**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**HOLDEN AT GWAGWALADA**

**THIS TUESDAY, THE 20TH DAY OF JANUARY 2020**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**
**SUIT NO: CV/819/16**

**BETWEEN:**

**FOSHIZI TOURS LIMITED.....PLAINTIFF**

**AND**

**LOH & OR CONSTRUCTION LIMITED.....DEFENDANT**

## JUDGEMENT

This matter has had a fairly chequered history. I will here give a brief background facts to properly situate the crux of the dispute. The Plaintiff commenced this action via a writ of summons on the undefended list issued on 4th February, 2016 against the Defendants for the following relief:

1. **The sum of N25,379,235.00(Twenty Five Million, Three Hundred and Seventy Nine Thousand, Two Hundred and Thirty Five Naira) only being the total indebtedness to the Plaintiff by the Defendant for tickets issued and services rendered to the Defendant between 2013 and 2014**.

The matter was then pursuant to the rules of court placed for hearing under the undefended list and the processes were served on the Defendants. The Defendants in response filed two processes to wit:

1. **A motion praying that the name of 2nd Defendant (Hon Kehinde Paul Fashanu) be struck out for non disclosure of a cause of action.**

2. **A motion for extension of time to file the 1st Defendant's notice of intention to Defendant and an affidavit disclosing a defence on the merit and to deem the processes as properly filed.**

The two applications were not opposed. The name of the 2nd Defendant was struck out of the action and the court then considered whether the affidavit disclosing a defence on the merit was availing to allow for the transfer of the matter to the general cause list.

In the affidavit, the Defendant however conceded to been indebted only to the sum of **N5,771,485** and denied that it was indebted in the sum as claimed by Plaintiff. The court on 13th May, 2016 granted Plaintiff judgment in the sum of **₦5,771,465** as admitted by defendant and having found that triable issues were raised in respect of the balance claimed transferred the matter to the general cause list and ordered for parties to file their pleadings.

By the statement of claim filed by the Plaintiff dated 28th June, 2016 consequent upon the order of court, the Plaintiff claims the following reliefs against Defendant:

"1. **The sum of N19,607,590.00(Nineteen Million, Six Hundred and Seven Thousand, Five Hundred and Ninety Naira) only, being the total debt owed to the Plaintiff by the Defendant for tickets issued and services rendered to the Defendant throughout the year of 2013.**

2. **Post Judgment interest at the rate of 20% per month on the Judgment sum until the debt is fully liquidated.**

3. **Cost of this suit."**

The Defendant filed a Statement of Defence dated 31st October, 2016. The matter was then adjourned for hearing. The matter then suffered several adjournments because parties informed court that they wanted to settle the matter out of court. Despite the ample time given to explore settlement out of court, nothing positive came out of it and the court had to then proceed with hearing. Now from the

records, despite service of hearing notices all through the proceedings, neither the Defendant nor counsel appeared in court again.

In proof of its case, the Plaintiff called only one witness, Mrs Ifeoluwa Olanrewaju, the Managing Director of the Plaintiff. She adopted her witness deposition dated 11th July 2016 and tendered in evidence, the following documents:

1. **Copies of invoices served on Defendant for tickets issued dated 2nd March 2012, 15th May, 2013, 16th May, 2013 and 31st May 2013 were admitted in evidence as Exhibits P1-P4.**

2. **The notice to produce documents at hearing served on Defendant dated 5th December, 2016 and received on 7th December, 2016 was admitted as Exhibit P5.**

3. **Letters of demand by Plaintiff dated 18th June, 2015 and that written by the law firm of Perazin Chambers dated 1st July, 2015 were admitted as Exhibits P6a and b.**

4. **E-mail correspondence (of 4 pages) between PW1 and Defendant together with the certificate of compliance were admitted as Exhibits P7a and b.**

5. **Copies of printed electronic tickets said to have been issued on behalf of Defendants (51 numbered) together with the certificate of compliance were admitted as Exhibits P8(1-51) and P9 respectively.**

With the evidence of PW1, the case was then adjourned to allow for the cross-examination of PW1. As stated earlier, despite the service of hearing notices, the Defendant never appeared in court. Counsel appearing for them equally ceased appearing. The court on 17th December, 2018 on application allowed the Plaintiff to close its case and granted the Defendant another opportunity to put in there defence. They never did despite ample time given to them to do so and on 27th June, 2019, again on application by Plaintiff, the case of Defendant was foreclosed and the matter adjourned for filing and adoption of final addresses.

