension of the licence should not have been done summarily as occurred in this case. His position was also that what was before the court was an administrative decision which did not comply with statutory requirements in that it was not clear which section of the regulations the applicant had

violated. He also stated that the safety of the flying public was not alluded to in the letter received from CAAZ. He maintained that this court was at large to interfere as a decision had been made by CAAZ which was in conflict with its own statutory instrument. He relied on the case of *Mugumbate* v *University of Zimbabwe* HH 183 /14 for the proposition that an administrative authority cannot go off on a tangent. Thus it essentially implicates CAAZ for procedural irregularity in that it is averred that it did not grant the opportunity to be heard as mandated above.

The gist of Mr *Mpofu'*s response was that there was absolutely no basis for this court to interfere with the decision of 'flying' experts. His chief argument was that the courts are not experts in aviation and ought to be guided by the findings of CAAZ on the reasons for the suspension of the licence. CAAZ, as captured above, emphasised that it had accorded the parties hearing before taking the action that it did.

The applicant's complaint was also expressed couched in terms of non-compliance with s 68(1) of the Constitution of Zimbabwe as read with s 3 of the Administrative Justice Act [*Chapter 10:28*].

Section 68 (1) of the Constitution provides as follows:

> "Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair."

Section 3 of the Administrative Justice Act [*Chapter 10:28*] requires that before an administrative act is made an affected must be afforded adequate notice of the nature and purpose of the proposed action; a reasonable opportunity to make adequate presentations and; adequate notice of any right to appeal or review.

Although Mr *Zhuwarara* went to great lengths to deal with the assertion that CAAZ had not acted in accordance with procedural justice, materially neither the interim relief nor the final relief sought are concerned with the issue of not having been heard. The interim order is preoccupied with curtailing Mr Karase's actions. The final order relates to the applicant's own internal meetings. In so far as CAAZ appears in the fray in terms of the interim order, it is simply in terms of it being asked to disregard the letter written by Mr Karase so as to lift the suspension of the licence.

That courts are no experts in aviation standards needs no say and neither does this court as a generalist court purport to have such expertise in matters where expert agencies are concerned. However, the court does have a role which is a very clear one with respect to such agencies. Administratively, the actions of such bodies have to be rooted in the applicable

laws. The role of the court is thus to exercise external oversight using the law as its point of departure. It is to ensure accountability in the actions of such expert bodies who act administratively, so as to foster the development of best practices in administrative governance. The aim is also to encourage proper deliberative approaches by such bodies in order to strengthen decision-making processes.

I largely agree with Mr *Mpofu*'s observations that the applicant did a double take at the hearing on its main argument and departed materially from the core complaint it had raised in its affidavit which was the actions of Mr Karase. The interim order sought simply does not address the lack of a hearing as the gravamen of the applicant's complaint. CAAZ was cited as a nominal respondent. But then a point of law can be raised at any time. If applicant's major complaint is that it was not heard then it would have made sense for the interim relief sought to have captured the issue against a background of a final order which relating to a thorough review of the actions. The ways in which CAAZ has deviated from its responsibility in terms of the applicable standards would have been the subject matter of a detailed review. I say this because where administrative action has been taken and it is the subject matter of great dissatisfaction, even if some urgent interim relief is sought, the proper course of action is to approach the courts by way of a review of such action.

In the case of *ZHLR* v *Minister of Transport Communication & Infrastructural Development & Ors*, HH 353/14, it was opined that in terms of the High Court Rules 1971, an application for urgent relief does not always to be pending something or be conditional upon some other application having filed. Much depends on the facts of each case and what is sought in that urgent application. In order for the court to properly carry out its work of review where required, it needs to have the necessary evidence from the expert body relating to what exactly was done in terms of conducting the hearing and follows the laws in place. It is hard to see how such an assessment especially where expert work is involved can be made without the proper evidence having been placed before the court. The court itself will have great difficulty developing its own body of knowledge about how these expert bodies work administratively if it is asked to make decisions on the scantiest of information regarding the hearing process having been placed before it. The yardstick used by CAAZ would be contained in its own report whilst the court would be guided by the relevant stature instrument.

In so far as neither the interim interdict nor the final relief in the pending matter seek to address the issue of not having been heard by CAAZ, the conclusion must of necessity be that albeit this is a grievance that applicant might have, it is not the primary thrust of its quest for an interim order. If the applicant has a major grievance relating to administrative justice, the inference is that it is to still bring a proper matter for the review of the actions taken.

Turning to the issue of interdicting Mr Karase – his averment that he is the applicant's effective manager are not supported by the facts. The fact that he is the major shareholder is not the point at this stage. It is that corporate procedures and governance which must be observed have simply been thrown to the wind in favour of a dictatorial approach. When a local investor sends out the message that he is above following basic procedures of corporate governance because he is a major shareholder, such attitude can only but serve to further distance would be investors. The applicant has in my view made out a *prima facie* case against Mr Karase in relation to the need to interdict him from making unilateral decisions in relation to the applicant's business. There is absolute merit in respect of its demand that in the absence of a board resolution executed by at least two directors of the applicant authorising him to act, he be interdicted from interfering with the applicant's normal business activities. The balance of convenience does favour the granting of an interim interdict on these two issues as this will facilitate the process of putting its house in order in an environment where it is not fire-fighting whilst engaged in this process.

Accordingly the following order is granted:

TERMS OF FINAL ORDER SOUGHT

That you show cause, to this Honourable Court why a final order should not be made in the following terms:-

1. That pending the applicant's members convening and finalising an extra ordinary General meeting pursuant to the applicant's Articles of Association and Shareholders Agreement the first respondent shall not carry out any work or make any decision, announcements or commitments for or on behalf of the applicant.
2. That the first respondent to pay the costs of this application on a legal and practitioner scale.

INTERIM RELIEF GRANTED

Pending the determination of this matter, the Applicant is granted the following relief:

1. The first respondent is interdicted from making a unilateral decision or taking unilateral actions in relation to Applicant's business.
2. In the absence of a valid resolution executed by at least two directors of the applicant authorising him to act, the first respondent is interdicted from interfering with Applicant's normal business activities.

Kantor & Immerman, Applicant's Legal Practitioners
Mutumbwa Mugabe & Partners, First Respondent's Legal practitioners
Chirimuuta & Associates, Second Respondent's Legal Practitioners