IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU – ABUJA
DELIVERED ON WEDNESDAY THE 30TH DAYOF SEPTEMBER 2020
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE.R. OSHO-ADEBIYI
SUIT NO. CV/1869/2019

BETWEEN:

MR. DAVID ANIKOH ----------CLAIMANT

AND

AZMAN AIR SERVICES LIMITED ----------DEFENDANT

JUDGMENT

The Claimant by a Writ of Summons, filed this suit against the Defendant claiming the following:

1. A Declaration that the action of the Defendant in refusing to return the sum of ₦39,000 .00, only being the price of airfare paid by the Claimant to theDefendant upon breaching the contract it had with the Claimant to transport him by air by rescheduling and cancelling of the departure and return flight respectively booked by the claimant as wrongful and illegal.
2. A declaration that the company policy of the Defendant to the effect that when flights are rescheduled at the instance of the Defendant no refund will be made to the customer is illegal and against the principle of rescission in contractual transactions.
3. An Order of this Honorable Court directing the Defendant to pay to the Claimant the sum of ₦39,000.00 only being the amount the

Claimant paid to the Defendant as airfare on the 7th day of March 2019.

4. An order of this Honourable Court directing the defendant to pay to the plaintiff the sum of ₦5,0000,000.00 (five million Naira) only, being general damages for breach of contract manifest in the Defendant's last-minute rescheduling and cancellation of his flights and non-refund of the money paid as airfare and the attendant financial, psychological and mental suffering, the claimant suffered as a result of the actions of the defendant .
5. The sum of ₦200,000.00 (two hundred thousandNaira) only, being the cost of litigation.
6. 10% post judgment interest of the entire judgment sum, untilsum is liquidated.

Parties exchanged pleadings and the Court fixed a date for hearing. The claimant opened his case on the 29th of January 2020 and called his sole witness, the claimant himself as PW1 where he adopted his witness statement on oath as his evidence in this case. The summary of the facts as stated in his evidence is that sometime in March 2019, the Claimant booked a round trip with the Defendant from Lagos to Abuja and paid the sum of ₦39,000.00. That the Claimant booked with the Defendant as the timing set was convenient to him. That Claimant thereafter received an SMS and email from the Defendant that the departing flight which was earlier scheduled for 3pm had been moved to 7pm on the 29th of March and his return journey scheduled for 30th March had been cancelled. That upon receiving the message from the Defendant, he approached the office of the

Defendant at Terminal 2, Murtala Muhammed Airport, Lagos to ask for a refund of his air fare for the two tickets, but he was informed by a staff of the defendant that by the Defendants' company policy, the only refund that will be made available to him is the one for the returning flight which was cancelled and that there will be no refund for the departing flight which was rescheduled. That as a result, he had to purchase another ticket to enable him meet up his engagement he had in Lagos. That as a result of the Defendant's refusal to give him his full refund upon request, he instructed his solicitor to write to the Defendant, which defendant never replied to the said letter. That the actions of the Defendant in rescheduling and cancelling his flights negatively affected him financially, mentally, psychologically, and caused him great embarrassment as he had to borrow money to add to what he had in his account which was already budgeted for family need, hence this claim.

PW1 tendered the following documents as exhibits in proof of his case as follows:

1. Booking confirmation of Azman with Booking reference AC2H2G dated 7/3/2019 admitted as Exhibit A.
2. Flight cancellation notice from Azman Air dated 19th March 2019 admitted as Exhibit B.
3. Reservation information/Flight itinerary for Aero Contractors Airline admitted as Exhibit C.
4. Max Air Limited booking with referenceno. AAQH87 dated 24/03/2019 admitted as Exhibit D.

5. Letter of Demand written by Lawrence Erewele& Co addressed to the Managing Director of Azman Air admitted as Exhibit E.
6. Copy of POS receipt and its original from Zenith Bank for the sum of ₦39,000.00 paid to Azman Air admitted as Exhibit F.
7. Legal Practitioners professional fees of J. O. Seidu& Co in the sum of ₦100,000.00 admitted as Exhibit G.