In the final address of Plaintiff dated 8th July, 2019 which was also served on defence counsel, two issues were raised as arising for determination, to wit:

i. **Whether the Plaintiff has successfully proven his case against the Defendant.**

ii. **Whether the Plaintiff shall be entitled to the Reliefs sought in this case.**

Having carefully reviewed the pleadings and evidence, the two issues raised by the Plaintiff can be better streamlined into one single issue to properly capture the crux of the dispute. The narrow issue simply is whether the Plaintiff has successfully established on a preponderance of evidence that it is entitled to the reliefs sought. This issue conveniently accommodates the two issues raised by Plaintiff and it is on the basis of the said issue that I would now proceed to consider the evidence and submissions of counsel.

**ISSUE 1.**

**Whether the Plaintiff has successfully established on a preponderance of evidence, that it is entitled to the reliefs sought.**

From the Pleadings and the unchallenged evidence, the facts of this matter are largely not in dispute. The case of Plaintiff in summary is simple and straightforward to the effect that they engage in the business of travel agency and that they had a contractual relationship with Defendant where they attend to their travel needs through supply of tickets, procurement of VISA and related services. That these services were provided for Defendant at different times but that they have refused to pay for the transactions subject of this action despite several demands thereby causing considerable inconveniencies to the Plaintiff. The case is squarely predicated on the alleged failure of Defendant to pay for these services.

As stated, earlier, the Defendant filed a statement of defence and a witness deposition in opposition. On the record, nobody however appeared for the Defendant to lead evidence and or adopt the witness deposition. The adoption of the witness statement is fundamental under the present regime introduced by the rules of court. The failure to testify and adopt this witness statement by defendant

simply means that though the statement of defence is before court, no evidence was led in proof; therefore the defence and witness deposition of Defendant in this case goes to no issue and are deemed abandoned. In **N.I.M.V. LTD V F.B.N. Plc (2009)16 N.W.L.R (pt.1167)411at 437 D.E**. the Court of Appeal stated thus:

**"Pleaded facts on which no evidence was adduced in support are deemed abandoned. Pleadings are the body and soul of any case in a skeleton form and are built and solidified by the evidence in support thereof. They are never regarded as evidence themselves and if not supported by evidence are deemed abandoned."**

The statement of defence and the witness statement on oath will therefore be discountenanced in the circumstances. The implication here is that there is absolutely nothing from the other side of the divide challenging or controverting the evidence adduced by the plaintiff.

In law, it is now accepted principle of general application that in such circumstances, the defendant is assumed to have accepted the evidence adduced by plaintiff and the trial court is entitled or is at liberty to act on the plaintiff's unchallenged evidence. See **Tanarewa (Nig.) Ltd. vs. Arzai (2005) 4 NWLR (pt. 919) 593) at 636 C – F; Omoregbe vs. Lawani (1980) 3 – 7 SC 108 and Agagu vs. Dawodu (1990) 7 NWLR (pt. 160) 56.**

Notwithstanding the above general principle, the court is however still under a duty to examine the established facts of the case and then see whether it entitles the claimant to the relief(s) sought. I find support for this in the case **of Nnamdi Azikiwe University vs. Nwafor (1999) 1 NWLR (pt. 585) 116 at 140-141** where the Court of Appeal per Salami JCA (as he then was) expounded the point thus:

**"The plaintiff in a case is to succeed on the strength of his own case and not on the weaknesses of the case of defendant or failure or default to call or produce evidence … the mere fact that a case is not defended does not entitle the trial court to over look the need to ascertain whether the facts adduced before it establish or prove the claim or not. In this vein, a trial court is at no time relieved of the burden of ensuring that the evidence adduced in support of a case sustains it irrespective of the posture of the defendant…"**

A logical corollary that follows the above instructive dictum is the attitude of court to the issue of burden of proof where it is not satisfactorily discharged by the party upon which the burden lies. The Supreme Court in **Duru vs. Nwosu (1989) 4 NWLR (pt. 113) 24** stated thus:

"… **a trial judge ought always to start by considering the evidence led by the plaintiff to see whether he had led evidence on the material issue he needs to prove. If he has not so led evidence or if the evidence led by him is so patently unsatisfactory then he had not made out what is usually referred to as a *prima-facie* case, in which case the trial judge does not have to consider the case of the defendant at all."**

From the above, the point appears sufficiently made that the burden of proof lies on the plaintiff to establish its case on a balance of probability by providing credible evidence to sustain its claims irrespective of the presence and/or absence of the defendant. See the case of **Agu v. Nnadi (1990) 2 NWLR (pt. 589)131 at 142.**

As stated earlier, the case of the Plaintiff is that they had a contractual relationship to render certain services to Defendant, which they rendered but that the Defendant has refused to live up to their contractual commitments. In law, a contract is an agreement between two or more parties which creates reciprocal legal obligations to do or not to do a particular thing. To bring a contract to fruition where parties to the contract confer rights and liabilities on themselves, there must be mutual consent and usually this finds expression in the twin principles of offer and acceptance. The offer is the expression of readiness to contract on terms as expressed by the offeror and which if accepted by offeree gives rise to a binding contract.

Putting it more succinctly, the basic elements in the formation of a contract are:

1. **The parties must have reached agreement (offer and acceptance)**
2. **They must intend to be legally bound, that is an intention to create legal relation.**
3. **The parties must have provided valuable consideration.**
4. **The parties must have legal capacity to contract.**

**See Alfotrim Ltd Vs A.G Federation (1996)9 NWLR (pt.475) 634 SC; Royal Petroleum Co. Ltd. Vs FBN Ltd (1997)6 NWLR (pt.570) 584: UBA vs. Ozigi (1991)2 NWLR (pt.570)677.**

It is equally important at the onset to properly situate or locate the position of law that the burden of proof by virtue of **Section 131 of the Evidence Act** is clear to the effect that whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts to exist. Similarly by **Section 132 of the Evidence Act**, the burden of proof in a

suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Let us perhaps situate the case of parties as streamlined on the pleadings. The following paragraphs of the plaintiff's statement of claims are relevant to wit:

"**4 The Defendant engaged the services of the Plaintiff from early 2012, and the Plaintiff provided all the services required of her during the said period and issued several invoices to the Defendant, which is proof that the relationship existed.**

**5 Conventionally, ticketing business is usually done on a credit basis against an existing guarantee. The Plaintiff creates an account for each of her clients; issued tickets on credit and then submits an invoice for the sum of the clients for payment.**

**6 The Plaintiff's various invoices to the Defendants, which were duly acknowledged, dated 2nd March, 2013, 15th May, 2013, 16th May, 2013 and 31st May, 2013 shows that parties have a contractual relationship. These invoices are hereby specifically pleaded and shall be relied upon during hearing of this suit.**

**7 All tickets issued by the Plaintiff to the Defendant and its employees, agents and representatives in the year, 2013 have not been paid for. Electronic copies of the said tickets, duly printed form the Plaintiff's computer covering the said period are hereby pleaded and shall be relied upon at the hearing of this suit.**

**8 The Plaintiff at this point, started to make oral requests for the Defendant to pay up the outstanding sum, but he Defendant pleaded with the Plaintiff to exercise patience while promising that it will clear the outstanding bills which have remained unpaid.**

