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27 OCTOBER 2017

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DEPARTMENT OF HOME AFFAIRS
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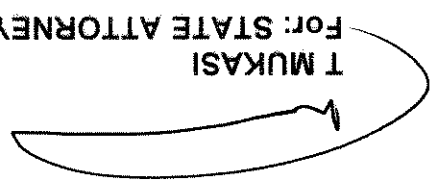
ATT: MPH
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RE: FIREBLADE AVIATION (PTY) LTD. / MINISTER OF HOME
AFFAIRS AND OTHERS

1. We refer to the above matter and the telephone conversation held with Mpho today.
2. We attach hereto copy of the judgment handed down this morning by Judge Potterill for your urgent perusal and consideration.
3. You will note from the judgment that she found in favour of the Applicant.
4. We confirm that we shall proceed to peruse the judgment and revert with our opinion.

5. Hope you find the above in order.


T MUKASI
FOR: STATE ATTORNEY (PRETORIA)





IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO. <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO.
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(3) REVISED. <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO.
DATE 27/10/2016
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Case Number: 85376/2016 & 93450/2016

In the matter between:

FIREBLADE AVIATION PROPRIETARY LIMITED Applicant

and

MINISTER OF HOME AFFAIRS

DIRECTOR-GENERAL OF HOME AFFAIRS

SOUTH AFRICAN REVENUE SERVICE

DENEL SOC LIMITED

Fourth Respondent

Third Respondent

Second Respondent

First Respondent

AIRPORTS COMPANY SOUTH AFRICA

SOC LIMITED

Fifth Respondent

PRECINT 2A INVESTMENTS PROPRIETARY

LIMITED

Sixth Respondent

JUDGMENT

POTTERILL J

[1] The applicant brought an application for a declaratory order that the first respondent,

the Minister of Home Affairs [the Minister] granted the Applicant's, Fireblade

Aviation [Fireblade] application for the approval of an *ad hoc* international customs

and immigration service component of a corporate fixed base aviation operation

[FBO] to be conducted by officials of the Border Control Operational Coordinating

Committee [BCOCC] at the premise that Fireblade leases from the fourth

respondent Denel SOC Limited [Denel] at O.R. Tambo International Airport

[ORTIA]. This approval was granted on or about 28 January 2016 and

communication thereof was issued in the presence of representatives of the

applicant as well as other persons.

[2] In the alternative the applicant applies that the Minister is directed to forthwith grant

the Fireblade application and to do all such things as may be necessary or apposite to issue and give force and effect to the Ministerial approval.

[3] In the further alternative direct the Minister to forthwith consider and if deemed fit to

grant the Fireblade application to do all such things as may be necessary or apposite to issue and give force and effect to the Ministerial approval.

[4] The Court is also asked to declare that the Ministerial approval issued in terms of

prayers 2,3, or 4 is of force and effect and may not be renounced or revoked by the Minister without due cause and may be implemented and relied on by Fireblade.

[5] Paragraphs 1-4 *supra* constituted the main application and was launched on 4

November 2016 [Case number 85376/2016.] Three days later the Minister delivered a rejection letter. The rejection letter is dated 27 October 2016. Fireblade

thus launched a second application, referred to as the review application [case number 93450/2016]. This is an application that the Minister's decision dated 27

October 2016 [the decision] be reviewed, set aside, corrected or remitted. This application is thus to address a situation where the court should find that approval

was not given, but in fact was declined as the Minister contended.

[6] The Minister and second respondent, the Director-General of Home-Affairs [DG] opposed this application. They also filed a counter-application for a declaratory order that in terms of section 9A of the Immigration Act 13 of 2002[Act] the power of the Minister of Home Affairs to designate a place as a port of entry will be used by all persons and become accessible to all persons.

[7] Although no relief is sought against the third respondent, South African Revenue Services [SARS] and the fourth respondent Denel SOC Limited [Denel] both opposed the application. Denel also filed an application to strike out paragraphs of the founding and supplementary affidavit of Fireblade in the main application as well as paragraphs in the founding affidavit in the review application. The application included that certain annexures be struck out.

[8] The fifth respondent is ORTIA and it does not oppose this application. The sixth respondent is Precinct 2A Investments (Pty) Ltd, a wholly-owned subsidiary of ACSA that owns the land from which ORTIA operates. They too do not oppose the application.

[9] The crux of the matter is whether:

(1) Did Fireblade request a new port of entry or only that immigration and customs services be rendered by officials of BCOC; ;

(2) The Minister approved that Immigration and Customs services could be

rendered at the FBO by officials of the BCOC;

(3) If the Minister did not approve Fireblade's application should the Minister's

decision to deny a new port of entry be reviewed and set aside.

[10] It makes sense to address the main application first; this was also the process

followed in court because the factual sub-stratum is mainly common to both

applications. I also find it prudent to set out the relevant facts that cannot be

disputed as background to the matter.

Common cause facts setting out background

10.1 A FOB caters for VIP's and is very common within the international aviation

industry. It is highly unusual in Europe for a private aircraft to use an airport

facility other than an FBO. There are over 5000 FBO's in the USA. FBO's

alleviate the pressure on the facilities of an airport, with the airport then free

to focus on commercial airlines.

10.2 Airports Company South Africa [ACSA] support Fireblade and approved the

rendering of customs and immigration services because it "is one of ACSA's

first steps in reorganising Commercial Business Aviation at ORTIA, in line

with ACSA's long term development plan."

"... Having a fully operational international border control capability at

Fireblade will have the following benefits for ACSA:

1. Fireblade's approval by ACSA is one of ACSA's first steps in reorganising Commercial Business Aviation at ORTIA, in line with ACSA's long term development plan for ORTIA.
2. All security and border control facilities at Fireblade have been designed, constructed and will operate to existing ORTIA standards.
3. Fireblade is already considered by ACSA as being an extension of the airport facilities at ORTIA.

- 4.(a) It will provide additional capacity for ACSA and ORTIA to handle Commercial Business Aviation away from current congested facilities at the main terminals.
- (b) There is a dire need for these premium products at the largest airport in Africa and the lack of these facilities is definitely tarnishing our Brand.
- (c) Once Fireblade is fully operational, runway crossings by aircraft will be reduced tremendously, which will in turn improve safety and increase the capacity for other flights to enter and depart from ORTIA. This is an immediate ACSA imperative.

10.5 Since 1 September 2014 the FBO has been up and running in respect of domestic flights. It has been set up to cater for both domestic and international flights. The process to cater for international flights was however hampered by the fact that at the FBO there is no customs and immigration services. This *lacuna* was escalated to the Inter Agency Clearing Forum

10.4 There are many bonded cargo warehouses at ORTIA which are mostly privately owned by firms such as DHL. These warehouses process goods carried on domestic and international flights. BOCC officials (including those of SARS) render an international customs service at these warehouses.