Under cross examination, Claimant reiterated that he patronised Defendant on the grounds that the timing of Defendant's flight suited his itinerary. Claimant further admitted under cross examination that although the flight was scheduled for 29th of March 2019, he got a notice of rescheduling and cancellation via his email on 19th March 2019 but because he had committed all his funds into booking the flight with Defendant, he had no choice but to write the Defendant for a refund of his airfare.

The Defendant on the other hand, filed its Statement of Defence and opened its defence on the 1st of July 2019 and called a sole witness, the General Manager of the Defendant as DW1 who adopted his written statement on oath and the summary of facts as stated in the statement on oath is that there is usually uncertainty in the aviation sector which makes rescheduling and in extreme cases, cancellation of flights inevitable and that it is covered by the contractual terms between the Defendant and its customers and there are laid down procedures which claimant needs to comply with before he can get his refund which Claimant never followed said procedures.

The Defendant in proof of its case adopted Exhibit A (the booking confirmation with Azman Air), which was already before the Court and tendered the following in addition;

Exhibit H1- Refund policy of Azman Air and

Exhibit H2- Certificate of Compliance.

Under cross-examination, DW1 admitted that the signature on his statement on oath did not belong to him but insisted that the Nigerian Civil Aviation Authority has rules and regulations covering refunds of passenger tickets and that same is contained in the airline'swebsite.

At the close of the case, the Court adjourned for parties to file their final written addresses.

The Claimant in his final written address, raised a sole issue for determination, which is;

"Whether the Claimant has proved his case on the balance of probability thereby making the Claimant entitled to the grant of the relief sought"**?**

The Claimant's Counsel arguing the sole issue submitted that through the PW1 and the exhibits tendered, the Claimant has proved his case. Submitted that the Defendant could not keep up with its terms of the contract it had with the Claimant because of the alteration of the time of departure and outright cancellation of the returning flight without any reasonable or valid excuse and as a result, the Defendant breached the terms of the contract.

Submitted that Defendant having breached the contract, the claimant requested for a refund via Exhibit E which the Defendant failed to respond to the Claimant's request, the Claimantis entitled to the reliefs sought.

Counsel submitted that the Court has the unfettered powers to declare illegal any agreement therein that negates any principle of law or public policy and the policy of the Defendant which is to the effect

that there will be no refund of tickets to the customer upon their rescheduling of flights,the Court should hold same as illegal, void and wrongful.

Counsel submitted further that the Claimant has shown through his testimony and Exhibit D and C that he is entitled to the relief of general damages as well as the award of cost and urged the Court to hold that the Claimant has proved his case on the balance of probability and is entitled to all his reliefs more so as the case is uncontroverted; as the Defendant does not have any evidence before this Court to controvert the claimant's evidence, the Defendant's sole witness having denied his statement on oath.

The Claimant Counsel cited the following authorities in support of his argument:

1. Emeka V. Chuba Ikpeazu (2017) LPELR-41920 (SC)
2. Best Nigeria Ltd Vs. Blackwood Hodge Nigeria Ltd (2011) LPELR-776 (SC)
3. Abba V. Shell Petroleum Development Company of Nigeria Limited (2013) LPELR-20338 (SC)
4. Pan BisBilder Nigeria Ltd V. FBN Ltd (2000) LPELR-2900(SC)
5. Dantata V. Mohammed (2000) 7 NWLR (pt.664)176
6. Advanced Coating Technology (Nig) Ltd V. Express International Plant Hire (Nig) Ltd (2019) LPELR-47833(CA)
7. Mr. Chris Dura Aondo V. Benue Links Nigeria Limited (2019) LPELR-46876 (CA)
8. Corporate Ideal Insurance Limited V. Ajaokuta Steel Company Limited &Ors. (2014) LPELR-22255(SC)

9. Unity Bank V. JashwillOnwudiwe& Anor (2015) LPELR 24907 (CA)
10. HadejiaJama'are River Basin Development Authority V. Chimande (Nig) Ltd (2016) LPELR-40202 (CA)
11. Registered Trustees Ikoyi Club 1938 V. Ikunjuni (2019) LPELR-47373 (CA)
12. SEDC West Multipurpose Co-operative Society Ltd. Vs. SEC (2019) LPELR-48164(CA)
13. Ogunyade V. Oshunkeye (2017) 15 NWLR (pt.1057)218.

