

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

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU, GODSPOWER EBAHOR & ORS.

COURT NO: 6

SUIT NO: FCT/HC/CV/157/2015

BETWEEN:

1. MISS ANU OLOTU

2. MASTER NIFEMI OLOTU

(INFANTS SUING BY THEIR NEXT FRIEND- MR BOLA OLOTU.....CLAIMANTS

VS

ARIK AIR LIMITED.....DEFENDANT

JUDGMENT

By a Writ of Summons filed on 13/11/2015, the Claimants are praying for the following reliefs against the Defendant:-

- (i) A Declaration that the Defendant's Acts/Omission on the 15/2/2014 vide the refusal to allow the 1st plaintiff to board the Arik Air Flight Ibadan –Abuja even after her father had paid for Ticket No. 7252105291697 and was issued payment Slip No. No. K23ED863 of 8/2/2014 is a clear breach of the Terms of Agreement between the Plaintiff and the Defendant.
- (ii) A Declaration that the 1st Plaintiff by virtue of the payment

made same 8/2/2014 was entitled to board the Flight IBD-ABJ on 15/2/2014 without any further payment or purchase of any other Ticket or any hindrance from the Defendant and/or agents.

- (iii) A Declaration that the Defendant's acts/omission on the 15/2/2014 vide the refusal to allow the 1st Plaintiff to board the Arik Air Flight Ibadan-Abuja without any reasonable justification caused embarrassment, disgrace, shame mental trauma etc to the Plaintiffs.
- (iv) An Order of Court that the Defendant publish an unreserved apology to the Plaintiffs in two National Newspapers for the mental trauma, disgrace, embarrassment and ridicule which they suffered as a result of the Defendants Acts/Omission on the 15/2/2014.
- (v) Special damages in the total sum of ₦51,828:00 (Fifty One Thousand Eight Hundred and Twenty Eight Naira) being ₦24,865:00 (Twenty Four Thousand Eight Hundred and Sixty Five Naira) as the cost of the unused Ticket No. 7252105291697 and the sum of ₦26,963:00 (Twenty Six Thousand Nine Hundred and Sixty Three Naira) being the cost of the additional Ticket No. 7252104326461 purchased by the Plaintiffs on the said 15th February, 2015.
- (vi) The sum of ₦20,000,000.00 (Twenty Million Naira) against the Defendant for exemplary and aggravated damages for pains,

great fear, mental, psychological and physical tension, apprehension, embarrassment, ridicule and degrading damages treatment meted out to the Plaintiffs by the Defendant.

(vii) The sum of ₦100,000,000.00 (One Hundred Million Naira) against the Defendant being mental distress damages arising from the Defendant's breach of contract entered between the Plaintiffs and the Defendant including inconvenience caused.

(viii) Cost of this Suit as may be accessed by this Honourable Court.

The pleadings and other court processes was served on the Defendant on 21/7/2016. On the other hand the Defendant did not file any defence.

On 2/3/2016, the Claimant through their next friend Bola Olotu, testified as PW1 and adopted all the deposition of 33 Paragraphs contained in Witness Statement on Oath as his oral testimony, in proof of the Claimant's case, in urging the court to enter Judgment in favour of the Claimant.

In course of the Examination-In-Chief of the PW1, the following documents were tendered and received in evidence as Exhibits.

- (1) Two payment slips issued by the Defendant, Nos-KCBFC94C AND K23ED863 dated 15/2/2014 and 15/2/2014 as Exhibit "A1"- "A2".
- (2) A copy of the Electronic Ticket No:7252104326461 issued by Defendant for 15/2/2014 in favour of 1st Claimant – Exhibit "B".

- (3) Copy of Letter dated 10/3/2014 addressed to the Defendant Titled Breach of Contract to carry passenger by Air on 15/2/2014 Re: Miss Anu Olotu & Nifemi Olotu as Exhibit "C1" – "C4".
- (4) A letter dated 9/3/2015, Titled "Authority to Acts as Next Friend and Representation is Exhibit "D".

At the next adjourned date 11/4/2016, when the matter came up for cross-examination of PW1, G.A. Okoro Esq for Defendant sought the indulgence of court to address it on the issue of jurisdiction based on Section 251 (1) (k) of 1999 Constitution (As Amended). Consequently, the court directed counsel to file address before the court. On 24/11/2016, the Claimant counsel adopted his Written Address, and the court deemed the response of the Defendant as duly adopted. The Court on 13/2/2017 in a Considered Ruling, dismissed the application of the Defendant that it has jurisdiction to hear and determine this case, which is simply based on breach of contract which did not mature into actual carriage of the passenger by Airline.