10.3 The Lanseria and Kruger Mpumalanga International Airports are both designated ports of entry and are both privately owned. At both Airports the BOCC officials (including those of SARS and the Department of Home Affairs [DHA]) render Customs and Immigration Services.

Heads of State:

(d) Fireblade provides ACSA with many options to deal with high visibility events where ACSA needs to facilitate VIP's and

10.7 On 10 April 2013 Denel wrote to Mr Irons [Fireblade] re-endorsing Denel's full support in respect of establishing and endorsing a Corporate VIP FBO from their Kempton Park Campus. "The Denel Kempton Park Campus is strategically situated, not only by virtue of its proximity to the O.R Tambo International Airport, but also due to the fact that Johannesburg is regarded as the economic powerhouse of South Africa, and for these reasons this Campus would be the logical choice from which to operate a FBO terminal as proposed by E. OPPENHEIMER & SON (PTY) LTD. Furthermore E. OPPENHEIMER & SON (PTY) LTD have indicated their willingness to institute all the necessary security measures to the satisfaction of ACSA, in

for such approval.?

10.6 On 17 March 2013 Fireblade wrote to Minister Pandor, the then Minister, thanking her for considering their application for in-house Customs and Immigration Services within the VIP at ORTIA and setting out a motivation

[IACF] on 13 February 2013. SARS and the IACF requested Fireblade to apply to the Minister personally for approval for an in-house Customs and Immigration service at the FBO.

FOB on the property by the Lessee [Denel].

to cater for the lessor and lessee as being desirous to make provision for a sign a second addendum to their lease agreement with the specific purpose

10.10 On 7 October 2013 Precinct 2A Investments (Pty)Ltd, required Denel to

to the Minister.

he personally supported the FOB, but that Fireblade must direct the request

10.9 On 17 April 2013 the BCOCOC Chairman confirmed that at the IACF meeting

airport complex."

on the Denel-administered Kempton park footprint adjoining the OR Tambo

the consideration and approval of the intended Corporate VIP FBO Terminal

and hoped that "the urgent actions being implemented by Denel will support

Denel precinct. The letter recorded Denel's full support for the FBO proposal

on key aspects of prioritised interventions that were being implemented at the

current security measures at Denel Kempton Park. It included a presentation

10.8 On 9 April 2013 there is a letter from Denel to Fireblade setting out the

immigration requirements."

respect of handling international passengers, including customs and

"The leased premises shall be used solely for the purposes of the LESSEE conducting its Aviation Business. For purposes of this Agreement, Aviation Business shall include but not be limited to any activities, operations, business or other functions necessary for, ancillary or related to the establishment and continued running and managing of Fixed-base Operator facilities ("FBO Facilities"). FBO Facilities are facilities from which aeronautical services such as fuelling, hangering, tie-down and parking,

set out as follows:

10.13 On 18 November 2013 the lease agreement between Denel and Fireblade is concluded. In clause 13.1 of the lease agreement the use of the premises is

10.12 Between 5 November 2013 and 2 December 2014 there are e-mails between SARS's Port Coordinator Inter Agency Coordination and the BCOC members and Fireblade relating to the Layout/Concept, design/architect request for furniture & equipment specifications as well as the upgrade project specifications.

10.11 On 28 October 2013 there is a BCOC Ad Hoc meeting. The steps taken to step up the FBO is set out and the different departments set out their individual requirements for this to be achieved.

stake-holders.⁵

10.15 On 7 March 2014 ACSA and ATNS [Air traffic and navigation Services SOC Limited] give their support for the FOB operations and facilities. This includes them being supportive of SARS Customs and Immigration Services being present within the FBO as long as they have consent from all the

consent.

10.14 On 29 January 2014 all the lessee's rights and obligations under the Fireblade lease were assigned to Fireblade. This is done with Denel's

In clause 13.2 it is set out that FBO's generally also provide basic auxiliary and ancillary services and amenities to pilots, flight crew, and passengers such as *inter alia*: Customs and Immigration services, restrooms, lounges and showers, accommodation reservations or concierge services for both crew and passengers through a customer services representation ..."

not limited to, the following ..."

aircraft rental, aircraft maintenance, etc. can be provided and operated. In particular, the aeronautical services that FBOs usually provide include, but

10.19 On 17 September 2014 Minister Gigaba, now the Minister, writes to Fireblade informing it that the Inter-Agency Clearance Forum [IACF] requested that a feasibility study be conducted to consider potential security weaknesses, the critical volume as well as the required resources. An

discussed.

10.18 On 9 May 2014 and 24 June 2014 the ACC meet. This is a meeting of the stakeholders pertaining the FBO and problems and progress is highlighted and

10.17 On 2 May 2014 Minister Pandor wrote to Fireblade that a new Port of Entry required a collective decision-making process to ensure an integrated approach and therefore a work group consisting of the various stakeholder departments will conduct a feasibility study to consider the impact. The results of the feasibility study would be presented in June 2014.⁶

"New Port of Entry".

10.16 On 25 March 2014 Fireblade again write to Minister Pandor requesting a

respective expected participation.

BCOCC stakeholders confirming their telephonic assurances regarding their

10.22 On 23 October 2014 the Port Coordinator sends an e-mail to various

port but an extended facility of ORTTA.”⁸

recorded that “Must keep in mind that the FBO terminal is not a new

[p309-311,317]. This meeting is recorded and under DIRCO it is *inter alia*

the officials of the BCOCC will have access to. Fireblade attended thereto

like an additional sterile area and the plans for the server room to which only

and BCOCC pursuant to which the FBO had to address project listing issues,

10.21 On 17 October 2014 there is a site visit by senior representatives of ACSA

border control services rendered by the various Government stakeholders.

decided, that if necessary, Fireblade will provide full financial cover for the

Minister that to address the DHA budgetary constraints the Fireblade Board

pertaining to the FBO. On the same day Mr Oppenheimer writes to the

10.20 On 19 September 2014 Fireblade wrote to the Minister requesting a meeting

be informed of the final decision.⁷

international stakeholder feasibility study will be undertaken and Fireblade will

10.23 On 24 October 2014 the ORTIA BCOCOC stakeholders, SARS, Customs, DAFF, DOH and DHA assure in writing to the FBO that there will be staff available for deployment at the FBO. This assurance is given at the Local Level and the National Department must still give a formal approval.⁹ The ORTIA Customs Compliance Unit of SARS also set out that they will be able to accommodate the FBO's with staff capacity requirements. On the same day the Director Immigration ORTIA from a DHA e-mail address in an e-mail set out: "In terms of the issue of the Minister of Home Affairs accessing and approving any new Port of Entry, the Fireblade facility is not a new Port of Entry but simply a further offering at an existing Port of Entry under the ACSA umbrella, meeting a crucial economic need. ORTIA is an ever expanding International Airport and will always have the need for all departments and state agencies to consider such issues as we are now addressing. The key issue therefore is standards, compliance and readiness. ... It is on this basis that all stakeholders are now able to effectively and efficiently place a professional assessment before the Minister of Home Affairs when the Minister requests a means to respond to extension of state services to meet economic developments within an existing Port of Entry.¹⁰

out:

10.27 On 12 March 2015 the Minister wrote to the Minister of Transport that the BCOC, including staff of the SAPS, Customs, DAFF, DOH and DHA would be available for deployment at the FOB provided that each respective National Department issues a formal approval. On the same date the Minister wrote to the Minister of Agriculture, Forestry and Fisheries and *inter alia* set

Minister in support of the FBO.