The Defendant in its written address filed, raised two issues for determination thus;

1. Whether the Claimant has made a valid demand for the refund of his money given the extant refund policy of the Defendant Company and in the instance where he has not, whether the defendant could be said to have refused and/or neglected to make refund of the Claimant'sairfare.
2. Whether the claimant has proved his claim to be entitled to the grant of the reliefs sought.

The Defendant's Counselcontendedthat the Defendant cannot be blamed for the rescheduling and cancellation of flights as it was beyond the control of the Defendant and that it is in evidence before this Court as testified by the DW1 that the Defendant has in place, a refund policy which the Claimant failed to follow as there is no valid demand for refund by the Claimant as Exhibit E (letter of demand for refund of air fare) is not in compliance with the laid down requirements for refund.

On issue number two, Counsel submitted that with respect to the Claimant's reliefs 1 and 2 there is no single evidence before this court in support of the Claimant's case that would justify the grant of reliefs 1 and 2 as the Claimant has not satisfactorily proved the refusal of the Defendant to refund his money.

Counsel submitted that the conditions for the grant of general damages claimed by the Claimant have not been met by Claimant for him to be entitled to same as, there has to be unjustifiable cancellation or rescheduling of the flight operation and that the customer was informed late. Counsel relied on Regulation 19.5.1(iii) of the Nigeria Civil Aviation Regulations 2012 Vol. II.

Submitted that assuming without conceding that the Claimant is entitled to the award of damages, the claimant has failed to adduce any evidence which this Court may use as a parameter to access and award damages in his favour as the amount spent in booking another ticket as gleaned from Exhibit D is ₦22,999.00 and that the amount borrowed as claimed by the Claimant is not stated and such claim should be under specialdamagesand not general damages.Counsel submitted finally that there was substantial compliance with the rules of this Court with respect of the DW1's witness statement as the DW1 emphaticallyidentified his witness statement on oath and adopted same during his oral testimony. Counsel urged the Court to dismiss the Claimant's suit with substantial cost for lacking in merit.

Counsel relied on the following cases:

1. Haidar V. S.A.I. PLC (2015) All FWLR pt. 790 pg. 1344 at 1355
2. Mekwunye V. Imoukhuede (2019) LPELR-48996 (SC)

3. Dragetanos Construction (Nig) Ltd V.Famedis Ventures ltd. (2012) All FWLR Pt.616 pg.441 @482
4. Tukur V. Gov. of Taraba State (1997) LPELR-SC 143/1996
5. Abo V. Aanyam (2017) LPELR-42453(CA)
6. UBA PLC Vs. Davies (2011) All FWLR Pt.576 pg. 547
7. Mirchandant V. Pinheiro (2001) 3 NWLR (pt.701) 557 at 567
8. A.M.C (Nig) Ltd. V. Volkswagen of (Nig.) Ltd (2011) FWLR Pt.588 Pg.928 @ 951.
9. Tylor V. Ogheneovo (2012) All FWLR pt. 610 pg.1358
10. Asman Man & Mech. Co. Ltd. Vs. Spring Bank Plc (2012) All FWLR Pt.613 pg.1864.

I have examined the arguments in the final addresses of respective Counsel to the Claimant and Defendant as well as the reply on points of law by the Claimant's Counsel. Before I delve into the body of the judgment it will be imperative at this point to deal with the issue of the witness statement on oath of the DW1, the sole witness of the Defendant. The Claimant has urged on this Court to treat the evidence of the Claimant as uncontroverted as the DW1 has denied signing the statementon oath under cross-examination,therefore, the Court should discountenance the evidence of the DW1 and the exhibits attached, as the statement on oath was not signed which makes the document worthless.

