

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,  
HOLDEN AT APO, ABUJA.**

**ON THURSDAY THE 18TH DAY OF NOVEMBER 2021  
BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.  
(JUDGE.)**

**SUIT NO. FCT/ HC/CV/208/2021**

**BETWEEN**

**MRS MARYAM BAYAWO-----CLAIMANT**

**AND**

**TRAVELARK LIMITED**

**MISHELIA IFEOLUWASEYI }----- DEFENDANTS**

**MISHELIA JOSEPH**

**[RULING.]**

By Writ of Summons dated and filed on the 28<sup>th</sup> of January,  
2021 brought under the Undefended List Procedure,

the plaintiff claims against the defendants as follows:

1. An Order directing the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Defendants to jointly or severally pay the Claimant the sum of ₦5,600,000.00 (Five Million, Six Hundred Thousand Naira) only being the sum owed the Claimant by the Defendants.
2. Interest of 10% on the judgment sum from the date of judgment till the final payment of sum.
3. And for such other orders as this Honourable Court may fit to make in the circumstances of this case.

The writ of summons is supported by an affidavit as required by the Rules of this Honourable Court, deposed to by the Claimant herself,

The summary or the substance of the affidavit is essentially that the Claimant had approached the Defendants in 2019 for the procurement of a Canadian Permanent Residency. The 1<sup>st</sup> Defendant is a travel agency duly registered as a travel Agency ; the 2<sup>nd</sup> Defendant is the Managing Director of the 1<sup>st</sup> Defendant while the 3<sup>rd</sup> Defendant is the Chief Executive Officer of the 1<sup>st</sup> Defendant. The Defendants billed the Claimant the sum of ₦2,800,000.00 (Two Million, Eight Hundred Thousand Naira) only. The Claimant made payment of ₦1,450,000.00 (One Million, Four Hundred and fifty Thousand Naira) only.

After a period of time, the Defendants persuaded the Claimant to switch over to the Canadian Work Permit and

gave her an updated invoice for payment. Upon receiving further clarification from the Defendants with regard to the Canadian Work Permit in response to her inquiries to that effect, the Claimant proceeded to make full payment of ₦5,600,000.00 (Five Million, Six Hundred Thousand Naira) only to the Defendants. After she made this payment, the Defendants sent letters which indicated that her application had been approved by the Canadian embassy which were followed by letters of employment from two Canadian companies among other documents.

The Claimant received two letters from the Canadian visa collection centre to the effect that her application for Canadian visa and that of her spouse were rejected because the documents submitted in support of the application were fraudulent further that there was no evidence that any application for visa was made for any of her four children.

Following this development, the Claimant stated that she reached out to the Defendants' but their attitude, necessitated her briefing her solicitor to demand for a refund of the sum of ₦5,600,000.00 (Five Million, Six Hundred Thousand Naira) only which she had paid to the Defendants. She insisted that the Defendants had been evasive since then and that the Defendants had no defence to this suit and urged this Honourable Court to hear this suit under the undefended list.

In support of her affidavit, the Claimant annexed a number of exhibits which include: a copy of the acknowledgement of the payment of ₦1,450,000.00 marked as **Exhibit 1**; a copy of the updated payment invoice for Canadian work permit

marked as **Exhibit 2**; a copy of the email of inquiry from the Claimant to the Defendants demanding for further information on the Canadian work permit marked as **Exhibit 3**; a copy of the acknowledgement for the payment of ₦5,600,000.00 marked as **Exhibit 4**; letters from the Defendants to the Claimant notifying her that her application had been approved marked as **Exhibits 5 and 6**; letter of employment for the Claimant and her husband marked as **Exhibit 7 and 8**; an upfront medical report marked as **Exhibit 9**; a letter of visa collection dated 14<sup>th</sup> of November, 2020 marked as **Exhibit 10**; letters from the Canadian Embassy informing her of the unsuccessful outcome of her visa application and the reasons for the refusal marked as **Exhibits 11 and 12**; and the letter from the Claimant's solicitors demanding from the Defendants a refund of the ₦5,600,000.00 the Claimant paid to them marked as **Exhibit 13**. This court was urged to enter judgment based on the reasons as contained in the 24 paragraphs affidavit in support.

In response and pursuant to Order 21 Rule 3(1) of the Rules of Court, the defendants filed a notice of intention to defend and an affidavit of 18 paragraphs deposed to by the 2<sup>nd</sup> defendant disclosing a defence on the merit with one annexure marked as Exhibits A.