10.26 On 15 December 2014 the Minister of Transport writes a letter to the

its full operation due to the following reasons ..."¹²

the Minister of Transport grant permission for the Fireblade VIP to assume

therefore recommended that the office of the DG together with the office of

compiled a report for the Minister of Transport wherein it is stated: "It is

10.25 On 28 November 2014 the National Aviation Security Committee [NASC]

Ebola virus-was installed."

that an ACSA-approved thermal imaging scanner used in the detection of the

10.24 In November 2014 the FOB complied with the requirement by Port Health

10.28 On 15 April 2015 the minutes of the Airside Tenant Security Forum reflect that everybody in possession of a permanent or semi-permanent access for the campus will need to apply for an official Security Clearance to minimum level of Confidential, as well as undergo a preliminary screening process via MIE. "The need for the above was discussed at length. Clearances and preliminary screening costs will be for tenants own account." 14

"The principles and guidelines for rendering government services at the Fireblade VIP facility are:
The service will be rendered within the existing perimeter of ORTIA (National Key Point) and would thus not require DHA to declare the facility as a new port of entry.
The same infrastructural equipment, IT systems and procedures must be deployed at the facility as is currently deployed within the main terminal building and perimeter of ORTIA.
You are therefore requested to provide a response to the Department of Home Affairs on the availability of your Department to provide services at the Fireblade VIP facility by Friday, 20th March 2015." 13

10.31 On 22 May 2015 Fireblade submitted its third application to the Minister; "Kindly take note that these discussions have been ongoing with all Government Stakeholders since August 2012, initial reference was made to a new Port of Entry application. Through this engagement process

10.30 On 12 May 2015 Fireblade wrote to the Minister that the process had started on 8 May 2012 and they are now greatly concerned because the delay is having a direct negative impact on large scale international investors looking to partner with Fireblade. "... We are further advised the Ministry of Transport granted their full support and approval dated 28 November 2014 for ad hoc border control services at FIREBLADE, including a complete report by the national Airport Security Committee (NASC) which was then communicated with DHA directly on 14 December 2014." 15

10.29 On 6 May 2015 Minister Nene advised the Minister that after he engaged with SARS about the request for ad hoc custom services at the FOB it was his opinion that the costs involved for such a single facility could not be warranted.

was committed to paying for the services rendered by the border control

10.33 On 8 July 2015 the Minister of Transport informed the Minister that Fireblade

border control services within the Fireblade FBO.¹⁷

also reiterates that Fireblade is not requesting a new port of entry but ad hoc

entity, the Aviation Security Division of SA, was now also secured. Fireblade

10.32 On 29 May 2015 Fireblade supplemented its application that a further state

¹⁷ state-entity authorisations was secured pertaining to the FBO.

*Services within FIREBLADE FBO.*¹⁶ Herein it is also expanded that by then

Honourable Minister of Home Affairs to approve Ad hoc Border Control

Port of Entry as FIREBLADE is only requesting approvable from The

Kindly ignore any and all reference in the previous communications to a New

Hoc Customs & Immigration Border Control Services within FIREBLADE.

latter communications have been formally corrected making reference to Ad

recognized ACSA and BCOC as an extension to the ORTIA facilities, all

considered on an AD Hoc service basis. Since FIREBLADE is now officially

any such Border Control services within FIREBLADE could only be

International Airport (ORTIA) is already a designated Port of Entry, therefore

FIREBLADE was corrected by the higher authorities that OR Tambo

VVIP FBO.¹⁹

10.36 On 28 July 2015 Fireblade writes to the Minister informing the Minister that Fireblade has now complied with every Government stakeholder approval process necessary to establish the ad hoc border control services at the

10.35 On 10 September 2015 the extract of the minutes of the in-committee board meeting of Denel SCC reflect that "... certain security concerns were raised relating to the current tenant (Fireblade) of the land. The Denel position was *lacking in the supporting documents.*"¹⁸ It was to be investigated and reported back to the Board.

10.34 On 21 July 2015 there is a schedule setting out 27 sources' approval for the FBO, Denel Group SOC Limited approved on 10 April 2013, Denel Group: Security Services and Denel Group Technical on 9 April 2013 and Denel Aviation on 10 February 2014.

departments. The customer pays principle could thus address the resource constraints.

10.40 On 23 October 2015 Denel writes to Fireblade that as discussed all tenants on campus will need to apply for official Security Clearances. Fireblade reacts that they acknowledge the new security requirements presented by Denel Security to Denel Industrial Properties. Fireblade places on record that

10.39 On 22 October 2015 Denel Industrial Properties requested Armcor Security to wave the vetting requirements for certain tenants on the Denel Kempton Park Campus.²¹ On the same day Denel Industrial Properties also request The GM: Vetting and Advising; State Security Agency to through them do the vetting and screening for Denel Industrial Properties private tenants and employees working on the Denel Kempton Park Campus and who are not involved in Defence Projects.²²

10.38 On 17 September 2015 the Minister wrote to Fireblade and advised that DHA was still liaising with the various stakeholders and once concurrence was achieved Fireblade shall be advised of the outcome.

10.37 On 15 September 2015 Fireblade again writes to the Minister noting that all government stakeholders had approved and confirmed that the FBO is compliant with all their specific requirements.²⁰

national interest to suspend this arrangement.

arrangement, a decision will have to be made as to whether it is in the

is no breach of national security. If any challenges are experienced with this

arrangement on an annual basis for the next three years to ensure that there

ORTIA. Therefore, I would like to recommend that we review this

concern regarding a private entity funding operations at the VIP facility at

note that the South African Revenue Service (SARS) has expressed a

"I hereby confirm that I concur with this request; however, I would like you to

on the following basis:

10.42 On 1 December 2015 Minister Nene [SARS] approved the financial layout

SAPS do the vetting.²⁴

Properties that they have no objection that the State Security Agency or

10.41 On 2 November 2015 Armscor Security Division advised Denel Industrial

place on record that the costs are exorbitant.²³

they have many questions relating to this. They will endeavour to comply but

"It is with great pleasure to inform you that Denel SOC Ltd has completed its discussions and fact finding on this project. We are pleased to inform you that Denel approves and support our tenants in these premises. We therefore are endorsing the project to go ahead and we further endorse that the