The Defendanton the other hand, has urged the court to discountenance the Claimant's line of argument as the DW1 stated that he signed the statement on oath in Court and the Claimant did not object to the

adoption of the statement on oath as well as the documents already tendered and admitted by this Court.

Section 13 of the Oath Act, Laws of Nigeria 2004 provides as follows;

> "*It shall be lawful for any commissioner for oaths, notary public or any other person authorized by this Act to administer an oath to take and receive the declaration of any person voluntarily making the same before him in the form set out in the first schedule to this Act*"

The first schedule to the Oaths Act provides that oaths shall be in the form set out below: -

> "*I……do solemnly and sincerely declare that (set out in numbered paragraphs, if more than one matter) and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act……."*

Order 2 Rule 2 of the FCT High Court Civil Procedure Rules, 2018 states;

> "*All civil proceedings commenced by Writ of Summons shall be accompanied by;*
> *a. Statement of Claim*
> *b. List of witnesses to be called at the trial*
> *c. Written statements on oaths of the witness except a subpoenaed witness*
> *d. ……*
> *e. ……*
> *(4) where a Claimant fails to comply with Rules(2)……., his originating process "SHALL" not be accepted for filing by the registry.*

Section 13 of the Oaths Act, 2004 provides that only the Commissioner for Oaths or any other person authorized to admnister an oath can do

same in the form set out in the first schedule to the Oath Acts. DW1 in contravention of this law, did not declare his oath before the Commissioner for Oaths or like person, moreover, Order 2 Rule 2, of the FCT High Court Civil Procedure Rules 2018 as stated above makes it mandatory, by the use of the word "SHALL" that a written statement on oath must accompany all civil matters commenced by writ as this present case. Order 2 Rule 4 goes further to make itmandatory by the use of the word "SHALL", that a Claimant who fails to comply with Rule (2) as stated above shall have his originating processes rejected by the Registry and consequently deny such process filing status.

The question that arises at this juncture is "Whether DW1's Statement on Oath complies with the Oath Act, 2004 and Order 2 Rule 2 of the FCT High Court Rules"

Under cross-examination, defendant was asked;

> *"Question- The statement on oath that you adopted was signed at your branch office at Azman House 63 Accra Street?*
> *Answer: No, I signed in the Court. I signed the document myself.*
> *Question: Look at your signature on your witness statement on oath and that of Exhibit H1 (shows DW1 his statement on oath and Exhibit H1)*
> *Answer- Exhibit H1 is my signature but the signature on the witness statement on oath is not my signature"*

From the above, there are obvious contradictions in the testimony of DW1, but DW1 was affirmative in finally admitting that the signature on the witness statement on oath does not belong to him. In other words, DW1 did not sign the witness statement on oath. Contrary to submissions of learned Counsel to the Defendant, the issue of

an"unknown" signature on a witness statement on oath cannot be explained away under the "technical rule". DW1 admitted under oath that the alleged signature on his already adopted witness statement on oath does not actually belong to him neither was evidence led to show to the Court the alleged author of the signature.It simply means DW1 did not give the testimony as contained in the statement on oath. It is the signature of a deposing witness that "attaches" the said witness to a document deposed on oath but in the present circumstances, DW1 has categorically stated that the signature on the witness statement on oath is not his own. This is not a technicalrule, but an issue of law.

Section 93(1) of the Evidence Act 2011 states that:

> "*If a document is alleged to be signed or have been wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be his handwriting*"

A signature as defined in Black's Law Dictionary means a person's name or mark written by that person.

The essence of a valid signature is that it proves that the author of the signature consented to the document wherein his/her signature is appended.

Section 93 of the Evidence Act provides that a paper based signature must be proved to belong to the writer who signed same (author of the signature) and in this instance, the testimony of DW1 extracted under cross examination, contravenes Section 93(2) of the Evidence Act 2011, as the witness statement on oath alleged to be that of the DW1 has not

been proved to have the signature of DW1 appended on it and which better witness to prove same than the purported owner of the signature being DW1. It is more damaging that **DW1 admitted under oath** that the signature on his witness statement on oath does not belong to him.

