IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA

JUDGE

SUIT NO.: FCT/HC/CV/0364/17

BETWEEN:

1. **OKWUDILI ANOZIE ------- PLAINTIFFS**
2. **UZOMA ANOZIE**
3. **CHRISTABLE ANOZIE**
   (SUING THROUGH HER PARENTS, THE 1ST AND 2ND PLAINTIFFS.)
4. **CHUKWUEMEKA ANOZIE**
   (SUING THROUGH HER PARENTS, THE 1ST AND 2ND PLAINTIFFS.)
5. **KAOSISOCHUKWU ANOZIE**
   (SUING THROUGH HIS PARENTS, THE 1ST AND 2ND PLAINTIFFS.)
6. **KATE EGBEJIOGU**

AND

EMIRATES AIRLINE ---------- DEFENDANT

JUDGMENT

The Plaintiff Okwudili Anozie planned vacation for his family to Hong Kong. His mother in law was to be part of the journey. He purchased tickets as far back as June 2016. They were to live Abuja on the ---August, 2016 but they did not leave that day

because the mother in law who had some previous health challenges- hypertension and diabetic took ill. She was hospitalized at the National hospital. The Plaintiff informed the Airline-Emirate and they changed the Travel date to 25/8/19.

After the due notification and the payment of the difference in travel far as at the day through- payment maser Card from his GTbank Account they were rescheduled to travel on the 25/8/16. But on the 24/8/16 the Defendants notified the Plaintiffs that the airline had shifted forward the travel time from 18:35 to 17:00. That is 25 minutes earlier than scheduled. The Plaintiff stated that that time was not convenient to them because it will difficult for all the 6 Applicants to be at the airport at that time. They end up not going to the airport meanwhile the 1st Plaintiff had earlier told the Defendant that they have booked medical appointment in Hong Kong for the 6th Respondent on the 26/8/16.

He alleged the usual amount paid for change of travel date is $50 US Dollars per passenger. But that the Defendant deducted $2351.81 from his GTBank Account No. 0022750029. A new booking was made which was for the 25/8/16 travel date. He called the Defendant challenging what he called excesscive deduction in the new fare price. When he did not receive any response from the Defendant, he asked his Solicitor to write to Defendant protesting the deductions. The letter was dated 11/8/16 and received on 16/8/16. In it the 1st Plaintiff threatened to take legal action after 7 days of receipt of the letter. That means that the Defendant was to respond on or before 23/8/16 meanwhile the travel date was still 25/8/16. The Defendant acknowledged receipt of the letter on 17/8/16 promising that they will reply the letter. And on the 24/8/16 they did informed the Plaintiffs about the change in the travel time from 18:35 to 17:00. That is about 25 minutes earlier than scheduled.

The Plaintiffs said it will not be convenient for the 6th Plaintiff. He alleged the Defendant refused to reply the letter from his Solicitor after 7 days so Plaintiff instructed their Solicitor to cancel the ticket and asked for a refund within 48 hours of receipt of the instruction.

According to the 1st Plaintiff the reasoning behind the cancellation that charging more than $300 US Dollars because of the change of date. Breach for change of travel time from 18:35 to 17:00.
On 24/8/16 they Defendant sent a mail stating why the change was more than $300 US Dollars which was that the tickets were cancelled and reissued at the prevailing rate of N316 per $1 US Dollars fully paid. He claimed that the cancellation and reissue was to enable the Defendant perpetrate the fraud of double charging the Plaintiffs for "the US Dollars denominated tickets at the new prevailing rate of N316 per $1 US Dollar.
They claimed that the cancellation of the trip had caused them untold hardship especially on the 6th Plaintiff who could not attend the medical appointment in Hong Kong. That the unilateral changing of the flight from 18:35 to 17: 00 pm is unfair, insensitive and callous. It was based on all these he instituted this action.
The Plaintiffs claim against the Defendant as follows:

1. The sum of USD$7,149.19 which is the equivalent of the N1,429,383.00 at the then prevailing exchange of N200 to USD$1, paid by the Plaintiffs to the Defendant for the unused flight tickets for their cancelled Abuja to Hong Kong trip.
2. The sum of USD$2,352.81 paid by the Plaintiffs as fare difference following their change of travel date for which the sum of N870,540.87 was charged on the 1st Plaintiffs ATM debit Card linked to his Guaranty Trust Bank account number 0022750029.
3. Interest of 22% per annum on the USD$7,149.19 and USD$2,352.81 from the 26th of August, 2016, when refund thereof became due, till the day of Judgment and interest, at the prevailing Bank rate, on the Judgment sum from the date of Judgment till full liquidation of the Judgment sum.
4. The Sum of N150,000,000.00 as general damages for breach of contract.
5. The sum of N500, 000,000.00 as punitive/exemplary damages for callously and unrepentantly over charging the Plaintiffs for

their tickets date change and treating the Plaintiffs, who are the Nigerian Customers with disdain.