**9 In a bid to retain the Defendant's custom and also to maintain a healthy relationship with its client, the Plaintiff magnanimously accommodated the Defendant and continued to issue tickets to the Defendant up till 29th day of December, 2014.**

**10 The Plaintiff's decision to keep issuing tickets, despite the Defendant's indebtedness, was based on the repeated promises made by the Defendant that it would pay the outstanding debt for the tickets issued to it and its**

**employee and on the fact that it started honouring most of the invoices issued in 2014.**

**11 The Plaintiff made countless calls to the Defendant in addition to several emails, requesting for payment of the outstanding sum, but the Defendant always responded with repeated promises that it would pay pleading that the Plaintiff should exercise some patience because it (Defendant) was facing some challenges. The e-mail correspondences between the Plaintiff's Managing Director and the Defendant's director of January, 7th 2015, February 18, 2015 and March 25, 2015 are hereby pleaded and shall be relied upon at the hearing of this suit.**

**12 Despite the e-mail correspondences, the Defendant did not make good on their promise, therefore prompting the Plaintiff to write a Letter of Demand. The letter was duly delivered and receipt acknowledged by the Defendant. The letter dated 18th June, 2015 is hereby pleaded and shall be relied on during hearing of this suit.**

**13 When it became obvious that the Defendant had no plans of paying the debt, the Plaintiff caused its solicitors to write the Defendant a Demand Letter on the 1st of July, 2015, requesting the payment of the sum of N25,379,235.00(Twenty Five Million, Three Hundred and Seventy-Nine Thousand, Two Hundred and Thirty-Five Naira Only) copy of the letter is hereby pleaded and shall be relying on same during the hearing of this suit.**

**14 On the 13th day of May, 2016, the Court gave judgment in favour of the Plaintiff and awarded the sum of N5,771,645.00(Five Million, Seven Hundred and Seventy-One Thousand, Six Hundred and Forty-Five Naira) only, being the amount which the Defendant acknowledged to be its total debt to the Plaintiff out of the sum of N25,379,235.00(Twenty Five Million, Three Hundred and Seventy-Nine Thousand, Two Hundred and Thirty-Five Naira Only) being the Plaintiff's claim in this suit, and ruled that the documents exhibited by the Plaintiff were not adequate to convince the court to enter judgment for the entire sum."**

The evidence of the sole witness for the Plaintiff is clear and essentially a rehash of the above averments. As stated repeatedly, this evidence of PW1, was not challenged or impugned in any manner.

Indeed even the abandoned statement of defence of Defendant clearly accentuated the position or established clearly that parties had a precisely streamlined

relationship for rendering of travel related agency services, to wit: issuing of tickets, procurement of visas and related businesses to staff and beneficiaries of Defendant. Let me perhaps refer to relevant paragraphs of the defence as follows:

"1. **Save and except as hereinafter admitted the Defendant denies each and every material allegation of fact in the Plaintiff's statement of claim as if same were set out and traversed seriatim.**

2. **The Defendant denies Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Statement of Claim and put the Plaintiff to the strictest proof of the averments.**

3. **Defendant avers that she is aware of the Plaintiff company.**

4. **That over the years parties have had businesses together which the Plaintiff was always promptly paid.**

5. **That most instructions were at the instances of the company.**

6. **Those beneficiaries were always staff of the company.**

7. **That the Plaintiff denies most of the beneficiaries pleaded in the Plaintiff's statement of claim.**

8. **That aside the Judgment entered against the Defendant under the undefended list procedure, Defendant is not indebted to the Plaintiff."**