10.45 On 12 January 2016 Denel wrote to the Minister as follows:

it is stated that Denel SOC had not concluded its discussions and processes.

meeting in view of the letter received by Fireblade from the Minister wherein

10.44 On 8 January 2016 Fireblade writes to Denel Group SOC requesting a

process will be finalised and communicated to Fireblade.

processes on this project. As soon as the Minister received feedback the

attention that Denel SOC Ltd had not concluded its discussions and

10.43 On 22 December 2015 the Minister informs Fireblade that it has come to his

*operation of the facility.*²⁵

same conditions that were applicable during the first three years of the

FBO would be approached to continue to fund the activity subject to the

they would be able to make funds available to fund this activity or whether

After the initial three-year period, the relevant departments should consider if

MG then tasked JM to initiate the finalisation of the operational plan in conjunction with RI. JM indicated this plan would be tabled to the Inter Agency Clearing Forum [IACF] as an information only presentation as authority to proceed has now been obtained directly from the Minister. RI thereafter to be reviewed ...

MG indicated that his approval letter would be released with a formal response letter addressed to FIREBLADE. MG indicated the need for finally of the operational procedures required to enable Customs and Immigration Services to start on an Ad hoc basis for a trial period of three years and The minutes reflect that "MG has signed this approval ...

10.46 On 28 January 2016 a meeting was held at 909 Arcadia Road, Hatfield attended by the Minister [MG], the DDG Immigration Services-DHA [JM], the Deputy Director: Special Projects [KD]-DHA, Director Research – DHA[LI], Acting Chief of Staff - DHA [NM], as well as the Chairman [NFO] and two Directors of Fireblade [BT & RI]

The meeting

Minister of Home Affairs can issue the Ad Hoc International status approval to operate.²⁶

10.47 On 28 January 2016 Mr Oppenheimer wrote to the Minister thanking him for seeing them and "... I was delighted to be told that all outstanding matters had now been resolved and that you had signed the necessary letter to empower Fireblade to offer Customs and Immigration at its facility on a three year trial basis. I understand the need for your department to review the operational plan of how this would work before releasing the letter and the need to submit that plan to the Inter Agency Clearing Forum for their information. After everything we have been through I hope this process will not take long and Mr Robbie Irons will be available to meet with your people from Monday ..."²⁸

NFO requested MG to attend a formal opening ceremony at a future date. MG requested we invite the President to participate in the event as well ..."²⁷

indicated the BCOC draft Standard Operating Procedures (SOP's) managing the AD Hoc Border Control Movements at FIREBLADE is already in place at ORTIA and that he would be available immediately to finalise these drafts SOP's with JM ...

10.50 On 3 February 2016 representatives of the DHA visited the Fireblade premises and completed a checklist for international arrivals and departures at the facility.³¹ Also on this date the Port Coordinator sent to the BC OCC stakeholders a document with the heading "FIREBLADE AVIATION (FBO) PRINCIPLE APPROVAL". In this document the background is set out as that the BC OCC stakeholders received an urgent invitation to participate in a meeting taking place at the FBO. This meeting was called by Mr McKay the

10.49 On 29 January 2016 Fireblade e-mailed Ms Mazibuko [NM] the promised minutes of the meeting of 28 January 2016. She is also requested to comment on the minutes. On the same day she reverted with, "The minutes are noted. I spoke with Mr McKay, he will set a meeting with your team for next week so that the process can start shaping."³⁰

10.48 On 28 January 2016 Mr Irons sent to Mr McKay at DHA an e-mail setting out that the Port Co-ordinator of BC OCC had requested a direct instruction from her office to engage with Fireblade to finalise the SOP's. He also informed her that he could meet with her early the next week for her final scrutiny of the SOP's whereupon it could be submitted to the IACF for implementation.²⁹

10.52 On 9 February 2016 Fireblade writes to Denel that the DHA confirmed that there was a further objection letter by Denel and requested them to provide them with a copy as they are bewildered to hear this.³⁵

1. *In view of this letter, obviously the letter from the Acting CEO granting Denel's approval for the fireblade must be set aside, as advised by the Chair,*
2. *Anglo must be made aware forthwith that the approval we granted then is also suspended until further notice, pending Denel's investigations and their conclusions, and*
3. *Therefore, the fireblade must not proceed with this ...*³⁴

10.51 On 5 February 2016 the Minister writes on an internal memo:

DDG of DHA. It was reported that the Minister had given principle approval to the FBO after due consideration of all relevant Departments' representation.³² The follow up actions as agreed to in this meeting is on the same date e-mailed to Fireblade by DHA.³³

10.55 On 6 April 2016 Fireblade writes to Denel informing them that they are in breach of the lease agreement because the lease agreement specifies that FBO's have customs and immigration services. Furthermore on 12 January 2016 Denel issued a letter wherein it unreservedly confirmed its support for the FBO, to only on 17 February 2016 receive a letter wherein they now seek a security clearance from Fireblade.

10.54 On 17 February 2016 the port coordinator by e-mail confirmed that the report in 2014 depict that all Government Departments within ORTTA have been collectively part of the discussion regarding Fireblade. ... the SSA and SAPS are permanent members of these two forums."³⁶

10.53 On 15 February 2016 Denel informed Fireblade that *inter alia* "3. Denel as a State Own [sic] Company and a Strategic Asset of the State wants clearance from State Security Department that it can allow Fireblade Aviation to use the leased premises for international flights. 4. Investigation is underway in respect of the flagrant breach of Denel security obligations by our employees."

10.59 On 27 October 2016 the Minister in a letter writes to Fireblade for "... the reasons mentioned above, my view is as a Minister, I would probably be acting unconstitutionally and in breach of section 9A of the Immigration Act if

10.58 On 4 May 2016 Fireblade writes to the Minister that the letter referred to in 10.51 conveying that unless the security vetting of Fireblade personnel is complete, it has a security concern about Fireblade and the Minister should not give approval. "... As you are aware the security vetting process is completely unrelated to Fireblade's application for your department approval for the provisions of customs and immigration facilities at Fireblade's FBO."²⁸

10.57 On 26 April 2016 Denel writes to the Minister that Fireblade cannot contend that they met its security obligations under the lease agreement when the process of security vetting is not yet completed.

