



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. E 358 OF 2020

DAWN AVIATION LIMITED.....APPLICANT

VERSUS

KENYA AIRPORTS AUTHORITY (KAA).....1ST RESPONDENT

WILKEN AVIATION..... 2ND RESPONDENT

PERFECT AVIATION LIMITED..... 3RD RESPONDENT

RULING

1. The entire purpose of these proceedings is to interdict Kenya Airports Authority (**KAA or the 1st Respondent**) from disposing of or selling aircraft registration No. 5Y-ATW. That aircraft belongs to Dawn Aviation Limited (**Dawn Aviation or the Applicant**).

2. In a Plaint dated 14th September 2020, Dawn Aviation states that it bought the aircraft from **Perfect Aviation Limited (Perfect Aviation or the 3rd Respondent)** and it is under the custody of Wilken Aviation (**Wilken or the 2nd Respondent**), as an operator. It complains that KAA intends to sell the aircraft, ostensibly because of outstanding parking charges. It denies owing any charges.

3. The intention to sell is said to have been expressed in Kenya Gazette Notice No. 5870. That is the notice that triggered Dawn Aviation to file this suit and the Notice of Motion dated 14th September 2020 for the following substantive orders:-

2. Spent

3. That pending the hearing and determination of this suit, a mandatory order of injunction does issue compelling the 1st Respondent to withdraw the Notice published in the Kenya Gazette Notice No 5870, specifically in respect of the 5Y-ATW aircraft.

4. Notwithstanding evidence of service, KAA neither responded to nor attended the hearing of the Application. Wilken and Perfect separately filed Preliminary Objections dated 23rd September 2020 in which they raise the same issues. At the heart of the objections is that there is no cause of action against them.

5. This Court is inclined to grant the order injuncting KAA from selling the aircraft. The allegations made by Dawn that it does not owe any parking charges to KAA have not been rebutted. In that event it has made out a prima facie case.

6. Whether or not Wilken and Perfect Aviation should have been sued is a matter for another day and can be raised as a substantive question by the affected Defendants.

7. I grant of order 3 of the Notice of Motion dated 14th September 2020. Costs in the cause.

Dated, Signed and Delivered in Court at Nairobi this 10th day of November 2020

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Nyakeringa for the Applicant.

No appearance for the Respondents.