The above averments are clear. The Defendant here clearly admits the existence of this relationship with Plaintiff. It is settled principle of general application that a fact admitted by a Defendant in his pleadings is regarded as established and constitutes one of the agreed facts of the case such that they need not be proved for there is no issue joined. Accordingly, admissions made do not require to be proved for the simple reason that no better proof is required then that which an adversary as in this case wholly and voluntarily owns up. See **Section 123 of the Evidence Act, 2011 (As amended). See also Bunge V Gov. of Rivers State (2006)12 N.W.L.R (pt.995)573 at 599-600H-A; Biezan Exclusive Guest House Ltd V. Union Homes and Savings & Loans Ltd (2011)7 N.W.L.R (pt.1246)246 at 285 C-D.**

Flowing from this precisely established scenario, it is common ground from the unchallenged evidence that parties had a contractual relationship whereby the Defendant engaged the services of the Plaintiff to render services of issuing tickets

and procurement of visas for its staff and beneficiaries. This on the evidence is a common ground.

The narrow issue and which is the crux of this present complaint is to determine on the evidence whether Defendant did live up to or did not live up to its commitments under the relationship and thus liable to pay the sums claimed.

Now on the unchallenged evidence of PW1, she stated in her witness deposition as follows:

"**6 The Defendant engaged the services of the Plaintiff from early 2012, and the Plaintiff provided all the services required of her during the said period and issued several invoices to the Defendant, which is proof that the relationship existed.**

**7 By the industry practice; the ticketing business is usually done on a credit basis against an existing guarantee. The Plaintiff creates an account for each of her clients, and then issues tickets on credit and then submits an invoice for the sum to the clients.**

**8 The Plaintiff's various invoices to the Defendant, which were duly acknowledged, dated 2nd March, 2012, 15th May, 2013, 16th May, 2013 and 31st May, 2013 shows that parties have a contractual relationship. These invoices are hereby specifically pleaded and shall be relied upon during hearing of this suit.**

**9 All tickets issued by the Plaintiff to the Defendant and its employees, in the year, 2013 has not been paid for. Electronic copies of the said tickets, duly printed from the Plaintiff's computer covering the said period are hereby pleaded and shall be relied upon at the hearing of this suit."**

Paragraph 6 above underscores the fact of the relationship between parties. Paragraph 7 of the above deposition is equally clear as it has precisely streamlined the modalities of the arrangement Plaintiff had with Defendant. The modalities is to the effect that by the industry practice, the ticketing business is usually done on credit basis against an existing guarantee. That they usually create on account for each of their client(s) and then issue tickets on credit and then submit an invoice for the sum to the client(s) for payment. Paragraphs 8 and 9 above then provides basis showing that Plaintiff fulfilled its terms of the contract.

I shall be guided by this unchallenged evidence on the modalities of the relationship. Now on the evidence, it is clear that based on the relationship, the

Plaintiff issued or raised tickets at various times for the Defendant. **Exhibits P8(1-51)** are such electronic tickets said to have been generated and issued for and on behalf of the Defendant to its staff and beneficiaries. The issuance of these tickets presupposes that the client(s) on whose behalf the tickets were issued have an account with Plaintiff which must be created according to PW1.

In this case, tickets may have been issued on behalf of the Defendant but the next and perhaps must decisive step is the issuance of an **invoice** for the sum(s) to the client for payment. The **invoice** is usually a document showing a list of goods that have been sold, work that has been done etc... showing that you must pay (syn) bill... to write or send somebody a bill for work you have done or goods you have provided. See **Oxford Advanced Learners Dictionary (6th ed) at Page 633.**

On the basis of clear evidence of PW1, it is expected that after issuing the tickets, the next step is for them to prepare an invoice detailing the services rendered and serve it on the client for payment. In this case, the Plaintiff by **Exhibits P1 (dated 2nd March, 2012), P2 (dated 16th May, 2013) P3 (dated 15th May, 2013) and P4 (dated 31st May, 2013)** clearly sent invoices to the Defendant which were all received and or receipt acknowledged by Defendant. Let us analyse the invoices.