10.56 On 14 April 2016 Denel reacts to the above letter and *inter alia* set out that they had not withdrawn its support for the FBO under the lease agreement, however "... So whilst Denel support Fireblade, this support cannot dispense with the requirements of security, security clearance, vetting and the obligations that Fireblade has in terms of the lease agreement."²⁷

[11] I find it prudent to first address the point raised by SARS because it boils down to a point *in limine*, although not presented as such. This point was not raised in the papers and was also not raised in the heads of argument, but the applicant was forewarned that it would be raised in oral argument. The argument was the Minister could not grant the application because the deployment of immigration officers is a power that parliament gave to the Director-General [DG] of Home Affairs to exercise. SARS thus in direct contradistinction to the Minister argued that the power to grant an ad hoc customs and immigration service exists. However, Parliament divided the powers between the Minister and the DG; the Minister to pass regulations, but the powers of administering the Act conferred on the DG. Thus only the DG can deploy immigration officials to the FBO and not the Minister, whereas only the Minister can designate a Port of Entry in terms of section 9A of the Immigration Act, 13 of 2002. This submission, so it was argued, is fortified by the Public Service Act rendering the DG to be the Head of the National Department and therefore in terms of section

only the DG has the power

SARS argument: The Minister did not have power to grant Fireblade's application,

*to inform you that I do not accede to your request.*²⁹

I were to accede to your request, I (sic) light of the above, I regrettably wish

[13] The background to this application is that permission is sought to approve an ad hoc immigration and customs service at the FBO. A decision is sought; not the day to day running of management and administration of the department. Whilst it is true that the Minister is the Executive Authority, and is entrusted with the responsibility of the DHA; "He is ultimately responsible for the conduct and acts of the functionaries in his department."⁴⁰ The Public Service Act clearly requires of the DG to ensure training and discipline of staff, sound labour relations and proper use and care of State Property. It also requires from the DG the proper utilisation of staff; so if the Minister informs the DG that staff is required at the FBO the DG must ensure that there is proper utilisation of that staff. Section 3 of the Immigration Act confers the power to the Minister to delegate any power, excluding certain powers not relevant to this

bad in law.

[12] The Minister in his answering affidavit set out that his affidavit included information provided to him by *inter alia* the DG. The DG is also a party to the application; yet he did not raise this point. I would assume because it was the DG that in fact referred Fireblade to the Minister. The DG also did not raise this because the argument is

7(2)(b) the Head of Department shall be responsible for the efficient management and administration of his department.

[15] The first is that the Minister did not have the power to grant a new Port of Entry. This is an ingenious argument as this is not what the applicant is requesting. The common cause facts reflect that initially the permission sought was referred to as "a new Port of Entry", but as far back as 25 May 2014 the Minister himself was informed that although initial reference was made to a new Port of Entry, Fireblade was corrected by higher authorities that ORTIA is a Port of Entry and therefore Fireblade was in fact

wrong in doing so.

[14] I find it necessary to first address certain arguments on behalf of the Minister because they can be dismissed with ease. All of these arguments seem to be raised to set up reasons why, if the Minister did convey his approval on 28 January, he was

Arguments raised as to why the Minister could not have conveyed such a decision

This point is thus dismissed.

ultimate responsibility for the acts of the DG and all other functionaries. daily basis he is not divested of any power to do so and most certainly has the in terms of the Act. Although he does not have to fulfill the functions of the DG on a exception those conferred in sections 3, 4, 5 and 7, to do anything conferred on him divested of any power so delegated. This Minister thus has all the powers, with the employees or a person or category of persons in the Public Service, but shall not be application, to an officer or category of officers or an employee or category of

seeking ad hoc Customs and Immigration services at the FBO. At this stage this was

also the DHA's understanding as reflected in the letter by the Director: Immigration

ORTIA dated 24 October 2014 wherein he records that the Fireblade facility is not a

new Port of Entry, but simply a further offering at an existing Port of Entry under the

ACSA umbrella, meeting a crucial economic need. The fact that the request was for

ad hoc services is reiterated in Fireblade's further application to the Minister dated

22 May 2015 and its last application to the Minister dated 29 May 2015. Under the

hand of the Minister himself, he wrote to the Minister of Agriculture, Forestry and

Fisheries that the BCOC provided in principle assurance that staff will be available

for deployment at the FBO facility provided the National offices issue formal approval.

These services would be rendered within the existing perimeter of ORTIA and DHA

was thus not required to declare the facility as a new Port of Entry. This point raised

by the Minister is thus spurious, fundamentally flawed and is rejected.

[16] On behalf of the Minister the argument was mounted that in terms of s9A of the Act

all persons entering through a Port of Entry must do so at the same location/place. S

9(A)(1) reads as follows:

"Place of entry or exit - (1) The Minister may, in the prescribed manner,

designate any place in the Republic, which complies with the prescribed

requirements, where all persons have to report before they may enter, sojourn

or remain within, or depart from, the Republic."

Section 9 sets out that no person may exit or enter the Republic at a place other than a Port of Entry. A Port of Entry is the place so designated by the Minister.

The argument was thus that the premises of Fireblade are not at the place designated by the Minister. This argument is laboured. This is simply so because "the place" can never be equated to a particular area within the Port of Entry. The argument that if there is a revamp at ORTIA and the Customs and Immigration counters need to be moved to facility the revamp, a new designation will have to be sought illustrates the absurdity of such submission. Terminals A and B is not the Port of Entry, the airport is. The Fireblade premise is in the Port of Entry where persons may exit or enter the Republic. The Bonded warehouses at ORTIA are within the Port of Entry, but at different parts of the airport. Yet they are manned by customs officials at those different locations. If the argument of the Minister is correct, then the bonded warehouses could not have such facilities. SARS, in contradistinction to the Minister's argument, submitted that ACSA did not need a new Port of Entry proclaimed to shuffle their terminals because a Port of Entry is not a geographical area within the airport, but the airport itself is designated. This argument is sound. Lastly I find this argument surprising because the Minister wrote to Minister of Transport on 12 March 2015 that services at Fireblade "will be rendered within the existing perimeter of ORTIA (National Key Point) and would thus not require DHA to declare the facility as a new port of entry."

The submission on behalf of the Minister is rejected as meritless.

[17] The further point raised by the Minister is that Fireblade's intention is to create an island for the exclusive use of the Oppenheimers and the like, which is exclusionary and in direct conflict with the requirement in s9(A) that at the place of entry or exit "*all persons have to report*"; This argument is also to be rejected. Immigration through a port of Entry is by its very nature exclusionary; if one does not have a valid passport you cannot use the facility. The whole nature of flying is exclusionary; a business class passenger stands in a different queue and some passengers may use the business lounges and others not. On some airlines free food is included and some not. There is a vast difference between commercial flying and chartered and private air transport. The reason for these choices is that airlines run a commercial operation with the aim of making a profit. Passengers choose an airline that fits their pocket. But even more importantly the "*all*" in s9(A) must be interpreted, and simply means, that all persons must report at the place of entry and exit and not that all persons must report at the same place of entry and exit. This argument is bad in law and laboured.