6. Cost of this Suit.

On their part the Defendant had stated that by the claims of ticket bought by the Plaintiff they were to travel within the specified period. That since the Plaintiff changed their travel date that the only option was for reissue of the ticket and cancellation of the previous.

Again that it was not because of the 25 minutes shift that made the Plaintiffs to cancel the trip; rather it was because the Plaintiff could not secure the requisite visas. Again that the charge or amount charged for the tickets is the appropriate amount going by the Airline policy in that regard. That the Defendant did not over charge or defraud the Plaintiffs as they have been accused of erroneously by Plaintiffs. That they followed due process in the transaction with Plaintiff. They also pointed out that while they were trying to sought out the problem with the Plaintiffs, the 1st Plaintiff was busy calling the Abu Dhabi office of the Defendant. They claimed that the informed the 1st Plaintiff of the changes and the implication of change of date of travel. That it was after bthat that the 1st Plaintiff paid the money from his Master Card Account at GTBank. That they communicated to the Defendant on 17/8/16 a week before the travel date about the change in the in ternary not on 24/8/16 they tendered the E-mail sent to 1st Plaintiff. That the change was in total conformity with their provision of Article 9.1.1 of its condition of carriage. That amount charged was for both the change of travel date and reissuance which cover the difference in the amount they paid for the earlier ticket and the later ticket at the prevailing exchange rate (Naira to US Dollars in accordance with Article 4.4 of the condition of carriage. The Plaintiff were informed of all those and they accepted it. That the change is not static but is based on Cost of aviation fuel as at the time, issuance and sundry expenses/Services applicable on the date the Plaintiff choose to

travel. That is not based on the rate of the day they bought the ticket initially.
The Defendant denied all the claims and contends in paragraph 38 of the claim and they urged Court to dismiss the Suit with substantial cost as the Suit is gold-digging, frivolous and lacking in merit.
The parties called 1 witness each. Each party supported its case with documents. The Plaintiff tendered 11 documents and defendant tendered 2 documents, all making a total of 13 documents marked as Exhibit 1-13. The Defendant had informed the Plaintiff that they will raised an objection in their final address. In their written address the Defendant raised 2 issues which are:

1. Whether 6th Plaintiff is still a person capable of suing and been sued.
2. Whether Plaintiff have proved their case upon preponderance of evidence therefore entitled to Reliefs Sought in their claim and amended claim.

ON ISSUE NO.1
the Defendant submitted that the Plaintiff ought to have filed to substitute the 6th Defendant with their beneficiaries of her estate. Since she had died in the cause of the Suit as it is only the living that can maintain a Suit –to sue and be sued. That dead persons are no longer legal persons and do not have legal personality. They relied on the case of
Cief John Ehimigbai VS Omokhafe s Chief John Ilavgba Ojelboyi Esekhomo (1993) LPELR-2649(SC).

They submitted that the 6th Plaintiff cause of action against Defendant ceases upon her death and as such her claim ought to be dismissed.
ON ISSUE NO. 2
On the $2,352.81 being on overcharge the defendant referred to their fair conditions under the title: “charges before Departure” They submitted flight ticket prices do not remain static but it fluctuates. That they advised the 1st plaintiff that fare prices are

not guaranteed as reflected in Exhibit 13. That the currency exchange rate was not the same for both dates. That as at 9/8/16 it was N316 to $1US Dollars. That when the ticket was reissued the prevailing rate was applied and the Plaintiffs changed the different. That the Plaintiff made the change with his ATM Card and his Bank surcharge him N380 instead of N316 to $1 US Dollars. This led to the wide margin in the payment for the 1st Plaintiff. That is a matter between the Plaintiff and his Defendant. The Plaintiff should recourse to his Bank GTB. Again the new booking the Plaintiff referred to compare prices of Air fare is for a totally different class Economy from the Original booking made by Plaintiffs that original Booking was a “flex Economy” that the subsequent booking was a”Economy Saver” which attract different fares which give great value when youn travel during lower-demand period. That the “flex” cost more than Savers. That the prices paid depends on different categories of economy depending on the period when one bought or made his booking.