The Court in the case of **ALIYU v. BULAKI(2019) LPELR-46513(CAPer WAMBAI, J.C.A. (Pp. 37-40, Paras. F-A)** held

> "*.....A witness shall only testify by adoption of his earlier written deposition which must be duly sworn in accordance with the Evidence Act. It is upon such duly sworn and adopted deposition that he shall be led in oral evidence in chief, be cross - examined by the adverse party and re-examined by the party calling him if necessary. His evidence in chief shall be limited only to confirming his written deposition and tendering in evidence all documents or exhibits referred to in the deposition. Any evidence outside his deposition shall not be allowed. In other words, the only evidence the Court is entitled to receive into its record is the evidence contained in the duly sworn written depositions front loaded along with the pleadings, (be it the statement of claim or the statement of defence and) which deposition becomes evidence only upon adoption and subjugation to cross-examination. A written deposition that is not adopted or cannot legally be adopted is deemed abandoned and the deponent incapacitated from testifying. It follows that any evidence sourced from a*

fundamentally defective deposition, as in the case at hand, is equally fundamentally inadmissible and cannot be relied upon in proof of any fact. Such evidence goes to no issue because as the legal maxim goes "ex nihilio nihil fit" from nothing comes nothing, the evidence cannot be placed on nothing.

From the statement of the DW1 admitting he didn't sign the witness statement; the signature thereon is therefore of an unidentified person and it needs to be emphasised that a signature by an unknown person not known to the other is an incompetent signature.

In my opinion, the failure of the DW1 to identify the signature on the deposition as his, but rather, testified that he did not sign nor was he able to furnish the Court with the author of the signature, has rendered thewitness statement on oath worthless as it is his signature that authenticates the document and differentiates it from another one. I hold the view that the DW1 having disowned the signature as the deponent on the witness statement on oath the implication is that the said statement was not made and deposed to by him and therefore he has no witness statement on oath before this Court to be used as evidence and the said witness statement on oath and documents predicated on the facts elicited from the written statement on oath having been denied by the DW1, is hereby expunged from evidence before this Court.

Having expunged the Defendant's sole witness statement on oath, the case of the Defendant now stands solely on the defendant's statement of defence as the there is no evidence adducedin support. The law is trite

as held in the case of **HADEJIA V. ABBAS (2016) LPELR-40234 (CA)**that pleadings not supported by evidence is deemed abandoned and averments in pleadings not supported by evidence are bound to be discountenanced. As it stands, the Claimant's evidence is unchallenged; and the position of the law is trite that for any of such evidence that is neither attacked nor discredited and is relevant to the issues joined ought to be relied upon by the Court.

In the light of this, the issue for determination is whether the plaintiff is entitled to the reliefs sought in his claims. The claims of the plaintiff will be considered sequentially.

The Claimant in relief one, is seeking for a Declaration that the action of the defendant in refusing to return the sum of ₦39,000.00, only being the price of airfare paid by the Claimant to the Defendant upon breaching the contract it had with the Claimant to transport him by air by rescheduling and cancelling of the departure and return flight respectively booked by the claimant as wrongful and illegal.Indeed, judicial pronouncement are in agreement that declaratory reliefs are not granted based on admission or on default of filing defenceand the Court in **AGBAJE VS FASHOLA & ORS (2008) LPELR-3648 (CA**)held thatin cases where declaratory reliefs are claimed, as in the present case, the Claimant must satisfy the court by cogent and reliable proof of evidence in support of his claims, the failure of the Defendant calling any evidence would not relieve the Claimant from proving his case before the Court. Relief one on the face of the writ claimed by the claimant is declarative in nature thereby predicating the success of other reliefs on its success.