[18] The further submission was that it was impermissible for the state to allow a private organisation to pay for services rendered by the state. Thus, if the Minister had the power to grant the application the Minister's decision was irrational. The Minister of

[19] Section 217 of the Constitution was also raised in that this process should have been a competitive and fair process. Despite the Minister engaging with Fireblade for 4 years the law was against these negotiations because this process was not transparent or competitive. Even if I find that the Minister did finally grant the application then the remedy that I should give is that the process in terms of section 217 must be followed. The state did not solicit goods and services for the FBO; the

has not raised their initial objection.

and the submission is rejected. It is also of significance that SARS, in their opposition, of Finance approving the arrangement do not constitute a *bona fide* dispute of fact *privately provide what should be a public service.*"⁴¹ This statement and the Minister *entity to take on the financial responsibility and pay the state in order for the state to submit "it is, however doubtful [my emphasis] whether the law permits a private Minister herein accepted, this and cannot now as an afterthought in an affidavit years be reviewed. This court cannot ignore this common cause evidence. The but added a proviso that the arrangement on an annual basis for the following three concern that a private entity fund operations at the FBO, concurred with the request, the costs relating to the ad hoc facility at the FBO. The Minister then, despite SARS's render services at the FBO. Fireblade then gave an undertaking that they would carry Finance, Nene, at the time expressed the view that the cost would be too high to*

[20] The common cause facts reflect that the concept of establishing an FBO was already floated in 2011 and had the support of ACSA, ORTIA, Denel and the DHA. It required the applicant to adhere to many regulatory hoops from various departments and institutions. It was a four year expensive exercise to establish this seven star facility. For the FBO to fully function for international flights an essential component was a customs and immigration facility at the FBO. The last step of the process was the approval by the Minister. Fireblade avers that on the meeting of the 28th of January 2016 the Minister informed all present that he had already signed the approval of the Fireblade application. The Minister denies that he on the 28th January 2016 informed all present that the Fireblade application was signed as approved. Did the Minister at the meeting of 28 January declare to all that he had approved the application?

opposed Fireblade's application

The main application: Did the Minister on 28 January 2016 convey that he had

to the PMFA.
enterprise of a FBO. In light hereof I do not find to address any argument pertaining agreement between them specifically provides that Fireblade runs the commercial commercial purposes; Sections 217 and 195 have no application. The lease principles of section 217, this is astonishing. Fireblade leases property from Denel for was meant to be that the source of business, the FBO, should have adhered to the and 195 of the Constitution have no application or relevance at all. If the argument state is to render the services itself. The State is not paying any entity. Sections 217

Fireblade answers "yes" and the Minister and Denel says "no". For Fireblade to be granted the final relief I must according apply the trite principles of *Plascon Evans*.⁴² In *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 (SCA) the principle is reiterated as follows:

"... a final order can be granted only if the facts averred in the applicant's affidavit, which have been admitted by the respondent, together with the facts alleged by the respondent, justify such order. It may be different if the respondent's version consists of bald or uncreditworthy denials, raises fictitious disputes of fact, is palpably implausible, far-fetched or so clearly untenable that the court is justified in rejecting them merely on the papers."⁴³

[21] The meeting of 28 January 2016 is common cause. The context in which the meeting was held is also common cause; all the relevant departments had given its approval and/or blessing for the ad hoc customs and immigration services to be rendered at the FBO. The Minister himself states that all the major stakeholders had indicated their support.⁴⁴ Only the Minister's approval was outstanding. Denel had given its approval on 12 January 2016 and relayed it to the Minister in the following glowing terms:

⁴² *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A); *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* 2008 (3) SA 371 (SCA); *Gowar and Others v Gowar and Others* 2016 (5) SA 225 (SCA)
⁴³ Para 26
⁴⁴ Para 52 of answering affidavit

[22] On 28 January 2016 (same day) Mr Oppenheimer expresses his delight that all outstanding matters was resolved and that the Minister had signed the necessary letter for the FBO to offer Customs and Immigration services. He confirmed that Mr Irons of Fireblade and Mr McKay of DHA would attend to the SOP. Mr Irons on this

ceremony that Fireblade was to hold at a future date.

Minister also requested Fireblade to invite the President to attend the formal opening facility to promote the new Premium Visa Visitation Centre for Businessmen. The Minister also indicated that he would like to explore the possible use of a Fireblade was already in place at ORTIA and was thus immediately available to Mr McKay. The of the operational plan in junction with Fireblade. Fireblade indicated that the SOP's addressed to Fireblade. The Minister then tasked Mr McKay to initiate the finalisation indicated that the approval letter would be released with a formal response letter The Minute of the meeting reflects that the Minister signed the approval. The Minister

to operate."

Minister of Home Affairs can issue the Ad Hoc International status approval are endorsing the project to go ahead and we will further endorse that the that Denel approves and support our tenants in these premises. We therefore discussions and fact finding on this project. We are pleased to inform you "It is with great pleasure to inform you that Denel SOC Ltd has completed its

date also writes to Mr Mckay that the Port Co-ordinator of BC OCC had requested a direct instruction from Mr Mckay's office to engage with Fireblade to finalise the SOP. He confirmed his availability to meet with Mr Mckay early in the following week.

[23] On 29 January 2016 Fireblade by e-mail sent the "promised" minutes of the meeting

to Ms Mazibuko from the DHA who attended the meeting. She is requested to comment on the minutes. She on the same day reverted that she noted the minutes and she spoke to Mr Mckay and he would meet with Fireblade early the following week.

[24] On 3 February 2016 representatives of the DHA visited Fireblade and completed a

checklist for international departures and arrivals. On the same date the Port Co-ordinator sent to all the BC OCC stakeholders a letter setting out the background as

follows:

"On Tuesday the 2nd February 2016, BC OCC stakeholders received an

urgent invite to participate in a meeting taking place at Fireblade Aviation

(FBO) facility which was called by DHA DDG Jackie Mckay. During the

meeting it was reported that DHA Minister has given a principle approval to

Fireblade Aviation (FBO) after due consideration of all relevant Departments'

representation."

[27] The proof that the Minister did not say he had approved the application is said to be evidenced by the fact that he instructed Mr McKay to conduct a "feasibility study". The minute reflects the Minister instructing Mr McKay to finalise the "operational plan". The minute reflects that the "operational plan" must be finalised and could now due to the Minister's approval be finalized and sent to the IACF. Mr Oppenheimer on the same

[26] The facts the Minister sets up in contravention to all the written documents before me is that on the meeting of 28 January 2016 he indicated to Fireblade that most of the major stakeholders had indicated that the project could go ahead, "on the basis that they always understood the request to be that Fireblade wanted a port of entry within a port of entry." ⁴⁵ This submission is palpably untrue. At the time of the meeting not a single stakeholder understood the application as being a Port of Entry within a Port of Entry. Denel, the Ministers of Finance, Transport, Agriculture, SARS and all the BOCCOC stakeholders all before the meeting of the 28th in correspondence referred to Ad Hoc Customs and Immigration services to be rendered at the FBO. The Minister himself referred to the FBO as requesting Ad Hoc Customs and Immigration Services.