That the Plaintiff did not show how the Defendant breached the Contract they entered into with the Plaintiff to entitled them to claim of general damages as well as the punitive and exemplary damages. They Plaintiff booked their flight, subsequently requested to change date and they were advised about the surcharges. They paid and the new dates. That the Defendant did all it is obligated to do. That it was left for the Plaintiffs to use the ticket but they failed to do so. The Plaintiff were not denied boarding the flight. They decided not to present themselves for carriage to Hong Kong. That is not the fault of the Defendant. Plaintiff never proved that they have requisite Visas to travel to Hong Kong. The Visas the Plaintiffs presented does not meet the required standard for any probative value to be placed on them. That the Suit of Plaintiffs is only an invitation for Court to interfere with the contractual relationship between Plaintiff and Defendant. They urged the Court to resist same. That the parties in this Suit

voluntarily entered into the contract and they are bound by the terms therein. They referred the Court to the case of:
KAYDEE VENTURES CO LTD VS FCT MINISTER & " ORS (2010) "2-3(PT3) I
NIKA FISHING CO.LTD VS LOUINA CORPIS (2008)6-7(PT2)200

That the Plaintiff willingly by agreed to the said terms of contract of carriage. They decided not to show up thereby frustrating the Defendants performance of its obligation. Hence the Defendants not liable in anyway.
That Plaintiffs had not established that there is a breach of a contract. They urged the Court to dismiss the Suit with substantial costs.
Again that Court does not award general damages where there is a breach of Contract. That any award in this case can only ticket in issue or on the specific alleged value of the excess charges. They referred to the case of:
BRITISH AIRWAY VS. ATOYEBI (NO1) (294) 13 NWLR (PT1424) 253

That Plaintiffs have not established that Defendant's conduct were exception to entitle them for the award of punitive or exemplary damages. They urged Court to hold that Plaintiff have not established even ordinary breach of contract to be entitled to damages. Finally the Plaintiff has not been able to adduce enough evidence to establish its case.
The Plaintiffs, in their final written Address they raised 2 issues fo determination with are.

1. Whether the defendant breached the terms of its condition of contract of carriage with the Claimants.
2. Whether the Plaintiffs are entitled to the reliefs sought from this Court.

ON ISSUE NO.1

That Exhibit 2 states that only $50 US Dollars for each ticket. But N870,540.87 was deducted when the change was effected. The Naira equivalent of $2,352.81.
That the overcharging constitutes the breach of the contract with the Plaintiffs as parties cannot resile from the contract Agreement. He referred to case of:
A-G RIVERS VS A-G AKWA IBOM (2011) LPELR-633(SC)

That the grounds relied on by the Plaintiff is applicable to fare difference in event of change in sequence of flight, change of place of departure or directive of travel. That none of the provisions f Article 3.41,4.42 & 3.43 increased the cost of change of date from the prescribed $50 US Dollars per ticket. That the submission of the Defendant is an excuse of the Defendant that the amount arose in a different fare is not tenable. That in Exhibit 8- E-mail of 24/8/16 they said the reason is because of the foreign Exchange differentials. That the Defendant never mentioned issue of fare increase in the letter. They referred to the case of:
ILOYDS DEV.CO LTD & ANOR VS. BULLION TRUST & SECURITIES LTD. (2016) LPELR-41498
That such admission by Defendant cannot be altered by oral testimony. They referred:
M.T.N LTD VS. C-SOKA NIG. LTD (2018) LPELR-44423(CA)
On the ticket being a “flex economy ticket” they submitted that it is unsustainable as the fact were never pleaded and supposed subsequent ticket is not in evidence before the Court. That un-pleaded facts goes to no issue. They referred to the case of:
LEMONE & ORS VS. ALLI-BALOGUN (1975) LPELR-1779(SC)
That Defendant had admitted in Exhibit 8 that the payment was made after using the exchange rate of N200 per $1 US Dollar. And N316 per $1 US Dollar to compute the Naira payment. The Defendant did not deny that the ticket price was denominated in US Dollars and as such it was admitted. He referred to:
BAUCHI STATE HOUSE OF ASSEMBLY & OR VS. GUYABA (2017) LPELR-43295

That at the time of purchase and charge of the amount the Defendants assertion of purported fare increase at the point of change of their ticket is a lie. That Deendant had already gotten the value for the $7,149.19 for the Plaintiffs tickets they seek to change the travel date thereof. That Defendant failed to disclose the particulars of te supposed increase fare in order not to expose its lie of the increased fare which was never pleaded nor any evidence adduced to explain the exact amount that constituted the supposed increased fare for the Plaintiffs new travel date. That this connotes the presumption of withholding evidence by defendant as it knows fully well that disclosure thereof would not be fevourable to it. They urged the Court to so hold and presume pursuant to S.167 E.A 2011 as amended.

