

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 22**  
**CASE NUMBER : SUIT NO: CV/3048/19**  
**DATE: : THURSDAY 17<sup>TH</sup> SEPTEMBER, 2020**

**BETWEEN:**

**1. EMINENCE TRAVEL AND TOURS LTD.**  
**PLAINTIFFS** }

**2. SIR EMMANUEL EDOZIE**

**AND**

**1. ROUNDBOOKING LIMITED** } ..... DEFENDANTS  
**2. MR. PHILEMON USMAN** }

## **RULING**

The Plaintiffs took out a Writ of Summon under the Undefended List Procedure Pursuant to Order 35 of the Rules of this Honourable Court 2018 claiming the following:-

- a. Payment of the sum of N7,608,333.33 (Seven Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) made up as follows:-
  - i. N5,000,000.00 (Five Million Naira) being the outstanding debt arising from the sale agreement dated 18<sup>th</sup> April, 2018 between the plaintiff and the Defendants.
  - ii. N1,608,333.3 (One Million, Six Hundred and Eight Thousand, Three Hundred and Thirty Three Naira, Thirty Three Kobo) being the agreed liquidated damages of 30% interest on the

above debt from 21<sup>st</sup> July, 2018 to 20<sup>th</sup> September, 2019.

- iii. N1,000,000 being legal fees Plaintiff paid for recovery upon default by the Defendant.
- b. 30% interest on the above sum from 21<sup>st</sup> September, 2019 until Judgment is delivered.
- c. 30% interest on the Judgment sum from date of Judgment until final liquidation of same.
- d. Cost of this action.

In line with law and procedure, the said Writ was marked undefended on the 5<sup>th</sup> December, 2019 and the 30<sup>th</sup> January, 2020 was fixed as return date.

Upon service, the 2<sup>nd</sup> Defendant filed his affidavit showing his defence on merit. Both parties adopted their writ in line with law to pave way for this ruling.

The case of the Plaintiff as distilled from the affidavit in support of the Writ is that sometimes in March, 2018 he bought Direct Travel Limited Shares and International Air Transport Association (IATA) License No. **59-211460** with a view to reselling same. Vide Exhibit 'A'.

That on the 18<sup>th</sup> April, 2018 he resold the said shares and IATA License to the Defendants for N12,000,000.00 (Twelve Million Naira) to be paid as follows:-

- a. N7,000,000.00 upon documentation and exchange of title documents.
- b. N3,000,000 on or before 20<sup>th</sup> July, 2018.
- c. N2,000,000 on or before the 20<sup>th</sup> November, 2018.

The said agreement is annexed as Exhibit 'B'. And the tripartite agreement between the parties was attached as Exhibit 'C'.

It is further the deposition of the Plaintiff that in line with the agreement he paid Direct Travels Limited outstanding

annual returns and penalties thereto from 1997 to 2018 to Corporate Affairs Commission, the Sky Bank Deposit Slip, Remittal Payment Receipt and Corporate Affairs Commission Acknowledgment Letter were annexed as Exhibits 'D1', 'D2' and 'D3' respectively.

Plaintiffs aver that he caused his Solicitor to write a letter to the Defendants reminding them of the 2<sup>nd</sup> installment due and expected on or before 20<sup>th</sup> July, 2018 vide Exhibit 'E1' & 'E2'.

That despite the letter, the Defendants refused to pay and this prompted another letter on the 7<sup>th</sup> August, 2018 vide Exhibit 'F1' and 'F2'.

Plaintiffs aver further that due to failure of the Defendants to honour the agreement cause the Plaintiff hardship and that the Plaintiff paid its Solicitor N1,000.000 to file this case vide Exhibit 'G'.

That it will be in the interest of justice to grant the Plaintiff all the reliefs sought.

Upon services, the 2<sup>nd</sup> Defendant file Notice of Intention to defend the action on merit.

The affidavit in support of the notice was deposed to by the 2<sup>nd</sup> Defendant himself.

It is the deposition of the 2<sup>nd</sup> Defendant that the Plaintiff deliberately misrepresented to him on behalf of the 1<sup>st</sup> Defendant that he purchased and or secured the transfer of the shares and International Air Transport Association (IATA) Licenses No. **59211 460** in the name of Direct Travel Limited, a registered company under the Companies and Allied Matter Act, 1990 and was authorized to transfer title over same to any person of his choice.