[25] On 5 February 2016 the Minister in his own handwriting writes that Fireblade must forthwith be made aware that the "approval we granted them is also suspended until further notice, pending Denel's investigations."

meeting. "The alleged minute, in any event, was never sent to the DHA for its

[29] The Minister denies that the minute is a true reflection of what happened at the

evidence does not sustain his argument.

not assist the Minister in rendering his version tenable, because the objective

the Minister's version. The fact that Mr McKay filed a bald confirmatory affidavit does

letters and conduct in the direct aftermath of the meeting is completely destructive of

objective evidence reflects that the operational plan/SOB was to be finalised. These

unable to aver that at that stage a feasibility study was to be undertaken; all the

[28] After four years of negotiations and all the stakeholders buying into the project it is

FBO after due consideration of all relevant Departments' representations.

at the FBO where it was reported that the Minister had given principle approval to the

Makgai sets out in a letter to all the BCOC stakeholders that the meeting took place

finalise the SOP's. Mr McKay called an urgent meeting and the Port Co-ordinator, Mr

the BCOC required a direct instruction from the DHA to engage with Fireblade to

day as the meeting contacted Mr McKay informing him that the Port Co-ordinator of

only be released after the DHA reviewed the operational plan. Mr Irons on the same

day wrote to the Minister recording that he understood that the letter of approval could

[31] The Minister adds that he "superficially" denies ever having communicated to Fireblade that he had signed a letter of approval. If such a letter did exist, Fireblade would no doubt have attached it to their founding papers.⁴⁷ Fireblade has nowhere on the papers set out that they had at the meeting, or anywhere else, been placed in possession of such approval that they could attach; the whole matter revolves around the non-receipt of this letter. This lack of understanding is not helpful to the Minister's case and does not support his denial that he communicated the approval to

[30] The Minister explained his note on the internal memo reflecting that Anglo must be informed "that the approval we granted them is also suspended until further notice" as him noting this, because he was made to understand that Mr McKay and his team were intent on advising the Minister that the project should proceed. If approval was to be given in the future, what past approval needed to be suspended? This explanation is nonsensical and palpably untrue.

Minister is uncreditworthy.
after a request to comment on the minutes, "noted" the minutes. This denial of the received by the DHA. The Chief of Staff of his department received the minute and This statement, under oath, is incorrect. It was promised to the DHA and sent and comment. It looks like this was an internal note prepared for use by the applicant."⁴⁶

all at the meeting. The Minister did not deny that he received the letter dated 28

January 2016 from Mr Oppenheimer. The Minister never corrected Mr Oppenheimer

over his delight that the Minister has signed Fireblade's approval.

[32] In applying the principle of *Plascon Evans* to this application I find that the Minister's

version is to be rejected. I declare that the Minister did on the 28th January 2016

grant Fireblade's application for an ad hoc international customs and immigration

service component of the FBO to be conducted by officials of the BCOC.

The events after the Minister's refusal of the application

[33] It was argued that such a declaration would be wrong, if the Court has regard to what

transpired after the Minister in writing refused Fireblade's application. It was argued

that from Fireblade's own correspondence, in that time-frame, Fireblade's lack of

candour is clear. This correspondence, so was argued, clearly supported the

Minister's contention that the Minister never on 28 January 2016 did convey that he

approved Fireblade's application. This is illustrated by the following:

- On 1 April 2016 Mr Oppenheimer writes to the Minister: "Further to our

meeting on the 28th January 2106 and the recent court proceedings against

Denel, I felt it would be important to meet with you in person to discuss the

current status of the Customs and Immigration Application with your

- Reliance was also placed on the urgent application wherein Fireblade requested relief against Denel only, because it was said that the only impediment against their application was Denel's security concerns. Only if

application.

- Denel also made much of FA89 wherein Fireblade to Denel on 23 August 2016 set out that: "5. We have complied with all our obligations in terms of the lease agreement - your letter says nothing to the contrary - and record that our rights are specifically reserved insofar as you are unjustifiably hindering, as opposed to supporting, our application, whilst continuing to collect full rental under the lease agreement on a monthly basis." It was argued that the only inference is that Fireblade knew it was still a pending

- On 14 October 2016 Mr Oppenheimer wrote to the Minister that his "formal and final approval has, to our frustration, still not been granted ... Accordingly, I now ask for the final time, that you make your decision and enable our FBO to become the world class, international facility that it should be."⁴⁹

approval at Fireblade."⁴⁸

Department, and indeed the possibility of granting us this much anticipated

[34] Fireblade's version was throughout that the Minister informed Fireblade that he approved the application and will release the letter of approval after the finalisation of the operational plans. After the meeting the Minister refused to hand over the letter and purported to suspend his approval deferring to Denel's security concerns. The two letters in that context is nothing more than seeking the formal approval in the form of a letter. The argument on behalf of Fireblade that they did not rush into litigation against the Minister because at that stage they believed the Minister was *bona fide* and had been cooperative for years, is to be accepted if one has regard to Mr Oppenheimer's letter wherein he expressly states: "*Fireblade deplores these implied attacks on the integrity of Minister Gigaba and does not associate itself with any suggestion of ministerial capture by the Gupta family.*"⁵⁰ Fireblade therefore rushed to court, not against the Minister, but against Denel for averred security concerns blocking the approval letter from surfacing. This action did not militate against the version of Fireblade and does not render the facts put up by the Minister to be accepted.

Denel gave consent could the Minister give his approval. The inference is thus clear that the Minister had not taken a final decision.

Did Denel change its stance on supporting Fireblade's application after the meeting

of the 28th?

[35] Denel most certainly did and there can be no argument to the contrary. On 12

January 2016 Denel SOC Ltd informed the Minister that it completed its discussions

and fact finding and are pleased to inform him that Denel approved and supported

their tenants. They endorsed the project and further endorsed the Minister issuing

the Ad Hoc International status approval to operate. The Minister on 5 February

2016 refers in the internal memo to a letter from Denel that Denel's approval of

Fireblade's application must be set aside. It is undisputed that this Denel letter to

the Minister is never produced in the papers or discovered to Fireblade. On 15

February 2016 Denel writes a letter to Fireblade that they seek clearance from the

State Security Department that Fireblade can use the leased premises for

international flights and accordingly Denel cannot support the application. This

withdrawal of support did not set out any security concerns. It is however in direct

contrast to their full-blown support of 12 January.

Was Denel entitled to change its stance because of security concerns?

[36] Denel argued that the security concerns were already alive since 2013. As proof

hereof the court was referred to FA6 wherein it was set out that "the listed actions

were being considered to align Denel's security management with its obligations as

custodian of the Denel Aviation national keypoint (NKP) and comply with at least

the minimum regulatory prescripts promulgated by ... ACSA as well as ... SA CAA

flights.