That Defendant have raised the issue of increased fare on the Plaintiffs new date of travel the burden of proof rest on it to prove same. They referred to case of:

UNION BANK VS. RAVI ABDUL & CO LTD (2018) LPELR- 46333.

On issue pertaining to cancellation of travel because of none Visa that the Plaintiff have attached the Visas as Exhibit 9. That Visa to Hong Kong are applied for by the resident for and on behalf of the persons are invited to visit the Country and are sent/given to the person. That even if the Plaintiffs cancelled the ticket it does not discredit the purchased ticket or affect the cost of their date change.

On the death of the 6th Plaintiff the Defendant did not plead that fact and evidence was not laid. They referred to:

NWAFOR VS. ANYAEGBUNAM (1978) LPELR-2765(SC)

That by the terms of carriage contract a dead person is immediately entitled to the refund of the full value of their ticket without having to go through the rigors of Litigation as the Defendant had subjected the Plaintiffs too.

On call records-Exhibit 13 it was a document made by the Defendant which is not binding on them. The fact on whether 1st Plaintiff was advised of fluctuating ticket prices has nothing to do with the Plaintiffs cause of action where overcharging was not based on the fluctuating price of tickets but on change in foreign

exchange regime at the time which the Defendant used to exploit its clientele.
That by Exhibit 3 &8 it is obvious that Defendant overcharged the Plaintiff for change of date which is not based on the contract of carriage to warrant any increase of fare since the contract of sale of ticket have been concluded. That the Plaintiff had equally paid full for the tickets -$7,149.19 as against $6,868.93 for available tickets on the 10/8/16 when the effected of travel date.
That te defendant were out to take advantage of the foreign exchange fluctuations to overcharge them. The urged Court to so hold.
ON ISSUE NO.2
On whether the Plaintiffs are entitled to the reliefs, they submitted that the sums referred to in relief 1&2 were not denied. That overcharging the Plaintiff is a breach of the contract of carriage for which the Plaintiff validly terminated and cancelled their tickets. That the plaintiffs are therefore entitled to the Reliefs sought in Reliefs 1& 2. They relied on the case of:
DANTATA & ANOR VS MOHAMMED (2002) LPELR-925(SC)

On the Relief 4& % the Plaintiff submitted that they fall within damages for breach of contact. They referred the case of:
CAMEROON AIRLINE Vs. OTUTUIZU (2011) LPELR- 827 (SC)
That the Plaintiff seeking award of Damages is far overreaching which affected and limited the amount/fund available for them for the holidays. That 1 & 2 Plaintiff suffered to serve the money for the trip. The 6th Defendant lost the opportunity to receive a competent medical care. The 3rd Defendant lost opportunity to fraternize with her Cousins in Hong Kong. That Defendants are liable to pay the da mages for their total disregard and disdain treatment meted to Nigeria Customers.
That once there is a breach of contract, damages flow. They referred to the case of:
EMIRATE AIRLINE VS NGONADI (2013) LPELR- 22053(SC)

On issue of cost which is the 4th Relief they submitted that cost follow events. They relied on the case of:
OGUNDARA & SONS TRADING CO NIG. LTD VS. FIRST BANK

That since the Plaintiff had established that Defendant wrongly overcharged them for the change of date of travel contrary to the terms of contract, they urged the Court to grant the reliefs and award Cost as prayed and enter judgment in their favour.
In the Defendants Reply Address on issue No. one raised by the Plaintiff it submitted the Plaintiff failed to extentively read te Exhibit 2 which provide that the fare and fees charges for a passenger shall be recalculated in accordance with fares and charges in effect on dates on which the date change was made in addition to the charges of $540 US Dollars per passenger. that there was a time line of 54 days between the date of initial bookings and the sub sequent date of request for travel charge and that which date prices of tickets had fluctuated. That what the Defendant did was to recalculate the Plaintiffs fares to reflect the prevailing ticket prices vis-à-vis the original price and charged the Plaintiffs the difference together with the $50 US Dollars fee for the date change. That the defendant changed only that and the Plaintiffs only paid the Naira equivalent of that not that Defendant increased its fare as alleged by Plaintiff. That it was a fare difference between the original date of travel and the subsequent date change.
That the allegation of being overcharged by Plaintiff as shown in Exhibit 3 was based on another booking made by the Plaintiffs which was made by the Plaintiffs which was not in the same class of ticket with Exhibit H1. That Exibit H1 is a economy flex, ticket while Exhibit 3 is economy saver ticket. That from all indications both tickets are not in the same category. That those facts are known to the Plaintiff and need not be specifically pleaded. That Exhibit H1 & H 3 tendered by Plaintiff should be looked into by Court as Courts decision are based on evidence before it. That since the subsequent tickets is already before court in evidence the

