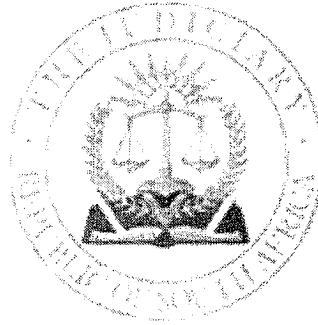




**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

- (1) REPORTABLE: **NO**  
(2) OF INTEREST TO OTHER JUDGES: **NO**  
(3) REVISED:

Date: **8<sup>th</sup> October 2019** Signature: \_\_\_\_\_

**CASE NO:** 2018/27317

**DATE:** 8<sup>TH</sup> OCTOBER 2019

2019/31880

In the matter between:

**4 KNIGHTS INTERNATIONAL EVENTS COMPANY (PTY) LIMITED**      Applicant

and

**CHES SOUTH AFRICA**

**MAHOMOLE, MAHLODI JOHANNES**

**PESA, ALFRED**

**XULU, SANDILE**

**ENGELMAN, GERALDINE**

**DIPALE, KEAOBAKA**

**AHJUM, LIEZEL**

**PETER, MNINAWA**

**LECHELELE, THOMAS**

**MOSETLE, KGAUGELO**

**DU TOIT, HENRIK**

**ESAU, OMAR**

**STEENKAMP, JUDY-MARIE**

**NAIDOO, SHANKS**

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

Sixth Respondent

Seventh Respondent

Eighth Respondent

Ninth Respondent

Tenth Respondent

Eleventh Respondent

Twelfth Respondent

Thirteenth Respondent

Fourteenth Respondent

**PRINSLOO, YOLANDA**

Fifteenth Respondent

**HUISAMEN, ANNE**

Sixteenth Respondent

**SOOKDEO, DIVESH**

Seventeenth Respondent

## JUDGMENT

**Adams J:**

[1]. I have before me an opposed urgent application by the applicant for declaratory orders and for interdictory relief against the first to the tenth respondents. The applicant applies for an order enforcing the provisions of a written contract ('the agreement') concluded between it and the first respondent on the 9<sup>th</sup> of August 2015.

[2]. In its notice of motion the applicant applies for an order in the following terms:

- '(1) That this application be heard as an urgent application in terms of the provisions of rule 6(12).
- (2) The written agreement, annexure "FA4" to the Applicant's founding affidavit ("the Agreement"), is declared to be binding on the Applicant and the First Respondent.
- (3) The First Respondent and the Second to Tenth Respondents are interdicted from interfering in any way with the Applicant's rights in terms of the Agreement.
- (4) The Second to Tenth Respondents are ordered to make a written unequivocal, irrevocable and unconditional retraction on Facebook of the Second to Tenth Respondents' statements regarding the hosting of the South African Junior Chess Championships ("SAJCC") and the South African Wild Card Tournament ("SAWCT").
- (5) The First Respondent and the Second to Tenth Respondents are interdicted from hosting the SAJCC, the SAWCT or any other Event envisaged in terms of the Agreement.
- (6) The costs of the application are to be paid by the Second to Tenth Respondents, jointly and severally, on the attorney and client scale.'

[3]. The applicant's application is opposed by the first respondent ('Chess SA'), as well as by the second to the tenth respondents. The answering affidavit of these respondents, namely the first to tenth respondents ('the respondents'), was deposed to by the second respondent ('Mahomole'). The eleventh to seventeenth respondents ('the New Board'), who contend that they are currently the legitimate board of Chess SA, have indicated that they intend abiding the written agreement, which is the subject of this application. Therefore, no relief is sought against the eleventh to seventeenth respondents.

[4]. The applicant in its papers refers to the second to the tenth respondents as the 'Mahomole Board' as these individuals claim to be the legitimate board of Chess SA. The New Board makes a similar claim that they presently are the legitimate board of Chess SA. There is therefore a dispute between the Mahomole Board and the New Board as to who are the current authorised representatives of Chess SA are. The applicant contends however that it does not matter for the purposes of this application who the legitimate board of Chess SA is. I agree with this contention and I do so for the reasons which will become apparent later on in this judgment.

[5]. The respondents oppose the applicant's application on the basis mainly that the agreement on which the application is based is *void ab initio*. In addition, two points *in limine* are raised by the respondents, namely that this Court lacks the necessary jurisdiction to hear this matter; and that, because of an arbitration clause in the agreement, this court is not the appropriate forum in which this matter should be adjudicated. The respondents also allege that the application should be struck from the urgent court roll for lack of urgency.

