



Blue Bird Aviation aircraft. [Courtesy, Standard]

High Court orders fresh valuation of local airline

▶ Judge sets aside a valuation report on Blue Bird Aviation by RSM East Africa.

▶ One of the shareholders argues Sh320.92 million valuation did not represent the true value of the airline.

KAMAU MUTTHONI, NAIROBI

The High Court has ordered a fresh valuation of an aviation firm in a buyout dispute between shareholders.

Commercial Court Judge Njoki Mwangi set aside a business valuation report on Blue Bird Aviation Ltd by RSM East Africa Ltd and directed that Yusuf Abdi Adan, Hussein Ahmed Farah, Hussein Unshur Mohamed, Mohamed Abdikadir Adan, and the firm appoint new a valuer.

The court had ordered that Ahmed, Unshur, and Abdikadir should buy out Abdi's stake in Bluebird Aviation.

Justice Njoki said the valuation by RSM was opaque as it did not disclose the source of its information. "RSM Ltd's conduct points towards a lack of transparency. A valuer must always remain unbiased and independent, more so when appointed by rivaling parties. If the valuer concedes to the fact that the valuation is based on various sources including audited financial statements which he was instructed to rely on, he should not have denied one of its appointing authorities access to the said statements," she

top up the difference within seven days after the report is filed.

"The sum held in court shall be released to the applicant's (Abdi) advocate within seven days of the valuation report being filed in court, subject to the value that will be determined of the applicant's shareholding in the fourth respondent (Bluebird Aviation)," ruled Justice Njoki.

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said.

She also ordered that Abdi will bear the cost of the fresh valuation.

In the case, Abdi had asked the court to set aside the report by RSM. He also asked the judge to appoint a new firm to conduct a valuation within 14 days to ascertain the value of his shareholding in Bluebird.

Abdi stated that the Sh320.92 million value submitted by RSM was speculative as financial statements relied on were not provided to support the amount.

He accused RSM of failing to conduct an independent valuation. According to him, RMS underquoted the value of some of the aircraft to deny him a fair stake in the firm.

Abdi's co-shareholders opposed the case. Unshur argued that Abdi was trying to review court orders without invoking the right law.

He said all parties unanimously agreed to appoint RSM to carry out the valuation. He stated that Abdi never challenged the consent order.

Unshur told the judge that RSM conducted Bluebird's valuation and submitted a report on December 6, 2021, out of the mutual agreement between them all. He argued that the application had been overtaken by events as the court's deputy registrar had already signed share transfer forms in his favour and submitted them to the Companies Registry to effect the changes.

He said the Sh320.92 million had already been deposited to the judiciary's account at KCB, adding that Abdi is no longer a shareholder.

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COURTS

School wins Sh3.6m case against contractor

St Francis of Assisi Myanga Secondary School will not pay a contractor who did a shoddy job Sh3.6 million.

It will, however, pay him just a fraction of it as ordered by the lower court, and now upheld by the High Court in Bungoma.

Justice John Amuro said the contractor, Zamken Building Construction and General Supplies, equally failed to prove their claim of Sh3.6 million and wanted the court to compel the school to share minutes on the contract, which amounted to a litigant relying on the court to give him evidence to prosecute his claim.

"The contractor is engaging in a fishing expedition in the hope that such minutes may contain some information that is in his favour. In an adversarial legal system like ours, such practice cannot be allowed," he said.

"The evidence on record was not sufficient to enable the trial court to reconcile the two conflicting sets of alleged contract sums or determine which of the alleged rival contract sums was the correct one. In light of this situation, it is the contractor who, being the plaintiff, asserted that the contract sum was Sh3.66 million. It is therefore he who would lose if that assertion was not proved."

Justice Amuro instead allowed the school to pay the contractor

Sh524,622, being the balance of a total of Sh1.7 million the school had allegedly agreed to pay the contractor based on the quality of his job.

The school argued in both courts that the contractor used materials not specified in the bill of quantities and supplied by the school which would ordinarily have been bought elsewhere. This compromised the estimates in the bill of quantities.

"The contractor having agreed to a renegotiated arrangement where it was concessionally agreed that the works done were incomplete, standard and even school materials had been used, was to be paid Sh1.76 million only. We paid them Sh1.23 million," said the school.

"The contractor can therefore only demand a balance of Sh524,622 and should be stopped from making fresh claims with exaggerated amounts that cannot be tested."

It added that the contractor never produced any agreement in support of its allegations on the contract sum of the job.

The institution said special claims the contractor was asking for must not only be pleaded but also be proved and that failure to produce any agreement of such allegations was fatal to their case.

Zamken argued that it built three classrooms and handed them to the school on May 30, 2016, at a sum of Sh3.66 million which was never fully paid. [Robert Amalemba]

BANKING

Former Stanchart employee accused of stealing Sh653m acquitted by court

A court in Nairobi has acquitted a former Standard Chartered Bank employee accused of stealing Sh653 million from the lender in 2013 due to lack of evidence.

Milimani Court Magistrate Peter Ooko found that the claims against Collins Omuga Mackenzie could not hold as there was no proof he was behind the robbery incident said to have led to the loss of the money.

The magistrate noted that none of the witnesses called by the prosecution gave evidence that proving Omuga has a case to answer.

"I do hold that the prosecution failed to prove, to the required standard, the two counts as preferred against the accused person. I do hereby do find him not guilty as charged and therefore proceed to acquit him forthwith," ruled Ooko.

Omuga had been charged with two counts. He was accused of stealing at least Sh328 million from the bank in the first count, and another Sh325 million, in the second count.

He denied the charges.

The State argued that the former operations manager had access to the money as an employee and called in six witnesses to support its case.

However, the accused argued that the person who defrauded the lender used his staff user name.

Loan advanced

According to the State, Sh328 was linked to an identity of a loan advanced to Alaf in Tanzania. The money ended up in China's Grate Land Consulting Company instead of Standard Chartered Bank in Japan.

Omuga, on the other hand, told the court that during his employment, he never came into contact with any cash money.

While disputing the claim, he argued that none of his colleagues linked him to the theft.

The magistrate agreed with Omuga, observing that it was only the ICT staff who would have shed light on what happened.

[Karnau Muthoni]

Value
SH321
MILLION

VALUATION of Blue Bird Aviation by RSM East Africa Ltd that had already been deposited to the judiciary's account at KCB.

The judge said if the valuation will find that Abdi's stake is more than Sh320 million, Bluebird Aviation will