

IN THE SUPREME COURT OF MAURITIUS

*Commercial Division
(Before the Honourable Judge in Chambers)*

SC/COM/WRT/000124/2026

In the matter of:

Graham Andrew WELLS

Applicant

V

- 1. AG AVIATION GROUP LTD**
- 2. Matt KRITZINGER**
- 3. Stephen VLOK**

Respondents

In the presence of:

- 1. Schindlers Trust Mauritius Limited**
- 2. The Registrar of Companies**

Co-Respondents

ORDER

On 31st of May 2026, after having heard counsel appearing for the applicant and respondents, I took time to consider.

And this day, after considering the proceipe and the annexed affidavits, together with the documents filed in support thereof as well as the written submissions of all counsel on the preliminary objections, and for the reasons given in my Order, I set aside the present application, with costs.

You are hereby given notice pursuant to Section 3 of the Civil Appeal Act 2025 of your right of appeal.

Chambers, this Monday the 20th day of April 2026.



**K BISSOONAUTH
JUDGE**

THE SUPREME COURT OF MAURITIUS

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ORDER

On 06 March 2026, I declined the applicant's prayer for an interim order in the nature of an injunction and instead ordered that a summons be issued upon the abovenamed respondents and co-respondents to show cause why the prayers as mentioned in the applicant's proceipe and affidavit both dated 05 March 2026, should not be granted. The interim order sought for by the applicant is as follows:

- (a) Restraining and prohibiting the Respondents, whether by themselves, their servants, agents and/or préposés or otherwise, from implementing or giving effect to any resolution purportedly adopted at the meeting of the Board of Directors of the Respondent No 1 held on 3 March 2026;*
- (b) Restraining and prohibiting the Respondents, whether by themselves, their servants, agents and/or préposés or otherwise, from giving effect to or relying upon the purported appointment of the Respondent No 3 as Director of Respondent No. 1 including any appointment made as representative of Evora pending the determination of the main case.*

- (c) *Restraining and prohibiting the Respondents from proceeding with or effecting any statutory filing with the Registrar of Companies pursuant to the said resolutions, including but not limited to any filing relating to the purported appointment of the Respondent No 3 as director;*
- (d) *Restraining and prohibiting the Respondents from taking any step to implement or give effect to the purported appointment of the Respondent No 3 as director of the Respondent No 1 or of any subsidiary of the Respondent No 1;*
- (e) *Restraining and prohibiting the Respondents from altering the existing banking mandates, governance structures, or corporate arrangements of the Respondent No 1 and its subsidiaries pursuant to the said resolutions;*
- (f) *Directing that the status quo ante as at 2nd March 2026 in relation to the governance and directorship of the Respondent No 1 be preserved pending the hearing and determination of the main case.*

The respondents are resisting the present application whilst the co-respondents will be abiding by my decision. All the three respondents have raised preliminary objections which are essentially of the same nature and which are two fold: firstly the lack of jurisdiction of the Judge in Chambers of the Commercial Division to entertain the present application; and secondly that the present application is in breach of section 169 of the Companies Act 2001 (as amended).

After written submissions were offered on the above preliminary objections, I took time to consider.

And this day, after considering the proceipe and the annexed affidavits, together with the documents filed in support thereof as well as the written submissions of Counsel appearing for the applicant and the respondents respectively on the above preliminary objections, I find as follows:

1. It is common ground that the constitution of the respondent no.1 contains an arbitration clause namely clause 18, as transpired in Annex 12 to the applicant's affidavit dated 05 March 2026, the material parts of which provide as follows:

" 18. ARBITRATION

Any dispute, controversy or claim arising out of or relating to this Constitution or the breach, termination or invalidity thereof, or relating to the Company shall be settled by international arbitration under the International Arbitration Act 2008 (referred to as IAA 2008). The arbitration shall be conducted by an arbitral

tribunal which shall consist of a single arbitrator under the LCIA-MIAC Arbitration Rules as established by the London Court of International Arbitration (LCIA) and Mauritius International Arbitration Centre Limited (MIAC).