Thereafter, the Defendant Counsel failed to appear to continue with the case for cross-examination of PW1.

On 29/10/2017, the PW1 was discharged on application of the Claimant Counsel and case adjourned for adoption of Final Address, after Defendant was foreclosed from Defence.

Before, proceeding to adopt their Final Address, the Defendant filed a Motion on Notice dated and filed 10/2/2021, seeking for an Order

suspending proceeding in the Suit. In a a considered Ruling delivered on 22/6/2022, the application of the Defendant was dismissed.

On 22/9/2022, both counsel for the parties adopted their respective Final Addresses, in urging this court to grant and/or refuse the claim of the Claimants.

Having carefully considered the pleadings and unchallenged evidence of the Claimant, the court finds that only three issues calls for determination:-

- (1) Whether there exist between the parties a contract capable of being enforced by this court.
- (2) Whether or not there is a breach of contract.
- (3) If the answer to (1) & (2) above, is in the affirmative, whether the Claimant is entitled to damages.

It must be noted that in this instant case, the Defendant was duly served with the Writ of Summons and other processes of court, but did not file any defence to the claim of the Claimant. Rather, filed two separate Interlocutory applications, which the court in a considered Ruling dismissed the applications. It is trite law that where the evidence is unchallenged and uncontroverted, the court is obliged to accept such evidence as true; correct and act on it. See case of Momah Vs. Enterprise Bank Ltd (2015) LPELR – 24832 (CA), where the court held.

“The law is settled that where evidence given by a party to any proceedings was not challenged by the opposite party, who had the

opportunity to do so, it is always open to the court seized of the proceedings to act on the unchallenged evidence before it”.

I am, however, quick to add that, the minimum evidence must be credible enough for court to act on. See *Zeneca Ltd Vs Jagal Pharm Ltd* (2007) All FWLR (PT. 387) 938 @ 950 Para F – G.

Further, the Claimant seeks declaratory reliefs against the Defendant. It is law that a party seeking for a declaratory reliefs must rely on the strength of his case and not on the weakness of the case of the Defendant. See *Orlu Vs Gogo – Ante* (2010) All FWLR (PT. 524). Thus the Claimant must discharge the burden of proof imposed by Sections 131 – 134 of the Evidence Act.

It is on the basis of the unchallenged and uncontroverted evidence of the Claimant that I shall determine whether the claims succeed. I now turn to the issues distilled above as those that call for determination;

Issue 1, whether there exist between the parties a contract capable of being enforced by this court; the elements of a valid contract has been held to be;

- (1) Offer
- (2) Acceptance
- (3) Consideration
- (4) Intention to enter into a contract and capacity to enter a contract.

See *BF1 Group Vs B.P.E* (2000) All FWLR (PT. 416) 1915 @ 1937 – 1938 Para H – B.

In this instant case, it is the evidence of the Claimants through their next friend – PW1 that there was a contract between the Claimants and the Defendant, when they purchased tickets on the Defendant's Airline to fly them from Ibadan to Abuja on 15/2/2014. The said tickets issued are; Nos. 7252105291697 and 7252105291699 for 1st/2nd Claimants, on payment of the total sum of ₦24,865.00 (Twenty Four Thousand, Eight Hundred and Sixty Five Naira) each through Arik payment Slip Nos. KCBF94C and K23ED863 dated 8/2/2016. That on the said dates of travel 15/2/2014, at the Arik – Air Checking Counter in Ibadan, the 1st Claimant was denied entry into the flight on the grounds that the tickets were issued in the name of the 2nd Claimant, and despite pleas to the Arik Staff on ground the 1st Claimant was refused entry into the flight and caused the Claimant to be traumatized. In order to avert not flying, another ticket was purchased for the 1st Claimant to fly with the 2nd Claimant. That the failure to fly the Claimant on the ticket purchased, was a breach of a valid contract, entitling them to damages.

A careful perusal of the testimony of the PW1 and the documentary evidence tendered in proof of this case, Exhibits "A1" – "A2" – Payment slips issued by the Defendant, Exhibits "B"- Electronic Ticket issued to the Claimants by the Defendants; Exhibits :C1 – C4" a Letter to the Defendant by the Claimant on breach of Contract to fly, the Claimants, Exhibit "D" – a Letter of Authority to sue as next friend; all gives credence to the fact that there was indeed an establish contract to fly the Claimants by the Defendant. These evidence of PW1 was never challenged or controverted by the Defendant. The court finds that the elements stated in the BF1

Group Vs B.P.E. case (Supra) are found to be present, consequently, resolve this issue 1 in favour of the Claimants.