I note that **Exhibit P1** dated 2nd March, 2012 covers a period or year not covered by the extant dispute. By **Relief 1**, the complaint of Plaintiff is limited to **"tickets issued and services rendered in 2013**." It is therefore logical to state that any invoice or material piece of evidence to ground the complaints of failure to pay for services rendered in 2013 must be such evidence situated and specific to 2013. **Exhibit P1** is an invoice raised in March, 2012 and cannot have any evidential value in the circumstances covering a period specific to 2013.

Now the invoices **Exhibits P2, P3 and P4** dated 15th, 16th and 31st May, 2013 detailed clearly the names of the recipients of the services rendered and the value or sum for the services. **Exhibit P2** shows that tickets and visas were procured on behalf of staff and beneficiaries of the Defendant and the value of each service was clearly indicated. The total amount claimed for these services was **₦3,731,000** (three Million, Seven Hundred and Thirty One Thousand Naira Only).

**Exhibit P3** dated 16th May, 2013 equally details names and services rendered to staff and beneficiaries of Defendant and the amount claimed for each particular service. The entirety of the services rendered here was that of issuing of tickets. The total amount claimed for these services is **₦6,070,000.00**(Six Million and Seventy Thousand Naira Only). The last tendered invoice is **Exhibit P4** dated 31st May, 2013. The services rendered here include issuing of tickets and procurement of visa services on behalf of staff and or beneficiaries of Defendant. The amount

claimed for these services is **N7,403,400.00**(Seven Million, Four Hundred and Three Thousand, Four Hundred Naira Only). The total amount of these unchallenged invoices is **N17,204,400** (Seventeen Million, Two Hundred and Four Thousand, Four Hundred Naira Only).

Now, these invoices were all specifically pleaded and frontloaded thereby putting the Defendant on notice with respect to the basis of their claim. The Plaintiff here who had the advantage of being able to base their claims upon a precise calculation have given the Defendant access to the invoices detailing the necessary facts and services rendered which make the calculation of the sums claimed possible.

The Defendant did not materially challenge or controvert the contents of these invoices and the sums claimed. Indeed even in the abandoned statement of defence without evidence to support the averments, the Defendant sought to advance a contradictory and ambivalent position which completely detracts from the credibility of the case they seek to project.

In paragraphs 4 and 5 of their defence, while agreeing they had a relationship with Plaintiff and that they gave the instructions for the services, they claimed they have paid for the services without providing evidence showing when they paid for the services and the amount; if any, they allegedly paid. In paragraphs 6 and 7, they agreed that the beneficiaries of the services were their staff but at the same time they again "denied most of the beneficiaries pleaded in the Plaintiff's statement of claim" without denoting or stating the beneficiaries that are their staff and those that are not their staff.

The bottom line is that the case presented by the Plaintiff with respect to the issuing of tickets and procurement of visas for staff and beneficiaries of Defendant encapsulated in the invoices issued has not been challenged or impugned at all. The law is that where evidence given by a witness is not contradicted by any other admissible evidence, the trial judge is bound to accept and act on that evidence, even if it had been minimal evidence. See **Adeleke V. Iyanda (2001)13 N.W.L.R (pt.729)1 at 22-23 A-C** per Uwaifo J.S.C. Where therefore evidence is given by a party as in this case and it is neither challenged or debunked by the adversary or other party who has the opportunity to do so, and such evidence proferred is not inherently incredible and does not offend any rational conclusion or state of physical things, such evidence remains good and credible which should be relied on by the trial judge who should ascribe credibility and probative value to such evidence. See **Ebunwe V. State (2011)7 N.W.L.R (pt.1246)402 at 416; Gana V. FRN (2018)LPELR-44344(SC) and Kopek Construction Ltd V. Ekisola (2010)3 N.W.L.R (pt.1182)618 at 663 C-D.**