The claimant in his evidence testified to the fact that upon the round trip flight he booked being rescheduled and cancelled, he approached the Defendant's office to demand for a refund and also wrote a letterofdemand through his solicitor that is Exhibit E, which he got no response from the Defendant.I agree with the Claimant Counsel that there exists a valid contract between the parties and the Defendant rescheduling and cancelation of the flights amount to a breach which entitles the Claimant to seek remedy for the said breach.It is settled from a number of decisions that a party in breach of a fundamental term of his contract will not be allowed to benefit from or resort to exclusion clauses. The rationale for this principle is that a party who is guilty of breach of a fundamental term of contract could/should not benefit from his own wrongdoing by resorting to exclusionary clauses in order to limit his liability. This is more so, when a contract of carriage by air is brazenly breached and no explanation is offered, as in the instant case. In which case there is a total failure of consideration and the central purpose or essence of the contract has wholly disappeared. In such a situation, as Okey Achike JSC explained in his book: NIGERIAN LAW OF CONTRACT, at page 107, under the doctrine of fundamental term, the party guilty of breach of a fundamental term will not be availed clauses excluding his liabilities.

It would be unfair for this Court to aid an injustice as the action of the Defendant in refusing to refund the Claimant's fare is wrong and I hereby declare that the action of the defendant in refusing to return the sum of ₦39,000.00 (thirty nine thousand Naira), only being the price of airfare paid by the claimant to the defendant upon breaching the

contract it had with the claimant to transport him by air, by rescheduling and cancellation of the departure and return flight respectively booked by the claimant as wrongful and illegal.

With respect to relief two, Claimant is seeking a declaration that the company policy of the Defendant to the effect that when flights are rescheduled at the instance of the defendant no refund will be made to the customer is illegal and against the principle of recission in contractual transactions.

From paragraph 12 of the Claimant's statement of claim and paragraph 6 of the Defendant's Statement of Defence, the fact is not disputed that it is the Defendants policy that refund is only made in the event of flight cancellation by the Defendant. There is nothing in the terms or as stated in Defendant's website that provides for cases of rescheduled flights.

The question that arises at this juncture is, "at what point does Defendant's policy of flight cancellation come into effect?" In my view, Defendant's policy on reimbursement of only cancelled flight as contained on its website only crystalizes when an aviation contract has been sealed between parties. In other words, when an "intended passenger" buys a ticket, checks in, either with baggage or otherwise or when the time for the scheduled flight has expired with or withoutthe check in procedures met, it is at that time that the "intended passenger" becomes a "passenger" and all liabilities, rules, regulations of the airline is applicable. In the instant case, the Claimant had simply bought a round trip ticket and the first leg of the flight rescheduled to a differenttimewhile the second leg of the flight, cancelled before the date

of departure. At this point, what is between the parties is a mere "simple contract" which had not migrated noris it covered by the aviation rules and regulations. At this point, the law of contract prevails and the policy of the Defendant that it only gives refund on cancelled flights and not on rescheduled flights cannot be said to come into force. It is my considered view that the policy of the Defendant that when flights are rescheduled at the instance of the air carrier, no refund will be made is yet to "catchup" with the Claimant as the relationship between the Claimant and the Defendant is still guided by the principles of contract and not the rules and regulations of the aviation industry.

At the stage of cancellation of ticket of the Claimant, it is erroneous for the Defendant to import their company policy on rescheduled flights into thecontractual relationship between parties emanating from a simple sale of ticket as such policy, given the peculiar circumstances of this case, is against the principle or recission in contractual transactions, as it is a general rule of contract that the essence of rescinding a contract is to extinguish it and to restore the parties to the positions they were in before contracting. The policy of the Defendant on reimbursement of onlycancelled flights only come into effect when an intended passenger, becomesa "passenger" of the airline and until that line is crossed, the relationship between Claimant and Defendant is only guided by the law of contract.

It is settled law that parties are bound by the terms of contract and the Court in the case of **ESENOWO V. SAM (2013) LPELR-21130 (CA) Per Ndukwe-Anyanwu J.C.A** held that,

"*where one party has committed a breach, the innocent party has remedies, one of which is the right to rescind the contract. One of the consequences is that the innocent party who has elected to rescind the contract is released from further obligations under the contract*".