Court is bound to look at it not withstanding that Plaintiff said it is not in evidence.
On the Plaintiffs submission on Exhibit H8 and alleged admission by Defendant, the submission is misconceived by Plaintiff as there is nothing ambiguous in Exhibit H8 to warrant inference of admission. That the recalculation took cognizance of price difference between the original date change request. That Exhibit H2 shows that Defendant is entitled to entitled to change price differential as stated above. For the Plaintiff to succeed on overcharge they ought to have presented another tickets of the Defendant in the same class of Exhibit H1 which they booked as there is a dissimilarity between the class of tickets-Exhibit H1 Exhibit 3. That Defendants tickets are Dollar dominated and are converted o Naira when payment is being made in Nigeria. That they cannot use the yardstick a ticket in a different category of economy to alleged an overcharge. Moreover the Defendants ticket prices are exhibited in its website and therefore cannot be manipulated to selectively cheat the Plaintiffs as alleged. The prices are done electronically and computerized and they are not done manually. That the Plaintiffs have not been able to discharge the burden of prove placed on them by the law. To show and establish the overcharge. The Court is therefore urged to dismiss their case. That it is laughable that the Plaintiffs are shifting the onus of the prove that 6th Plaintiff is dead but the issue is of law and not of facts perse. That 1-5 Plaintiffs should have applied that her estate be substituted her in this case. But they did not do so. That her Estate ought to have taken over. They urged Court to disregard the Counsel submission and strike out the name of the 6th Plaintiff in the Suit.
ON ISSUE NO.2- raised by Plaintiff the Defendant in reply submitted that the issue in the case of:
CAMEROON AIRLINE VS. OTUTIZU is not same with the present case. That in that case it was found that the airline is guilty of willful misconduct. That in this case Plaintiffs did not plead willful misconduct or adduced facts to buttress same what they said is on

overcharge which they have not proved. That Plaintiffs were not overcharged as already stated above. That Plaintiffs cannot therefore be entitled to the Relief as claimed as they did not discharge the onus placed on them under the law. They urged Court to so hold.

COURT:

In every Contract agreement it is a common mantra chanted that parties are bound by the terms and condition of the agreement voluntarily entered into. This hold even if such terms turns out to be inconveniencing to the parties or any of them.

It is summed up in the latin maxim “Paeta sunt severanda”. There is equally another mantra which is commonly chanted in a contract of “buying and selling”. That is known as “buyer beware” and in latin maxim it is “cavet emptor”.

So once any party gets involved in a contract agreement which another such parties is bound by the terms and condition of such contract. So also when anyone buys or sell an airline ticket such person whether buying or selling is bound by all the terms set out in such transaction.

Again whenever a company decided to do a promo-sales be it a ticket or other goods as the case maybe, there are obviously conditions set out for such promos. In that case aside from the usual condition for sale as in this case, of tickets, there are additional condition which specifically concerns the promo.

This means that once the promo is concluded the terms and condition thereof ends. It is no secret that promotional sale have condition set out and such sales and benefit thereof are for the specific period. This applies world over. So any party or persons that decides to partake in such promo is bound by such terms which apply within the specified period that is why such promos are usually contain the words terms and conditions apply. It is up to the person who wants to partake in such bonanza to ensure that he get the who inform before going into same. It is also the duty and responsibility of the makers of the promo to ensure that such conditions are set out clearly for would- be promo customers to be aware of so once a decides or opts to such promo, the person is bound by the terms and conditions set out there.