That despite demands made for proof of the acclaimed transfer to shares and IATA license purchase to the

Plaintiffs, the Plaintiffs concealed the existence of Exhibit 'A'.

Defendants aver that Exhibits 'B' & 'C' were undated and unsigned pending confirmation of title and other information from Mr. George Ashiru of Direct Travels Limited at Lagos because he was not satisfied of Plaintiff's claim of title. And that the date 18<sup>th</sup> April, 2018 and 21<sup>st</sup> April, 2018 were inserted by the Plaintiff without his knowledge.

The Defendants aver further that Plaintiff misinformed him in Abuja that the agreed price for the shares and IATA license was N12,000,000 against the sum of N5,000,000.

That he made electronic transfer of the sum of N3,000,000 into Plaintiff's account as proof based on his agreement to sign Exhibit 'B'. And that in the course of discussion with Mr. George Ashiru and Plaintiff and in between the execution of Exhibit 'C' it was discovered

that Plaintiffs had misrepresented the fact and at that point he and Mr. George representing Direct Travels Limited refused to go further with the sale, execution and affixing the company's seal to Exhibits 'B' & 'C' as well as Lawyer's involved appending their signature on the document and demanded the refund of the N3,000,000 earlier paid into 2<sup>nd</sup> Plaintiff's account.

That Mr. George Ashiru on behalf of Direct Travels Limited handed over the documents (IATA License) to him and other Directors upon receipt of the sum of N4,000.00 from the 1<sup>st</sup> Defendant on the 23<sup>rd</sup> April, 2018.

Defendants stated that he is not aware of Exhibits 'E1', 'E2', 'F1' and 'F2'.

That the Defendant have a defence on the merit and that he will counter-claim for the sum of N2,888,500.00 being the outstanding sum out of N3,000.00 paid to the Plaintiff on 23<sup>rd</sup> April, 2018.



**Court:-** I wish to observe that the undefended list procedure is a truncated form of ordinary civil hearing peculiar to our adversary system where the ordinary hearing is rendered unnecessarily due in the main to the absence of an issue to be tried or the quantum of Plaintiff's claim disputed to necessitate such a hearing. It is designed to quicken justice and avoid the injustice likely to occur where there is no genuine defence on the merits to the Plaintiff's case.

It is a procedure meant to shorten hearing of a suit where the claim is for liquidated money demand see ***UBA PLC VS JARGABA (2007) 5 SC1.***

An action begun under the undefended list, is no less a trial between the parties and where a Defendant is properly served, he has a duty to disclose his defence to the action. ***ATAGUBA & CO. VS GURA (2005) 2 SC (pt. 11) 101.***

However, notice of intention supported by affidavit so filed must condescend to issues stated in affidavit in support of the claim of the Plaintiff. A mere empty affidavit in support of the Notice of Intention to defend which discloses no defence shall certainly not sway the Court into transferring the matter to general cause list for trial.

Simply put, the Defendants affidavit must condescend upon particulars and should as far as possible, deal specifically with the Plaintiff's affidavit and state clearly and concisely what the defence is and what facts and document are relied on to support it.

Such affidavit in support of Notice of Intention to defend must of necessity disclose facts which will, at least throw some doubt on the Plaintiff's case.

A mere denial of Plaintiff's claim or liability or vague insinuation devoid of evidential value does not and will

not suffice as facts, which will throw doubt on Plaintiff's claim. *UBA PLC VS JARGABA (Supra)*.

I have gone through the affidavit of Plaintiff in support of its claim brought under the undefended list Pursuant to Order 35 of the Rules of this Court. I have also gone through the affidavit in support of Notice of intention to defend this action filed in compliance with Order 35 Rule 3(1) of the Rules of this Court.

The facts averred in affidavit in support of Plaintiff's case are such that if put side by side with those of the Defendant, certainly the reliefs claimed by Plaintiff cannot be resolved under Order 35 of the Rules of this Court.

By the power conferred on me therefore, I hereby transfer this suit to general cause list under Order 35 Rule 3 (2) of the Rule of this Court.

I order that evidence be led in prove of the respective cases of Plaintiff and Defendant in that Order.

This is the Ruling of the Court.

*Justice Y. Halilu*  
*Hon. Judge*  
*17<sup>th</sup> September, 2020*

***APPEARANCES***

JUDE UGWUANYI – for the Claimant.

Defendant not in court and not represented.