2. The issue to be determined is whether the above arbitration clause precludes me, sitting as Judge in Chambers of the Commercial Division of the Supreme Court, to entertain the present application for an injunctive relief as sought for by the applicant.
3. It is the applicant's contention that the relief sought for in the present application falls under **section 73 of the Courts Act** whereas the respondents' contention is that **sections 2A, 23 and 42 (1A) of the International Arbitration Act 2008 ("IAA 2008")**, together with **Rule 14 (3) of the Supreme Court (International Arbitration Claims) Rules 2013** are applicable to the present case inasmuch as the remedies sought from the Judge in Chambers are interim measures and the subject matter of the dispute is subject to an arbitration clause. Hence, it is the submission of Counsel for the respondent no.1 and Counsel for the respondents nos.2 and 3 respectively, that the present application should have been made before a "*Designated Judge*" as provided for in the IAA 2008.
4. It is trite law that **Section 73 of the Courts Act** refers to the wide powers of the Court to grant injunction both in term time and vacation. On the other hand, the sections of the IAA 2008 as cited above by Counsel for the respondents are in respect to the powers of the Supreme Court to issue interim measures in relation to arbitration proceedings.
5. This power of the Supreme Court "*to issue interim measures in relation to arbitration proceedings*" is derived from **section 6 of the IAA 2008** which reads as follows:

"6. Compatibility of interim measures

 - (1) *It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from the Supreme Court or a Court in a foreign state an interim measure of protection in support of arbitration and for the Court to grant such a measure.*
 - (2) *An application to the Supreme Court under subsection (1) shall be made and determined in accordance with section 23.*

Now, **section 23 of the IAA 2008** provides as follows:

"23. Powers of Supreme Court to issue interim measures

- (1) (a) *The Supreme Court shall have the same power to issue an interim measure in relation to arbitration proceedings as it has in relation to proceedings in Court, whether*

the juridical seat of the arbitration is in Mauritius or not, and whether that power is usually exercised by a Judge in Chambers or otherwise.”

6. It is the submission of Counsel for the applicant that **sections 6 and 23 of the IAA 2008** do not find their application in the present case inasmuch as the relief sought is not *“in support of arbitration”*. However, I fail to follow the reasoning of Counsel for the applicant on the face of the arbitration clause in the constitution of the respondent no.1, which to all intents and purposes, binds all the parties concerned and which unequivocally makes provisions for the settlement of *“any dispute, controversy or claim arising out of or relating to this Constitution or the breach, termination or invalidity thereof, or relating to the Company shall be settled by international arbitration under the International Arbitration Act 2008 (referred to as IAA 2008).* (Emphasis added)

7. Ex facie the applicant’s affidavit, it transpires that the applicant has entered the present application as director and shareholder of the respondent no.1 and is in essence invoking a breach of the constitution of the respondent no.1 by the respondents nos.2 and 3. Hence, it stands to reason that the arbitration clause at clause 18 of the constitution of the respondent no.1 finds its application.

8. It therefore follows that **sections 6 and 23 of the IAA 2008** bear all their relevance in the present case. Consequently, as rightly submitted by Counsel for respondent no.1 and Counsel for respondents nos. 2 and 3, **section 42 of the IAA 2008** is applicable in the present case . Same read as follows:

“42. Constitution of Supreme Court and appeal

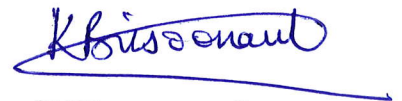
(1A) Applications to the Supreme Court for interim measures under sections 6(2) and 23 shall in the first instance be made to, heard by and determined by a Judge in Chambers who shall be a Designated Judge but shall be returnable before a panel of 3 Designated Judges, composed of the Designated Judge who initially heard the matter and of such 2 other Designated Judges as the Chief Justice may determine.”

9. In the case of **Galakha Enterprises Ltd v ECP Africa Fund IV A LLC & Anor [2023 SCJ 294]** the Learned Judge considered the purport of **sections 23 and 42 (1A) of the IIA 2008** in the context of an arbitration clause which binds the applicant and held as follows:

“Having regards to section 42 (1A) of the International Arbitration Act, I find that interim measures sought can be said to be under section 23 of the International Arbitration Act so that the application should in the first instance be made to, heard and

determined by a Judge in Chambers who shall be a Designated Judge but shall be returnable before a panel of 3 Designated Judges composed of the initial Designated Judge who heard the matter together with two other Designated Judges as the Chief Justice may determine. ...”

10. Based on all the above considerations and bearing in mind the above provisions of the law as well as the nature of the present application before me which is one for interim measures, I find that the Judge in Chambers does have jurisdiction to entertain an application of this nature but same should be before a **Designated Judge** in accordance with the IAA 2008.
11. In light of the foregoing, since I am not a Designated Judge in accordance with **section 42 (1A) of the IAA 2008**, I cannot entertain the present application for want of jurisdiction. I therefore consider that the first limb of the preliminary objection relating to lack of jurisdiction is well taken and I uphold same. Accordingly, there is no need for me to address the second limb of the preliminary objection relating to the application of section 169 of the Companies Act.
12. I accordingly set aside the present application. I certify as to Counsel.



K Bissoonauth
Judge

20 April, 2026