In this case it is not in doubt that the Plaintiffs cashed on the cheapness of the tickets at the time when the Defendants was doing a promotional sale Naturally the tickets were cheaper than ordinary as confirmed by the Plaintiffs and reaffirmed by the defendant. Since it was a promo-ticket, the Plaintiffs are aware that there are terms and conditions attached to the usage one of which is that it must be used within the promo period. The Plaintiff were

since that any failure to use the ticket within that time will obviously attract some charges to the Plaintiff it was only $50 US Dollars per person-$300 US Dollars for 1-6 Plaintiffs. But to the Defendant it was the $50 US Dollars per person plus the recalculated fare in accordance with fares and charges in effect on the date which the date change is made. This recalculation is applicable where there is a change of date of travel outside the promo period. This means, according to the Defendant, that once a passenger changes the date of travel where the ticket is a promo ticket (like that of the Plaintiff in this case) it will attract a recalculation in accordance with the fare and changes. In effect on the date in which the date change is made. This is in addition to the usual $50 US Dollars charge.

To the Plaintiff the Defendant charging them the recalculated fare charges and the $50 US Dollars is an overcharge when they-(Plaintiff) wanted to change their date of travel. It is important to note that the Plaintiffs wanted to change the date of travel 54 days after the purchase of the promo ticket. They applied to change the date of travel based on that change and particularly the date they Plaintiffs decided to eventually travel that affected the amount

charged by the Defendant. It is obvious that between this long 54 days gap that the price of the ticket had fluctuated so much so that asking for a change is almost if not more than purchasing a new ticket. The Plaintiff witness had admitted that he was notified about the possibility of extra charge where there is a change of date of travel because of the nature of the ticket-flexi ticket. It is not a secret that Airlines usually have several categories of economy tickets. The Defendant had in this case exhibited the term and conditions of their ticket sales, particularly the terms of sale of the tickets at the time of purchase of the ticket in issue. In particularly paragraph 3.4 as contained in Paragraph 15 of the statement of defence specifically stated that any tickets.

Article 3.4.1:

“ your ticket is valid for the carriage recorded on the ticket from place of departure……to place of final destination”.

In the same paragraph 3.4 .1(a) it states:

“ your ticket with has lose its validity and will not be honored by us if all the flight coupés are not used in the sequence stated in the ticket”.

Paragraph 3.4.2 :

Money fare are valid only on the dates for the flight shown on the ticket and may not be changed at all or may only be changed if you pay a fare increase to us on authorized agent".

In this case it is imperative to state that the 1st Plaintiff contacted the Defendant when they decided to change their travel date for the reason best known to them. The defendant told them the implication of change of date for travel and inform them about the charges thereof. The Plaintiff paid without complaint though 1st Plaintiff erroneously thought that the charge is only $50 US Dollars per person. He forgot that their ticket was promo ticket –flexi ticket which is in a class of its own with the terms and conditions set therein. But the Defendant told them about the charges and they accepted it and paid the charges deducted accordingly.

The payment was on master card platform where the foreign exchange computation was made based on banking platform used by the master card which is not in control of the Defendant. It is imperative to state that such foreign exchange computation like that of Master card are done at the exchange rate of the period and the billing is according to the Master Card set rules, a condition which their customers like 1st Plaintiff has agreed too. In such a case the

Plaintiff is subjected and bound by their Master Card billing and rate of exchange in that regard.

It is imperative to point out that as there are different categories and classes of ticket, so are there different rules, terms and conditions applicable. These special terms and condition are in addition to the general terms and conditions applicable to users of these classes of tickets.

From all these the question before this Court is, can it be said the Defendant overcharged the Plaintiff in their ticket when the Defendant applied for change of date of travel from 10/8/16 to 25/8/16, so much so that the Defendant should be held liable and responsible to refund the difference in ticket price.

Again can it be said that Plaintiff have established and properly proved that there is an overcharge by the Defendant and as such the Court should grant the Relief sought for the refund of the overcharge and also grant the general and exemplary damages as sought?

It is my humble view that there was no overcharge as claimed and the Plaintiffs has not been able to prove that there was an overcharge. To start with every class of ticket as already stated has

its special terms and conditions guiding it. Again any one one that buys such ticket is bound by the terms and conditions set therein. Pacta sunt servarada-Parties are bound by the terms and condition in the agreement they have voluntarily entered. Again caveat emptor- buyers beware is also applicable in such situation as soon as the Plaintiff decided to buy flexi and actually bought by paying for the tickets on the 17/6/16, they were bound by the terms of agreement of sale of ticket of that class. Again when the same Plaintiff decided to change the date of travel, they were bound by the terms especially when they opted for reissue as shown in the E-mail records tendered by the Defendants. Again a closer look at the terms and conditions of carriage Regulation ReG.3.4-1-3.4-3 clearly shows that where there can only be change of date if the passenger pay a fare increase to the airline or its agent. The Airline also has to work out the revised for change and give the passenger choice to accept or reject same. The airline does not loud or force any passenger to change. Where passenger accepts to change he will be liable to pay the new fare. Again where that is the case and passengers accept to pay, there is also the administrative fare payable once the passenger's ticket is subject to restriction. In this