In this instant case, the term upon which the Claimant agreed to purchase the ticket from the Defendant was based on the scheduled time. The Claimant completed his part of the contract by paying for the ticket upon the time fixed being favourable to him, leaving the performance of the contract to the Defendant. The Defendant'sfailure in transporting the Claimant on the agreed timeand dateby rescheduling and the outright cancellation of the return flight has therefore constituted a breach. The fact that the Defendant failed to perform its part of the agreement has given the Claimant the power to rescind the contract.

The Supreme Court in the case of **NWAOLISAH V. NWABUFOR (2011) LPELR-2115 (SC) PER ADEKEYE J.S.C IN PP.38-39 PARA G-B**held;

"A contract can be discharged by breach. A breach of contract means that the party in breach has acted contrary to the terms of the contract either by non-performance or by performing the contract not in accordance with its terms or by a wrongful repudiation of the contract. A party who has paid money to another person for a consideration that has totally failed under a contract is entitled to claim the money back from the other."

Going by this, the Defendant, having breached the terms of the of the agreement between the parties, and the Claimant having rescinded the contract, is entitled to a full refund and I so Holdthat Company policy of the Defendant that when flights are rescheduled and cancelled at the instance of the Defendant no refund will be made to the customer is wrongful, illegal, against public policy, and the principle of rescission in contractual transactions as the transaction between the parties given the peculiar circumstances surrounding this matter, is not governed by the aviation rules and regulations but the law of contract.

With respect to relief number 3 which is, an order of this Court directing the defendant to pay to the Claimant the sum of ₦39,000.00 (thirty-nine thousand Naira) only, being the amount, the claimant paid the Defendant as air fare on the 7th day of March2019.

The Claimant in proving his case, tendered a booking confirmation of Azman airline admitted as Exhibit A as well as Exhibit F which is a POS receipt from Zenith bank for the sum of ₦39, 000.00 paid to Azman airline for the purchase of the tickets.The Defendant having breached the contract by cancelling and rescheduling the flight, the Claimant is entitled to a refund of the airfare paid as the Defendant failed to fulfil his contractual obligation towards the Claimant and I so hold.

With respect to relief number 4, the Claimant is asking for the sum of ₦5,000,000.00 as general damages for the breach of contract. The law is that once there is a breach of a contract entered into by parties, the party in breach would be liable in damages resulting from the breach to

the other party to the contract against whom the breach was committed. In this instant case, the Claimant has proved that the Defendant has breached their contract by the failure to keep to the terms of transporting him to Lagos at a particular time agreed by them and the outright cancellation of the return flight.The Supreme Court in the case of **AGU VS. GENERAL OIL LIMITED (2015) LPELR-24613 (SC)** held that, it is now well settled that in a claim for damages for breach of contract, as in the instant case, the court is concerned only with damages which are natural and probable consequences of the breach or damages within the contemplation of the parties at the time of the contract. The essence of damages in breach of contract cases is based on what is called restitutio in integrum i.e. the award of damages in a case of breach of contract is to restore the plaintiff to a position as if the contract has been performed. It has been held that in an action for breach of contract, the measure of damages is the loss flowing naturally from the breach and is incurred in direct consequence of the breach.

In this instant case, the claimant in his evidence particularly paragraphs 14, 18 and 19 of statement on oath respectively stated that

> "*that with the situation the defendant foisted on me I was compelled to book another flight with Aero Contractors at an expensive rate because I had to meet up with my scheduled appointments……*"

> "*that the action of the defendant has negatively affected me financially, mentally and psychologically, because the money I later spent in booking another flight was budgeted for some pressing family needs*

which I could no longer attend to because of the situation the defendant foisted on me"

"*The actions of the Defendant in rescheduling and cancelling my flights respectively occasioned great embarrassment for me, as I had to borrow money to add to the money in my account to book amore expensive flight.*"

