IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA ON THE 28TH DAY OF FEBRUARY, 2022

BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE

SUIT NO.FCT/HC/NY/CV/16/2021

COURT CLERK: ***JOSEPH ISHAKU BALAMI & ORS.***

BETWEEN:

TRANS SAHARAN AIRLINE LIMITED…..……..CLAIMANT

AND

NATIONAL HAJJ COMMISION OF NIGERIA..……DEFENDANT (FORMERLY DIRECTORATE OF PILGRIMS AFFAIRS)

RULING

The Defendant/Applicant's Notice of Preliminary Objection dated 15/12/21 and filed the same date is for an Order Striking out the suit.

Learned Counsel to the Applicant rely on the grounds upon which the application is brought which are on the face of the Motion Paper they are:

(1) The Claim is statute barred.

(2) The suit is an abuse of Court Process.

(3) The cause of action is overtaken by the doctrine of res judicata.

Learned Counsel further rely on the 4 paragraph Affidavit in support sworn to by Moddibo Mahmud Abubakar. He deposes amongst others that. The Defendant is responsible for the movement of Pilgrims to and from Saudi Arabia. That it is the function of the Defendant to appoint airlines to airlift Pilgrims from Nigeria to the Kingdom of Saudi Arabia for Hajj.

In 2004 Defendant appointed Claimant/Respondent to airlift Pilgrims. The Saudi Authorities rejected the Applicant's Company from operating in the Kingdom for failure to meet certain international operation procedures. That matters relating to claims by air carriers appointed by the defunct Directorate of Pilgrims Affairs were handled by the Office of the solicitor General of the Federation and Presidential Committee. The Claimant was to appear before the said Committee to claim but never did.

That if Claimant's claim was genuine. It would have long been addressed by the Committee. That payments are to be made in accordance with the number of pilgrims airlifted. That Claimant did not airlift a single pilgrim. That the Saudi Authorities rejected the aircraft of the Claimant for lack of experience and capacity. The Claimant agreed to comply with full relevant aviation regulations but failed. The Defendant terminated the said airlift agreement based on

the failure of the Claimant to provide the specified aircraft. The letter of Termination is Exhibit A.

That Claimant had instituted similar action with the same parties and subject matter. The Court ruled on 19/05/2020 that the matter is statute-barred. That the matter is overtaken by the doctrine of Res Judicata. That the action is an abuse of Court Process. That Defendant was a defence to the action.

The Claimant/Respondent's Counter Affidavit is dated and sworn to on 22/12/21. He deposes that Saudi Authorities wrote to the Defendant to confirm that Claimant is authorised to operate in the Kingdom. That Claimant has a genuine claim and the agreement was not terminated. The Saudi Authorities did not reject the aircraft. The Defendant served a query on the Claimant and Claimant responded to same and was abandoned. The earlier case referred to was to direct parties to appoint on arbitrator. That the matter is not statute barred.

The Claimant's claim is for an order amongst others commanding Defendant to pay Claimant $1,805,400.00 representing 25% of the total contract sum of $7,221,600.00 as per schedule II of paragraph 4(1) of the Airlift Agreement, etc. The matter was under the undefended list procedure. The Court found that the Defendant has a defence on the merit and ordered parties to file their pleadings.

The Claimant/Applicant herein file a Statement of Claim while the Defendant has also filed his Statement of Defence upon which the Defendant now brings the application seeking to strike out the suit on grounds herein before stated.

I have read and considered the Written Addresses of Counsel. The Claimant/Respondent was appointed as the Pilgrim Carrier in November 2003. On 28/11/2004, the Defendant wrote to the Claimant stating that the Saudi Authorities rejected the Claimant and will not allow its operation in the Kingdom during the Hajj.

The Saudi's Claimant stated cited lack of credibility and experience. The Claimant denied it's aircraft was rejected. The Writ of Summons is dated 2/02/21. The 28/11/04 from the Claimant to the Defendant gives the Defendant an opportunity to find a solution to the problem encountered by the Defendant in Saudi-Arabia within 7 days or get the contract terminated. There is nothing before the Court to suggest that the Claimant took any step to assuage the Saudi Authorities. The Claimant by its letter made request for advance payment which was not granted. It is dated 1/12/2003.

In my humble view, the cause of action accrued in 2003/2004. The timeline between the time the cause of action accrued and the filing of this suit is 17 years.

By Section 7(1) of the Limitation Act Cap 522 LFN an action founded under simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued. This action although a simple contract of carriage has an international aviation dimension. The right for damages in international carriage of goods by air shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination or from the date on which the carriage stopped.

Article 29(1) Warsaw Convention

IBIDAPO VS. LUFTHANSA AIRLINES (1997) 4NWLR (PT. 498) 124 SC.

It is trite that a legal right to enforce an action is not a perpetual right, but a right generally limited by statute. Therefore, a cause of action is statute barred if legal proceedings cannot be commenced in respect of same because of the period laid down by the Limitation Law or Act had lapsed. The Defendant deposes that the Defendant did not terminate the agreement until Claimant terminated same. The said letter is dated 6/10/2020.

This letter was written after this Court found vide Ebong J. in the last page of his Ruling dated 19/05/20 between Claimant Defendant and another that the suit was statute barred.

In my humble view the letter written by Claimant's Counsel terminating the agreement cannot resuscitate the cause of action which has already been extinguished by the Limitation Law. The said letter cannot elongate the cause of action.

The cause of action in the claim is the failure/refusal of the Defendant to make advance payment for the operation of the Claimant. The Claimant's letter terminating the airlift agreement in 2020 amounts to pouring kerosene on a fire that is already out. The fire can no longer catch or ignite. The effort of the Claimant in this regard is therefore in futility.

It is my view and I so hold that this suit commenced 17 years after the accrual of the cause of action is statute barred. This Court per Ebong J has made a finding on the substance of this action (whether the parties in that case are the same with the parties in this case or whether the reliefs claimed are the same or not). The Claimant and Defendant are parties in the earlier suit with another nominal Defendant. The agreement to be enforced or upon which an application for application for arbitrators was made is the same

agreement in issue. The Defendant failed/refused to appeal that finding.

It is further my view and I so hold that the doctrine of per rem judicata avails the Defendant. It is a waste of time to consider whether the action is an abuse of Court process in view of the conclusion reached on the other issues.

Consequently for the totality of reasons given, this Court has no jurisdiction to entertain this case. The Notice of Preliminary Objection succeeds.

Suit FCT/HC/NY/CV/16/2021 is hereby struck out.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)
28/92/22

Appearances:

Parties absent

I.K. Okata for the Claimant/Respondent.

Mariam Mohammed for the Defendant/Respondent.