case the Plaintiff notified Defendant about change of date of travel from 10/8/16 to 25/8/16. The revised fare and informed the 1st Plaintiff who opted for reissue and paid for same. It is important to note that the Plaintiffs ticket economy flexi class ticket has its restriction. That attracted the administrative fee. Again these fees were never calculated manual but it is computer generated and it is not static but depends on the tariff as at the time of reissue.

The Defendant acted the way they did because the Plaintiff applied and made the choice of reissue. The 1st Plaintiff did not deny that. Their several emails from his phone and even from Christopher Anozie also confirm that. It was based on his acceptance of the condition that the 1st Plaintiff decided to pay using his Account with the GTBank. Deductions were made, the currency exchange was based on the rate of exchange as at that day and as the moment the payment was made. From the regulation there is always a recalculation unless there is evidence of force major event. Fares are also calculated based on the tariff as it applies on the date of payment for the ticket. Reg. 4.0 . this fare includes all applicable taxes, fees, and changes imposed by operators, government authorities in respect of the change. By Reg. 4.4 the airline may

accept payment in any currency too. A look at the E-mail attached by the Defendant shows that on the 20/7/16 the 1st Plaintiff failed to check on fares. Different fare prices were given to him and he was informed that fare prices are not guaranteed to be stable. He did not make any change that day. On the 8/8/16 at 4.06 he called to check on the changes for change of booking to 18/8/16. On the same date he was informed about the changes per passengers which is N746, 157 times number of passengers. He did not take any action 1st plaintiff also repeated the call on the 9/8/16 to check changes on date change at 21:49 hours. He was also advised that fee is not guaranteed as stable. At 22.27 hours 1st Plaintiff called from +2348052115668. He informed the Defendant that he want to leave the tickets open as his visa is not out yet when they did not travel on 10/9/16, they were charged $100 US Dollar for No show and $50 each for reissued/revalidation. This changes came at 22:29 …after the 1st Plaintiff decided to leave the ticket open for visa did not came out.

On the 10/8/16 at 13:34 hours the 1st Plaintiff called to check for availability of seat for 25/8/16 and at 13:34 hw was informed that seats were unavailable for 25/8/16 but are available for on 28/8/16.

The Defendant also informed the Plaintiff that the fee for available seat is $250,395 US Dollars. He promised to call back the Defendant. He was equally advised that the fares are not guaranteed. At 14:17 Plaintiff called from.+2348033327676 The Charge was done by Change a Booking module. He instructed to change departure to 25/8/16 to return on 10/9/16 on same flight. All these were done on 10/8/16 at 14:17 hours. The Defendant advised the 1st plaintiff on the fare difference and all charges per passenger. Each person has a limit of $1000 US Dollars per passenger. At 14.18 hours the Plaintiff wanted to pay for the fare change charged using 3 credit cards. He was advised that the fare difference is not guaranteed. The 1st Plaintiff on his own volition at 14:41 hours on the same 10/8/16 authorized payment for 5 of the Plaintiffs using the same card.

Immediately the tickets were all reissued in accordance with the new fare condition. He told the Defendant at 14:42 that he will call them back for issue of the ticket for the last Plaintiff to complete it. He informed the Defendant that the 6th Plaintiff will require a wheelchair at exactly 14:47 hours. At 15:07 on the same 10/8/16, receipts evidencing payment of the tickets were issued. It was sent

to the E-mail of the 1st Plaintiff on 10/8/16 at okwyanozie@yahoo.com at 15:07 hours at 22:24 – there was an E-mail notification for the Change on 17/8/16 so also the travel details. On 25/8/16 Mr. Christopher called from the same phone No.+2348033327676 @ 11:12 hours to check if booking was cancelled. Verification was done. Anozie Okwudili sent a mail authorizing the cancellation of the flight at 13:25 meanwhile the Defendant had earlier at 11:10 hours on 25/6/16 checked date for protection standards before the Christopher called that day. Original travel date was to be 11/8/16. From the above it is very clear that the Plaintiffs were the initiators of the change in travel date. They Defendant advised them about the cost implication of the change of travel date and they accepted same and that is why the 1st Plaintiff decided to pay.