[6]. As regards urgency, in *Twentieth Century Fox Film Corporation and Another v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) it was held at 586G that:

'In my opinion the urgency of commercial interests may justify the invocation of Uniform Rule of Court no less than any other interests. Each case must depend upon its own circumstances. For purposes of deciding upon the urgency of this matter I assumed, as I have to do, that the applicant's case was a good one and that the respondent was unlawfully infringing the applicant's copyright in the films in question.'

[7]. In this matter the applicant claims that this matter is urgent because on the 22<sup>nd</sup> of June 2019 the respondents announced that the South African Junior Chess Championship ('SAJCC') would be held from the 9<sup>th</sup> of December 2019 to the 12<sup>th</sup> of December 2019. This cannot be so, so the applicant contends, because it (the applicant), as the holder of the rights to host the SAJCC in terms of the agreement concluded between it and Chess SA, intends hosting the SAJCC event from the 3<sup>rd</sup> of January 2020 to the 12<sup>th</sup> of January 2020 in Birchwood, Boksburg. Furthermore, on the 23<sup>rd</sup> of June 2019 it was announced by the respondents that from the 13<sup>th</sup> to the 15<sup>th</sup> of December 2019 the South African Wild Card and African Club Championship would be held in Durban. The South African Wild Card Tournament ('SAWCT') is also an event, so the applicant alleges, in respect of which the applicant owns the right to host. These events have been hosted annually by the applicant since 2015 pursuant to and in terms of the agreement. This then means that the respondents do not have the right to be hosting these events or to be making announcements in that regard.

[8]. The announcements by the respondents came to the attention of the deponent to the applicant's founding affidavit on the 12<sup>th</sup> of August 2019, whereupon communications were addressed to the respondents demanding that they retract the announcements, which the applicant regarded as an unlawful repudiation of the agreement. The respondents failed to respond to this demand. This then caused the applicant to resolve to launch this urgent application and on the 14<sup>th</sup> of August 2019 the applicant's attorneys instructed Counsel to settle the founding papers. By the 3<sup>rd</sup> of September 2019, the application had been settled and the urgent application was issued on the 10<sup>th</sup> of September 2019.

[9]. I am satisfied that, all things considered, this matter is urgent. I am also persuaded that the applicant acted as expeditiously as it could in the circumstances of this matter to bring this application before the urgent court.

[10]. The respondents intend to cause Chess SA to host the SAJCC and the SAWCT respectively from 9<sup>th</sup> to the 12<sup>th</sup> of December 2019 and from the 13<sup>th</sup> to

the 15<sup>th</sup> of December 2019 in Durban. This conduct is in breach of and amounts to a repudiation of the agreement on the part of the respondents.

[11]. This application cannot be brought in the ordinary course. If the applicant does that, the application is more than likely to be heard well after these dates, which would render the relief sought nugatory. Therefore, this application is urgent.

[12]. As regards the alleged lack of jurisdiction of this court, it was submitted by Mr Hollander, Counsel for the applicant, that at least two of the respondents reside within the area of jurisdiction of the court, being the fifth respondent ('Engelman') and the tenth respondent ('Mosetle'). This means that, if regard is had to the provisions of section 21(1) and (2) of the Superior Courts Act, Act 10 of 2013 ('the Superior Courts Act'), this court has jurisdiction to adjudicate this matter.

[13]. Section 21(2) provides as follows:

'A division also has jurisdiction over any person residing or being outside its area of jurisdiction who is joined as a party to any cause in relation to which such court has jurisdiction or who in terms of a third party notice becomes a party to such a cause, if the said person resides or is within the area of jurisdiction of any other Division.'

[14]. I agree with these submissions. There is therefore no merit in the legal point raised by the respondents relative to the jurisdiction of this court.

[15]. As for the arbitration clause in the agreement, the respondents submit that the applicant should have referred this dispute to arbitration prior to referring same to this court. Arbitration clause is clause 12, and it reads as follows:

**'12. Disputes and arbitration**

12.1 The Parties shall endeavour to solve all disputes arising from, out of, or relating to this agreement by means of *bona fide* negotiations between themselves, failing which the dispute will be referred to arbitration as set out hereunder.