The Defendant here having elected not to challenge or impugn the case made out by Plaintiff with respect to their indebtedness, the implication is that they accept the truth of the matter as led in evidence. See **Oforlele V. State (2000)12 N.W.L.R (pt.681)415 at 436.** In this case the Plaintiff vide **Exhibit P6a** dated 18th June, 2015 wrote a letter of demand for the payment of these outstanding sums; the Defendant received this letter but did not respond to the demand. Again the Plaintiff's solicitors vide **Exhibit P6b** dated 1st July, 2015 wrote another letter of demand which the Defendant acknowledged receipt of but still refused to make or live up to its contractual obligations. I note that in **Exhibit P7,** the email exchanges between PW1and officials of Defendant dated 7th January, 2015 and 26th March, 2015 the Defendant in response to the demands of Plaintiff acknowledged their indebtedness and appear to be pleading for time to settle this outstanding indebtedness for services rendered by Plaintiff.

On the whole, it is clear that on the evidence, the Plaintiff has creditably established or shown that it rendered services to Defendant which was not paid for despite the demands made. The Plaintiff in relief (1) may have claimed the sum of **₦19,607,590**(Nineteen Million, Six Hundred and Seven Thousand, Five Hundred and Ninety Naira) as the total indebtedness of the Defendant for tickets issued and services rendered, but what the Plaintiff has been able to creditably prove or establish through the invoices issued and served on Defendant vide **Exhibits P2, P3 and P4** is the sum of **₦17,204,400** which is what they can properly and legally claim in this case.

In law, it is settled that where a party claims a particular amount but was able to prove a lesser amount than he claimed, the court has the power to award the lesser amount proved. See **Simton V. Pamil (2001)13 W.R.N 55 CA.** It is equally important to add that it is also settled law that a party is only allowed to establish what he pleaded and to obtain only such relief that was prayed for on the basis of his pleadings and creditably established by evidence. See **Ajikanle V. Yusuf (2000)2 N.W.L.R (pt.1071)301.**

As I round up, I need to state that there transactions were concluded as far back as 2013 when the services were rendered. It is now getting to seven (7) years and the Defendant has not lived up to its commitments under the agreement. Agreements will be useless if parties do not live up to the terms of the agreement they mutually agreed will guide the relationship and binding on them. It cannot be right or fair that the Defendant having enjoyed the benefit of the tickets issued and visas procured have blatantly and for too long shirked from the responsibilities or burden imposed by the agreement by paying for the services. One can only imagine the impact on the economics of the business of Plaintiff by the failure to pay these

huge sums. The dictates of justice demands they pay for these services without any further delay. It is not only a legal but also moral imperative. I say no more.

Now with respect to the post Judgment interest of 20% on the Judgment sum, the rules of court under **Order 39 Rule 4** allows for an award of interest at a rate not less than 10% per annum to be paid upon any Judgment. Having granted fully the proved amounts due to the Plaintiff, I consider the 20% claim of interest on the Judgment sum on the high side. The award of interest, even if discretionary cannot be done at large, neither is it a windfall. It must be granted judicially and judiciously in the context of the peculiar facts of each case. Having carefully weighed the facts of this case, I consider that the claim of interest however at the rate of 10% per annum should be granted on the Judgment. That appears to me a fair recompense in the circumstances.

On the whole, the sole issue raised is substantially answered in the affirmative in favour of the Plaintiff. For the avoidance of doubt, I hereby enter Judgment for the Plaintiff against the Defendant as follows:

1. **The Sum of N17,204,400(Seventeen Million, Two Hundred and Four Thousand, Four Hundred Naira Only) being the total debt owed to the Plaintiff by the Defendant for tickets issued and services rendered to the Defendant throughout the year 2013.**

2. **I award 10% post Judgment interest per annum on the above Judgement sum from today until the Judgment debt is fully liquidated.**

3. **I award cost assessed in the sum of N30,000 payable by Defendant to Plaintiff.**

**…….....**
**Hon. Justice A.I. Kutigi**

**Appearances:**

1. **Victor Emenike, Esq., for the Plaintiff**

2. **K.A. Achabo, Esq with H.A Chaha, Esq., for the Defendant.**