From the evidence stated above as well as Exhibits C and D which are AeroContractorsairline bookings and Max Air bookings respectively. The Claimant expended monies to be able to transport himself to and from Lagos and by doing that, inconvenienced himself as a result of the rescheduling and cancellation of the flights by Defendant and he is therefore entitled to damages.In awarding general damages, I have taken into consideration the evidence of the Claimant, the psychological, mental, financial suffering and also taking into account Exhibits C and D;flowing from those exhibits, the total sum expended to purchase a new ticket is about N60,000.00;Claimant also expended money to engage the services of a lawyer and the receipt admitted in this Court as Exhibit G.The Court in **ALHAJI MUSTAPHA ALIYU KUSFA V. UNITED BAWO CONSTRUCTION CO. LTD. (1994) 4 NWLR (PT. 336)**1, held that in cases of breach of contract, the damages that would be awarded are the pecuniary loss that may fairly and reasonably be considered as either arising naturally from the breach itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as a probable result of the breach.

This Court will therefore award the sum of ₦5,000,000.00 (five million Naira) only, as general damages for breach of contract manifest in the defendant's last-minute rescheduling and cancellation of his flights and the attendant financial psychological and mental suffering the claimant suffered as a result of the actions of the defendant.

With respect to relief 5, cost follows events and it is at the discretion of the Court. This Court will exercise its discretion in favour of the Claimant and I hereby award the sum of ₦200,000.00 as cost of litigation.

With respect to the 6th relief, which is for 10%post judgment interest. The Court in **STABILINI VISIONI LTD V. METALUM LTD (2008) 9 NWLR (PT.1092) 416 AT 463 PARA E-F** held that post judgment interest is awarded where there is power conferred by statute on the Court to do so in the exercise of Courts discretion and its meant to commence from the date of judgment until whole liquidation. By virtue of Order 39 Rule 4 of the FCT High Court Civil Procedure Rules, 2018, the Court has power to grant post-judgment interest either from the date of judgment or afterwards at a rate not exceeding 10% per annumand this discretion lies entirely at the discretion of the trial Court after delivery of judgment and I hereby grant the claim for post-judgment interest at the rate of 10% per annum from the date of this judgment until final liquidation.

Consequently, I hereby Order as follows:

1. I hereby Declare that the action of the defendant in refusing to return the sum of ₦39,000.00 (thirty nine thousand Naira), only being the price of airfare paid by the claimant to the defendant upon breaching the contract it had with the claimant to transport

him by air by rescheduling and cancellation of the departure and return flight respectively booked by the claimant is wrong full and illegal.

2. I hereby declare that the company policy of the Defendant to the effect that when flights are rescheduled at the instance of the Defendant no refund will be made to the customer is wrongful, illegal, against public policy, and the principle of rescission in contractual transactions as the transaction between the parties given the peculiar circumstances surrounding this matter, is not governed by the aviation rules and regulations but the law of contract.
3. I hereby Order the Defendant to pay to the Claimant the sum of ₦39,000.00 only being the amount the claimant paid to the Defendant as airfare on the 7th day of March 2019.
4. I hereby Order the Defendant to pay to the Claimant the sum of ₦5,000,000.00 (five million Naira) only, being general damages for breach of contract manifest in the Defendant's last-minute rescheduling and cancellation of his flights and the attendant financial psychological and mental suffering the claimant suffered as a result of the actions of the Defendant.
5. Cost of ₦200,000.00 (two hundred thousand Naira) only, is hereby awarded in favour of the Claimant against the Defendant
6. I hereby order the Defendant to pay 10% post judgment interest of the entire judgment sumfrom the date of judgment until the judgment sum is liquidated.

Parties: Parties are absent.

Appearances: D. A. Seidu, Esq., for the Claimant. Aliyu Anas, Esq., holding brief of A. M. Ma'aji, Esq., for the Defendant.

HON. JUSTICE M. R. OSHO-ADEBIYI
JUDGE
30TH SEPTEMBER 2020