On Issue 2, whether or not there is a breach of Contract. It is trite that a breach of Contract is the failure of a party to perform all or any of the terms of a contract. See Associated Bus Co. Plc Vs Ashimolowo (2017) LPELR –45714 (CA).

In the course of this Judgment, I found that there exist between the parties, Claimant and Defendant, and from the documentary evidence, contract to fly the Claimants from Ibadan to Abuja on 15/4/2014, on performance of the Claimants vide payment of Tickets and issuance of same is indeed a completed act. The Claimant through their Solicitors wrote vide Exhibit "C1" – "C4" to the demands on account of breach of contract, but failed to react or respond to it. This to say the least is callous on the part of the Defendants. In all of these, the Defendant failed to challenge this piece of evidence. In consequence the court resolves this Issue 2 in favour of the Claimants.

On Issue 3, if the answer to (1) & (2) above is in the affirmative, whether the Claimants are entitled to damages.

Having answered Issues 1 & 2 in the affirmative, this court will proceed to considered whether or not the Claimants are entitled to the reliefs sought.

On the Reliefs ofthe Claimant, Claimant seek declaratory reliefs in (i), (ii) and (iii) of the claim, and I have earlier stated that the Claimant must rely onthe strength of his case. In course of this judgment, and Ruling of this

court delivered on 13/2/2017, this court held that it has jurisdiction on a simple contract and that there is a valid contract establish between the Claimants and Defendants and that the Defendants are in breach of the contract to fly the Claimants on account of their purchased of tickets and refusal to fly, until an additional ticket was purchased. Consequently I hold that the Defendants are liable to Claimants for breach of contract and Reliefs 1, 2, 3 enures in their favour.

On Relief iv, an order that the Defendant publish unreserved apology to the Claimants in two National Newspapers, this court have stated that the Claimants must rely on its strength and not on weakness of the Defendants. In this instance, the Claimants have not furnished sufficient evidence to warrant the grant of this relief. It is hereby refused.

On the Relief v, special damages for the total sum of ₦51,828.00 (Fifty One Thousand Eight Hundred and Twenty Eight Naira) being cost of unused tickets and additional tickets purchased on 15/2/2015.

It is the law that special damages, unlike general damages, needs to be specifically pleaded and strictly proved. See cases of *ISC Service Ltd Vs Genak Continental Ltd* (2006) LPELR-7662 (CA). In *UTB Vs Ozoemena* (2007) NWLR (PT. 1022) 448 @ 453 (SC), the Apex Court, held that there is strict proof of special damages where there is a production of receipt of evidence of payments without oral evidence of the marker, as have been done in some cases”

I have looked at Exhibit “A1” – “A2”, “B” and also note the specific pleadings of the particulars by the Claimant in their Statement of Claim and

all of these not challenged by the Defendant, in consequence, the court finds that the Claimant have been able to establish their entitlement to this relief, accordingly Relief v is hereby granted in favour of the Claimants

On Relief vi, the court finds from the evidence that the Claimant have not shown sufficiently on the strength of their case, right to be entitled to this reliefs, accordingly Relief vi is refused.

On Relief vii, claim for ₦100,000,000.00 (One Hundred Million Naira) for breach of Contract. In this instant, the court having found that there is a breach and the resultant effect on the Claimants mentally, as the traumatization on their person being young children are entitled to this relief, but subject to the exercise of the court's discretion.

From all of these, the Claimants reliefs succeed in parts and judgment is entered as follows:-

- (1) Reliefs i, ii and iii are hereby granted as prayed.
- (2) Relief iv fails and is hereby dismissed.
- (3) Relief v, the Defendant is ordered to pay to the Claimant, the total sum of ₦51,828.00 (Fifty-One Thousand, Eight Hundred and Twenty-Eight Naira being cost of unused ticket and additional tickets.
- (4) Relief vi, fails and is hereby dismissed.
- (5) Relief vii, the Defendant is hereby ordered to pay the sum of ₦1,000,000.00 (One Million Naira to the Claimants being mental

distress, damages arising from the Defendants breach of Contract between the Claimant and Defendants.

- (6) Defendant is ordered to pay the sum of ₦100,000.00 (One Hundred Thousand Naira as cost of the Suit to the Claimant.

This is the judgment of the court.

Signed
HON. JUSTICE C.O. AGBAZA
Presiding Judge
22/11/2022

APPEARANCE:

KARINA WILLIAMS ESQ WITH PHILEMON .A. ACHURA ESQ - FOR THE
1ST/2ND CLAIMANTS

O.O. DURUAKU ESQ FOR THE DEFENDANT