The defendants states that the 1<sup>st</sup> Defendant indeed received the sum of ₦5,600,000.00 (Five Million, Six Hundred Thousand Naira) only from the claimant for the purpose of processing a Canadian permanent residency but

that the 1<sup>st</sup> Defendant was not able to complete the process of permanent residency because the Claimant was unable to meet up with the English language test requirement and was unable to obtain the transcripts of her academic results from Abubakar Tafawa Balewa University (ATBU) Bauchi, from where she graduated. It was this deficiency, that occasioned the option of processing the Canadian work permit in October, 2019.

The deponent further stated that since her company did not possess the professional capacity in the processing of Canadian work permit, they outsourced that job to a third party, a consulting firm she named as Castle Web Limited. That all payments which the Claimant made to the 1<sup>st</sup> Defendant were transferred to this third party. To prove this assertion, statement of account of the 1<sup>st</sup> Defendant is attached and marked as **Exhibit A**.

And that all the documents which required the Claimant's thumbprints forwarded to the Claimant were sent to the Defendants by the said Castle Web Limited, that in its determination to get to the root of the entire issue, the 1<sup>st</sup> Defendant wrote a petition to the Inspector-General of Police for detailed investigation. She also claimed that the Claimant was aware of this fact and that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants being persons distinct from the 1<sup>st</sup> Defendant were not liable for any action which the 1<sup>st</sup> Defendant had executed and, as such, were not proper parties before this Honourable Court. that from the facts disclosed in the affidavit in support of the notice of intention to defend, it was necessary to join the said Castle Web Limited as party to this suit for these reasons, that the suit was contentious in

nature and ought to be heard on the general cause list. urged the Court to move same from the undefended list to the general cause list.

Learned counsel on both sides addressed the court relying on the filed processes. Learned counsel to the defendants has argued that the matter on the state of contested assertion of facts be transferred to the general cause list for proper ventilation. On the other hand, the learned counsel for the plaintiff has urged that the court enters judgment in favour of the plaintiff. I have given background of the facts of the case and the essence of the position of parties without been too detailed. In my view, only one issue arises for determination and that is whether in line with the provisions of Order 21 Rule 3(1), the affidavit of defendants discloses a defence on the merits to warrant the transfer of the matter to the General Cause List. Let me state quickly that I am not unmindful of the fact that this is not the appropriate stage to evaluate the substance of the defence put forward. All that the court is required or called upon to do at this stage is to see whether by the defence, there are factual or legal issues raised which are not clear and which requires clarification through hearing or require oral evidence.

The moment there are sufficiently ambiguous matters or issues of facts in contest or contradictions requiring further clarification, then the court exercising sound wisdom ought to hear parties at a hearing in the interest of justice. The court is equally circumspect and must ensure that a defendant who has no genuine defence to the action is not allowed to dribble or frustrate the plaintiff out of the judgment he is legitimately entitled to by delay tactics aimed at not offering any real defence to the action but by simply gaining time within which to continue to postpone his obligations or indebtedness see **FESCO (NIG.) LTD. v. NASCO RICE and CEREAL PROCESSING CO. LTD. (1998) 11 NWLR (Pt.573) 227 at 233.** Here I have carefully considered the writ issued against the defendants, the affidavit and in particular a copy of the email of inquiry from the Claimant to the Defendants demanding for further information on the Canadian work permit marked as **Exhibit 1**; the statements of account Exhibit A, letters from the Defendants to the Claimant notifying her that her application had been approved marked as **Exhibits 5 and 6**. I have carefully read all the exhibits. Now the defendants in their affidavit disclosing a defence on the merits vide paragraphs 6 and 7 aver that in my view, there must be some explanation as to why there was outsourcing in the first place One would have logically

expected that if parties indeed agreed to outsource a firm with professional expertise why waste the said professional agency not sued along as defendants. There has to be some explanation as to it all It is obvious that in such unclear circumstances, necessary clarification to all these, I believe it would be most unsafe in such very fluid situation or circumstances to proceed to enter judgment as requested by the plaintiff. This court shall, God willing and at the appropriate time ensure that justice is done to deserving parties but for now it must be circumspect and proceed with abundance of caution. For these reasons, I hold that the affidavit of defendants has raised triable issues requiring the taking of evidence in the overall interest of justice. I therefore order that the case be transferred to the General Cause List. pursuant to the provisions of Order 21 Rule 3 (2), pleadings are hereby ordered.

HON JUSTICE F. E. MESSIRI  
[HON.JUDGE]

