

Rule 73
NOTICE OF MOTION: URGENT APPLICATION
IN THE HIGH COURT OF NAMIBIA
(Main Division)

Case Number: **HC-MD-CIV-MOT-GEN-2024/00100**

In the matter between:

FLYNAMIBIA AVIATION (PTY) LTD

APPLICANT

and

**THE CHAIRPERSON OF THE TRANSPORTATION COMMISSION OF
NAMIBIA**

**1st
RESPONDENT**

THE MINISTER OF WORKS AND TRANSPORT

**2nd
RESPONDENT**

NOTICE OF MOTION

TAKE NOTICE that the applicant(s) intends to make application to this Court on the **15th day of March 2024 at 09:00 AM** or as soon thereafter as the matter may be heard for an order in the following terms:

1 Part A of application:

- 1.1 Dispensing with full and proper compliance with the Rules relating to service and time limits as set out in Rule 73(3) of the Rules of this Honourable Court, by reason of the urgency of the matter.
- 1.2 The Applicant's late filing of its application to the Transportation Commission of Namibia "the Commission " for the renewal of Applicant's scheduled Air Transportation Service License No. 31 is condoned, and the matter is referred back to the Commission to deal with the pending application on its merits; alternatively.
- 1.3 Suspending the implementation and effect of the First Respondent's decision dated 7 March 2024 to refuse the renewal of the Applicant's Scheduled Air Transport Service License No. 31, pending the final determination of the review application in Part B.
- 1.4 That the Applicant's Scheduled Air Transport Service License No. 31 be deemed to continue in force, pending the final determination of the review application in Part B.
- 1.5 Ordering the First Respondent and any other respondents who may oppose the relief sought in this part application, to pay the costs of this application (jointly and severally, the one paying the others to be absolved, if more than one respondent should oppose), such costs to include the costs of one instructing and two instructed counsels.
- 1.6 Granting the Applicant such further and/or alternative relief as this Honourable Court may deem fit.

2 Part B of application:

- 2.1 Reviewing and setting aside the decision by the First Respondent, dated 7 March 2024, to refuse the renewal of the Applicant's Scheduled Air Transport Service License No. 31 (the "License").
- 2.2 Renewing the License; alternatively, to refer the application for renewal of the License back to the First Respondent and directing it to renew and issue the Licence, subject to such conditions as it may consider necessary and which it may validly impose in terms of section 11(3) of the Air Services Act No. 51 of 1949, in the further alternative that the application for renewal of the Licence be referred back to the Commission and it be directed to reconsider the renewal application and make a ruling within 14 days of this order, in the further alternative, granting condonation for the late filing of applicant's application, and referring it back to the Commission to determine the merits of applicant's renewal application.
- 2.3 Ordering the First Respondent and any other respondents who may oppose the relief sought in this part application, to pay the costs of this application (jointly and severally, the one paying the others to be absolved, if more than one respondent should oppose), such costs to include the costs of one instructing and two instructed counsels.
- 2.4 Granting the Applicant such further and/or alternative relief as this Honourable Court may deem fit.

and the affidavit(s) of COLIN HENRI VAN SCHALKWYK, ANDRE XAVIER COMPION, MARTIN WEBB-BOWEN, GYS JOUBERT, PHILIPPUS VILJOEN ELLIS and SHAUN ELLIS and the annexures thereto will be used in support of this application.

TAKE NOTICE FURTHER that:

(a) if you intend to oppose this application you are required to notify applicant(s) in writing of your intention to oppose this application, by delivery of your notice of intention to oppose and your answering affidavit or intention to raise a question of law (if any), prior to the date and time of the hearing, stated hereinbefore; and

(b) the applicant(s) will accept service of all process in these proceedings by filing of the document to be served through e-Justice on the electronic court file.

TAKE FURTHER NOTICE that if no notice of intention to oppose and answering affidavit or no question of law is raised, the application will be moved on **15th day of March 2024 at 09:00 AM.**



Shaun Ellis
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Namibia

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TO:

THE CHAIRPERSON OF THE TRANSPORTATION COMMISSION OF NAMIBIA
7th Floor Ministry of Works and Transport Building, Bell Street, Snyman Circle,, Windhoek,
Khomas, Namibia, 9000

Authorize Code: **Lvoahh**

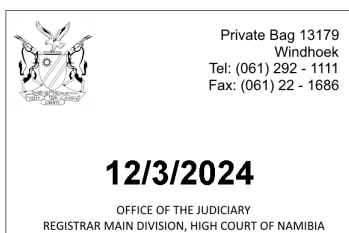
THE MINISTER OF WORKS AND TRANSPORT

7th Floor, Ministry of Works and Transport Building, Bell Street, Snyman Circle,, Windhoek,
Khomas, Namibia, 9000

Authorize Code: **Tg4Vp9**

And TO:

Registrar of the High Court
Main Division
Windhoek



Registrar