He was in the know about the fact that fares are not guaranteed. He gave go ahead with the issue of Reissue of the tickets. He paid for 5 out of the 6 tickets and inquired about wheelchair for the 6th Plaintiff who had same health challenges. He promised to get back to the defendant on the Reissue of the 6thn Plaintiff's ticket. He cause a lawyer knows that these kind of transaction attracts

penalties and charge. The terms of carriage attached. That there are charges involved. As at the time the Plaintiff paid for the ticket using E-payment system –(card) he knows that charges are involved and that payment and calculation of charges are not done manually. Moreso that fees and charges are not static and guaranteed.

The Plaintiff knows that and cannot therefore deny that. It is the humble view of this Court that there was no overcharge by Defendant. The Plaintiffs have not been able to establish that there is any overcharge on the ticket so the issue of given an Order for refund cannot stand. There is nothing to refund parties like the Plaintiffs in this case are bound by the terms of agreement they have entered into by the purchase of those tickets and the change of travel date and reissue of the tickets. The Plaintiffs know the tickets were reissued before they opted for that. So this Court holds. On the of the 1st Plaintiff getting another booking which is totally a different class of ticket- Economy fare saver which is different from the flexi class economy ticket initially bought by the Plaintiff which the 1st Plaintiff anchored his claim of refund on. It is the view of this Court that that reservation has nothing to do with the transaction of

the first ticket purchased which was later changed and another ticket reissued. It has nothing to do with the reissued ticket.
More so when it is on its own class. The Plaintiffs know that the ticket fares are not static and not guaranteed. Again the Plaintiffs also know that exchange rate of any ticket depends on the Banks rate for that period. Which determined by simple demand and supply for that day. Again it is not a secret that any travel within July and early September of any year the peak of travel period. Tickets-purchase, reissue cancellation usual attracts higher fees and of cause penalties on the case may be to get a seat at time is very difficult. Cancellation and delays are rife too at that period. The Defendant have no obligation to refund the difference in fare as they did not overcharge the Plaintiffs.
It is important to refer to Article 9.1.1-9.1.3 of the carriage regulation of the Defendant.
The said provision show that provides that.
Article 9.1.1
“The flight times and flight duration in our time table may change between date of publication and date of actual travel. We do not guarantee flight times and flight durations to you

and THEY DO NOT FORM PART OF YOUR CONTRACT OF CARRIAGE WITH US".

The above Airline exonerates the Defendant from any liability that may arise as a result of any delay, change of time of travel and or delay and even cancellation.

Also of great importance is the provision of Article 9.1.2. It states **"….your departure time will be shown on your ticket or e-ticket receipt and itinerary we may need to change departure time of your flight time and/or the departure or destination airport after ticket…….has been issued."**

The above is very clear and the Defendant can inform about change once there is any alteration and it is binding on the Plaintiffs who must have ensured that given their contact information to Defendant. Where the Defendant cannot get a more convenient plan from the Plaintiff and if the change is not convenient to Plaintiff for the class of ticket Defendant is entitled to involuntary refund in accordance with Article 10.2 otherwise the Defendant will have no liability to Plaintiff whatsoever.

In this case the Defendant had duely notified Plaintiffs about the 35 minutes change in departure time for the flight scheduled for

25/8/16 from 18:35 to 17:00 hours. The notification by Defendant on the Plaintiff is within the provision of Article 9.1.2 . this notification was due early enough. The Defendant still had a space for the Plaintiffs on the flight for 25/8/16 but the only alteration was only that the flight will take off 25 minutes earlier than scheduled. That being the case the cancellation by the Plaintiff is not the fault of the Defendant but that of the Plaintiffs. After all any international passenger is expected to be at the airport at least one hour before departure time. Notifying the Plaintiffs of the 25 minutes earlier departure more than 24 hours before the actual travel time is due notification . The Defendant cannot therefore be held liable for the cancellation. The Plaintiffs are and they know it. This Court cannot hold the Defendant liable. So the Plaintiffs submission on that is highly misconceived and misconstrued. The plaintiffs were not able to discharge that onus. After all whoever assents must prove . so this court holds.

All in all the Plaintiffs were not able to establish their claims as stated above on ground of probability so they are not entitled to the claim of refund since there is no overcharge by defendant and the cancellation of travel was not the fault the Defendant.

The case of the Plaintiffs is therefore DISMISSED. This is the Judgment of this Court. Delivered today by me.

----------day of ----------2020

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K.N.OGBONNAYA

HON.JUDGE