12.2 Should any dispute arise, any one of the parties shall be entitled to require by written notice to the other Party(ies) that the dispute be referred to arbitration and which notice shall clearly disclose details of the dispute.

... ..

12.9 Nothing contained in this clause shall prevent any of the Parties, pending the award of the arbitrator, from obtaining interim relief on urgent basis, from a court with competent jurisdiction.'

[16]. In *Aveng Africa Ltd (formerly Grinaker LTA Ltd) t/a Grinaker-LTA Building East v Midros Inv (Pty) Ltd* 2011 (3) SA 631 (KZD) the court held as follows:

'[17] It is now well established that an arbitration agreement does not oust the jurisdiction of the courts. Where a party to an arbitration agreement commences legal proceedings against the other party to that agreement, the defendant is entitled either to apply for a stay of the proceedings pursuant to s 6 of the Arbitration Act 42 of 1965, or to deliver a special plea relying upon the arbitration clause. Whichever course it adopts, the onus then rests on the claimant to persuade the court to exercise its discretion to refuse arbitration. This requires a very strong case to be made out.'

[17]. Gauntlett AJ in *Delfante v Delta Electrical Industries Ltd* 1992 (2) SA 221 (C) held that, in order for an arbitration clause in an agreement to be enforced there must be an issue, palpable and genuine.

[18]. Applying these principles *in casu*, I am of the view that the respondents' point *in limine* relating to the arbitration clause should be dismissed. In any event, if regard is had to *supra* clause 12.2 of the agreement, the parties to the agreement do not have an obligation to refer a dispute to arbitration.

[19]. That brings me to the respondents' defence on the merits.

[20]. The respondents contend that the contract between the applicant and the first respondent is invalid and void *ab initio*. As rightly pointed out by the applicant, the first time ever that this defence was raised by the respondents is in their answering affidavit. This, so the applicant submits, confirms its view that the version on which this defence is based is 'untrue, utterly false and no doubt an afterthought.'

[21]. In an affidavit in a related action, the second respondent under oath on the 25<sup>th</sup> of January 2019, acknowledged the validity of the agreement. At no stage since the conclusion of the agreement during August 2015 up to their answering affidavit in this urgent application, a period of four years during which the agreement was implemented and the SAJCC and SAWTC were hosted by

the applicant, did the respondents ever take issue with the validity of the agreement. The applicant contends that the claim by the respondents that the agreement is invalid *ab initio* is an afterthought and contrived. I find myself in agreement with this submission.

[22]. In their founding papers, the applicant explains in detail the rationale for Chess SA having sold to the applicant the rights to the events in question. This agreement enabled Chess SA to make payment to certain of its debtors, being the International Chess Federation ('FIDE'), arbiters of the 2014 World Youth Chess Championships and other debtors. At the time of the conclusion of the agreement, Chess SA found themselves in dire financial straits and this agreement was a way for them to get themselves out of the financial quagmire they found themselves in.

[23]. The conclusion of the agreement was preceded by extensive negotiations, clearly approved by the then members of the board of directors of the first respondent, including the second respondent. The foregoing is evidenced by the minutes of the meetings held at the relevant time. There were other options available to the first respondent, but in the end they decided, seemingly because they had little other choice, to go with a proposal by the applicant.

[24]. The agreement *inter alia* enabled Chess SA to be reinstated as a member in good standing with FIDE. At the time prior to the conclusion of the agreement, due to the outstanding debt to FIDE, Chess SA was for all intents and purposes under threat of suspension by the international body.

[25]. The negotiations which preceded the signing of the agreement were approved by a duly constituted ordinary general meeting of the National Council of Chess SA on the 4<sup>th</sup> of July 2015. That meeting, which was attended by the second respondent, resolved by an overwhelming majority that the Executive Board of Chess SA could enter into negotiations on behalf of Chess SA, and for that purpose a committee was established. During that meeting the second respondent himself proposed that 'Council gives Exbo permission to negotiate any deal on condition that Exbo informs the stakeholders'.

[26]. All of the foregoing culminated in the conclusion of the agreement, which was reduced to writing and signed on behalf of the first respondent by its then president on the 9<sup>th</sup> August 2015. Subsequently and pursuant to the agreement, the applicant hosted the SAJCC and the SAWCT annually. The fact that the applicant did so was known to the first respondent and the other members of the Exbo of Chess SA.

