

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 4 MAITAMA ABUJA ON THE 3RD DAY OF
NOVEMBER, 2021
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/CV/16/21

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

TRANS SAHARAN AIRLINE LIMITED.....PLAINTIFF

AND

NATIONAL HAJJ COMMISSION OF NIGERIA...DEFENDANT

RULING

This is a case under the Un defended List Procedure.

The claim of the Claimant vide a Writ of Summons dated 2/02/21 is for:

a. An Order for the Defendant to pay to the Claimant forthwith the sum of \$1,805,400.00 representing 25% of the total contract sum of \$7,221,600.00 as per Schedule II paragraph 4(1) of the Airlift Agreement.

b. An order for The Defendant to pay the Claimant \$1,805,400 representing 25% of the total sum of

\$7,221,600 as Schedule II, paragraph 4 (II) of the Airlift agreement.

Learned Counsel rely on the 17 paragraph Affidavit. The Defendant filed a Notice of Intention to Defend the Action with an Affidavit dated and filed on 15/09/21.

The crux of the Defendant's defence is that the Saudi Arabian Authority rejected the applicant's Company from operating in the Kingdom for failure to (qualify) sic comply with certain international operational procedure.

That matter relating to claims are handled by the Solicitor-General of the Federation.

That the Claimant ought to have appeared in the said Committee.

That Claimant did not airlift a single pilgrim from Nigeria to Saudi Arabia.

That airlift contract was based on Airlift of pilgrims to Saudi-Arabia and payment made according to the number of pilgrims airlifted.

That this matter is cut up with the doctrine of Res Judicata.

I have read the Notice of Intention to Defend and an Affidavit.

The law is that in an action brought under the Undefended List Procedure, the Court is required to

consider only the evidence contained in the Affidavit filed by the Defendant in support of the Notice of Intention to Defend the Suit.

See HAIDO VS. USMAN (2004) 3 NWLR (PT.859) 65 C.A.

I have gone through the Defendant's Affidavit. It discloses

- a.A triable issue as it relates to the issue of res judicata raised in defence.
- b.There is also a dispute as to facts.
- c.That it is an abuse of Court process.

The Undefined List Procedure is not intended to shut out a Defendant from contesting a suit brought thereunder.

The Defendant in my view has shown that he has a defence on the merit.

Leave is therefore granted to the Defendant to defend this suit on the merit.

The suit is accordingly transferred to the general cause list for hearing.

The Claimant shall file his Pleadings within 7 days from now.

On being served, the Defendant shall within 14 days
file its defence while suit is adjourned to 24/01/22
for mention.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
03/11/21