[37] It is common cause that Denel's security concerns was directly after the appointment of the new Board of Denel. Denel referred to Minutes of the Airside Tenant Security Forum meeting of 15 April 2015 as proof that these security concerns existed even before the new Board was appointed. Item 9 of the minute of the meeting reflects that everybody in possession of an access card for the campus will need to apply for security clearance and undergo a preliminary screening process via MIE.⁵¹ This relates to a vetting process of personnel, not security concerns about whether the FBO could use the premises for international flights.

order.

as its [sic] applies to the Kempton Park footprint being managed by Denel Industrial Properties on behalf of ACSA under a 10-year lease agreement ... " What was not highlighted was the last paragraph which reads as follows: "It is trusted that the urgent actions being implemented by Denel will support the consideration and approval of the intended Corporate VIP FBO Terminal on the Denel-administered Kempton Park footprint adjoining the OR Tambo airport complex. Should any further enquires arise on scope or clarity, please be assured of Denel's fullest support." No security concerns about the FBO is raised, Denel is getting its own house in order.

[39] It is understood that vetting of personnel on the Denel premise is to be adhered to. Vetting however relates to the lease agreement between Denel and Fireblade and the vexed question remains, if the vetting was not to the satisfaction of Denel why did it then initially give its glowing support to the FBO. The non-vetting, if so, is not a security concern for the FBO to be operational, simply because the personnel of

as Fireblade submitted.

[38] In further support much reliance is placed on correspondence for the period 21 October 2015 to 23 October 2015 between Denel and Fireblade. The content relates to once again the vetting of all tenants of the campus and Fireblade is informed thereof. Fireblade takes note of the new security measures and raises the fact that it involves exorbitant cost implications. The request for vetting comes from Denel Armcor Security. The landlord of Fireblade, Denel Industrial Properties, wrote to Armcor Security requesting vetting in respect of tenants not involved in defence projects be relaxed. Armcor Security acceded to this request in that the tenants can be vetted by SSA of the SAPS. The court does not know if the vetting of the personnel was the security concern raised by Denel, as that letter is not before us. It was however referred to the urgent application wherein Denel expressly stated that the vetting process was not completed and was the reason for their withdrawal of the support of the FBO, but the issue of the security vetting of the Fireblade personnel was escalated to the highest echelons of government and the process would not take much longer. Denel's actions were thus a far cry from "flip-flopping"

[41] In coming to my finding I needed not to rely on hearsay, irrelevant, scandalous, vexatious or speculative evidence. I had during the hearing also indicated that I was not going to hear the application to strike out separately as I would not make use of such evidence to come to a conclusion. Fireblade did not at the hearing attempt to include evidence showing bias on the part of the Minister. Fireblade made no arguments against the Minister via the backdoor. I did not find the paragraphs complained of to be prejudicial to any of the parties before court. All the parties had the opportunity, and in fact did, categorically deny any involvement with a certain family. In terms of *Plascon Evans* that evidence had to be accepted, but in any event, no finding was made thereon. This matter is distinguishable from the *Helen Suzman Foundation v President RSA and Others* 2015 (2) SA 1 at para [35] in

The striking out application.

[40] In view of my finding that the Minister did communicate his decision to approve customs and immigration services be rendered at the FBO by members of the BCOC I do not need to address the review application.

Ministers decision to grant approval of the FBO.
The volte-face of Denel is inexplicable and irrational and cannot negate the state officials in a sterile area to which the employees of Fireblade have no access. From the documents before court it is clear that the services will be rendered by Fireblade is not going to render the customs and immigration services at the FBO.

[43] I accordingly make the following order:

to name-calling and insults.

access. Counsel requesting a striking out should refrain from themselves reverting services from the public and put it in a private spot where only a chosen few will *they coming from where they think it is appropriate* to take away immigration address with reference to the Oppenheimers asked *"the question is what planet are private benefits, ultimately, at public expense."* Counsel for the Minister in his *Oppenheimers, well-connected, moneyed and politically powerful family to derive* Fireblade is made in the following terms: *"These cases concern the pursuits by the* in the heads of the applicant to the striking out many submissions referring to the words of the Constitutional Court, as a *"free for all insult trading contest"* and yet What I find more disturbing is that I am urged not to allow a court of law to serve, in [42]

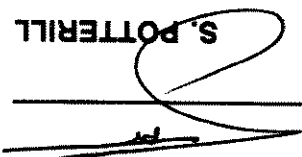
striking out.

plays a part in the politics of this country. I thus make no finding pertaining to the evidence objected to does not amount to reckless political posturing, unless Denel reputation, but it cannot bar a court from making such a finding. The inclusion of the attacked. The finding of the inexplicable conduct of Denel tarnishes Denel's was argued that Denel was prejudiced because its good name and reputation was were not prejudiced as they could easily ascertain what case they had to meet. It that Fireblade's case was pleaded with clarity and precision. The Minister and Denel

1. It is declared that, on about 28 January 2016, the first respondent:
 - 1.1 granted the applicant's application ("the Fireblade application") for approval of an *ad hoc* international customs and immigration service component of a corporate fixed-base aviation operation ("the FBO") to be conducted by officials of the Border Control Operational Coordinating Committee ("BCOCC"), not employees of the applicant, at premises leased by the applicant from the fourth respondent at OR Tambo International Airport ("ORTIA"), being the buildings and facilities within "the Denel precinct" known as K8 hangar and parking area, L6 building and parking area, L1 north hangar and apron area and all common areas associated therewith ("the Fireblade premises"); and
 - 1.2 communicated and thereby issued such approval ("the Ministerial approval") to persons in his presence at the time, including representatives of the applicant.
2. It is declared that the Ministerial approval issued in terms of prayer 1 above is of force and effect, and may not be renounced or revoked by the first respondent without due cause and may be implemented and relied on by the applicant.
3. It is directed that the first, second, third and fourth respondents pay the costs of the application, jointly and severally, including the costs of two counsel.

JUDGE OF THE HIGH COURT

S. POTTERILL

A handwritten signature in black ink, appearing to be 'S. Potterill', written over two horizontal lines. The signature is stylized with a large loop at the top.

CASE NO: 85376/2016 & 93450/2016

HEARD ON: 1 and 2 August 2017

FOR THE APPLICANT: ADV. A. FRANKLIN SC

ADV. R. PEARSE

ADV. N. LUTHULI

INSTRUCTED BY: Werksmans Attorneys

FOR THE 1ST AND 2ND RESPONDENTS: ADV. T. NGCUKAITOBI

ADV. R. TULK

INSTRUCTED BY: State Attorney, Pretoria

FOR THE 3RD RESPONDENT: ADV. C. PUCKRIN SC

ADV. K. HOFMEYR

INSTRUCTED BY: Macrobert Inc.

FOR THE 4TH RESPONDENT: ADV. A.R. BHANA SC

ADV. C.T. VETTER

DATE OF JUDGMENT: 27 October 2017

INSTRUCTED BY: Khampha Attorneys

ADV. K. PREHMID