[27]. In light of all of the evidence in this matter, I am of the view that the version of the respondents, on which they base their defence, is so far-fetched that it can and should be rejected on the papers. As was said in *Monde v Viljoen NO and Others* 2019 (2) SA 205 (SCA) the following was stated:

[7] A recurring feature of the appellant's answer is a bald denial of the allegations in the founding affidavit. This, so the appellant's counsel submitted, gave rise to several disputes of fact, so that a final order could be granted only if the facts averred in the respondents' affidavits, which have been admitted by the appellant, together with the facts alleged by the latter, justified such order, in accordance with the rule in *Plascon-Evans*. However, the appellant has ignored the exceptions to this general rule: a respondent's (the appellant in this instance) allegations may be rejected merely on the papers if they consist of bald or uncreditworthy denials, raise fictitious disputes of fact, or are palpably implausible, far-fetched or clearly untenable.'

[28]. For the above reasons, I am of the view that the applicant is entitled to enforce the agreement. I am satisfied that the applicant has satisfied all the requirements for interdictory relief. The requirements for a final interdict are usually stated as: (a) a clear right; (b) an injury actually committed or reasonably apprehended; and (c) the lack of an adequate alternative remedy.

[29]. The Applicant has a clear right to enforce the agreement and its rights in terms thereof. The Agreement was concluded by the applicant and Chess SA. Chess SA is bound by the agreement. Chess SA, irrespective of who represents it, cannot lawfully act in breach of or contrary to the said agreement. The Applicant has no suitable alternative remedy available to it other than to seek the relief it seeks herein. The Applicant has a reasonable apprehension of irreparable harm. The second to tenth respondents, insofar as they may represent Chess SA, intend to cause Chess SA to act in breach of and contrary

to the agreement by hosting the SAJCC and the SAWCT from the 9<sup>th</sup> to 12<sup>th</sup> and from the 13<sup>th</sup> to the 15<sup>th</sup> of December 2019 in Durban.

[30]. In the circumstances, I am of the view that the applicant is entitled to the relief sought in their notices of motion.

### **Costs**

[31]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[32]. I can think of no reason why I should deviate from this general rule.

[33]. It has been submitted on behalf of the applicants that I should grant the cost order only as against the second to the tenth respondents. An order against the first respondent, so the applicant submits would be unfair to that organisation and its members as it is in fact the other respondents who intended causing the first respondent to breach the agreement. I find myself in agreement with this submission.

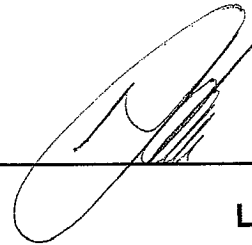
[34]. I therefore intend awarding cost in favour of the applicant against the second to the tenth respondents.

### **Order**

Accordingly, I make the following order:-

- (1) The application is enrolled as an urgent application, and the forms prescribed by the Rules of this Court are dispensed with and the application is heard as one of urgency under Rule 6(12) of the Uniform Rules of Court.
- (2) The written agreement, being annexure 'FA4' to the applicant's founding affidavit ('the Agreement'), is declared to be binding on the applicant and the first respondent.

- (3) The first respondent and the second to tenth respondents are interdicted from interfering in any way with the applicant's rights in terms of the agreement.
- (4) The second to tenth respondents are ordered to make a written unequivocal, irrevocable and unconditional retraction on *Facebook* of the second to tenth respondents' statements regarding the hosting of the South African Junior Chess Championships ('SAJCC') and the South African Wild Card Tournament ('SAWCT').
- (5) The first respondent and the second to tenth respondents are interdicted from hosting the SAJCC, the SAWCT or any other event envisaged in terms of the agreement.
- (6) The second to the tenth respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicant's cost of this urgent application.



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**L R ADAMS**  
*Judge of the High Court*  
*Gauteng Local Division, Johannesburg*

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|----------------------------------------------|------------------------------|
| HEARD ON:                                    | 1 <sup>st</sup> October 2019 |
| JUDGMENT DATE:                               | 8 <sup>th</sup> October 2019 |
| FOR THE APPLICANT:                           | Advocate L Hollander         |
| INSTRUCTED BY:                               | Swartz Weil Van der Merwe    |
| FOR THE FIRST TO TENTH RESPONDENTS:          | Adv Ghandi Badela            |
| INSTRUCTED BY:                               | Thobakgale Attorneys         |
| FOR THE ELEVENTH TO SEVENTEENTH RESPONDENTS: | No appearance                |
| INSTRUCTED BY:                               | No appearance                |