

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : SUIT NO: CV/3574/2020
DATE: : WEDNESDAY 16TH JULY, 2025

BETWEEN:

- 1. SADIQ USMAN**
- 2. LIQMAN HUSSAIN**
- 3. MUHAMMAD DANAZUMI**
- 4. ZUBAIR USMAN**



CLAIMANTS

AND

ARIK AIR LIMITED

DEFENDANT

JUDGMENT

The Claimants took out Writ of Summons dated the 31st December, 2020, and filed on the same day against the Defendants, claiming for the following;

- a. A Declaration by this Honourable Court that there was a valid and legal contract between the Plaintiffs and the Defendant to transport the Plaintiffs from Nnamdi Azikwe International Airport on the 22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3 838 on the said 22nd as the air tickets have clearly shown.
- b. A Declaration by this Honourable Court that there was a valid and legal contract between the 2nd 3rd and 4th Plaintiffs and the Defendant to return them from Yola International Airport on the 24th, 25th and 27th of October, 2020 respectively, to Nnamdi Azikwe International Airport, on flight W3 839 as the air tickets have clearly shown.
- c. A Declaration by this Honourable Court that the Defendant is in express Breach of its contract in particular respect to all the Plaintiffs in this suit when it failed to transport the plaintiffs from Nnamdi Azikwe International Airport on the

22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3 838 on the said 22nd as the air tickets have clearly shown.

- d. A Declaration by this Honourable Court that the Defendant is in express Breach of its contract in particular respect to the 2nd 3rd and 4th Plaintiffs when it failed to return them from Yola International Airport on the 24th, 25th and 27th of October, 2020 respectively, to Nnamdi Azikwe International Airport, on flight W3 839 as the air tickets have clearly shown.
- e. A Declaration by this Honourable Court that the Defendant is in breach of the National Civil Aviation Regulations and in violation of the Plaintiffs rights when it failed to notify the Plaintiffs of the cancellation of flight W3 838 to Yola at least 24 hours before the scheduled time of departure.
- f. A Declaration by this Honourable Court that the Defendant is in direct breach of the National Civil Aviation Regulations and in violation of the Plaintiffs rights when it failed to offer the Plaintiffs immediate reimbursement in cash following the abrupt cancellation of flight W3 838 to Yola.

- g. A Declaration by this Honourable Court that the Defendant is in direct breach of the National Civil Aviation Regulations and in violation of the Plaintiff's rights when it failed to offer assistance in the form of Hotel accommodation and transportation within the time limits set out by the regulations to the plaintiffs following the cancellation of flight W3 838 to Yola.
- h. An Order of this Honourable Court directing the Defendant to pay the sum of N204,213.00 (Two Hundred and Four Thousand Two Hundred and Thirteen Naira) for specific damages, representing the total amount paid for Flight Tickets by all the Plaintiffs as follows;
- i. 1st Plaintiff = N26,391.00 (Twenty Six Thousand, Three Hundred and Ninety One Naira).
- ii. 2nd Plaintiff N51,525.00 (Fifty One Thousand, Five Hundred and Twenty Five Naira).
- iii. 3rd Plaintiff N74,772.00 (Seventy Four Thousand, Seven Hundred and Seventy Two Naira).
- iv. 4th Plaintiff N51,525.00 (Fifty One Thousand, Five Hundred and Twenty Five Naira).

- i. An Order of this Honourable court directing the Defendant to pay the sum of N5,000, 000. 00 (Five million Naira) in General damages to the Plaintiffs following the irremediable inconvenience, transportation, Hotel accommodation, loss of valuable time, physical and mental torture, steep financial losses and psychological trauma occasioned by the actions and inactions of the Defendant.
- j. An Order of this Honourable Court directing the Defendant to pay the Plaintiffs the sum of N1,500,000. 00 (One Million Five Hundred Thousand Naira) for Cost of litigation.

Upon service of the writ on the Defendant and after pleadings were exchanged, the suit was set down for hearing and the Claimants called two witnesses, namely; **Sadiq Usman** as PW1, and **Mohammed Yahaya Akeresu** who is a subpoenaed witness as PW2.

The case of the Claimants as distilled from the Statement of claim and Witness Statement on Oath of PW1 (Sadiq Usman) is that, the Claimants jointly bought air tickets from the Defendant in this suit for flight W3 838 that was set to depart Nnamdi Azikiwe International Airport, Abuja on the 22nd day of October, 2020 at

11:15hrs and arrive Yola International Airport, Adamawa at 12:35 hrs of the same day.

That the Claimants purchased the said air tickets intending to attend the wedding of one Mubarak Abdullahi on the said 22nd day of October, 2020 when upon arrival at the Nnamdi Azikiwe Airport at about 9am, they found the Defendant's check in counter unmanned, with none of the Defendant's staff available anywhere in the airport for inquiries to be made.

PW1 stated that he was at the check in counter with all the Claimants and other passengers till 12:00hrs when they discovered that the flight had been cancelled, with no correspondence of any sort made by the Defendant to any of them in respect of the cancelled flight and no notice whatsoever had been given to them in advance about the cancellation.

That till 11:15hrs when the flight was scheduled to depart, there were no announcements for boarding and they had received no notices from the Defendant at any point in time with reasons for the cancellation, after it was confirmed from the airport authorities that the flight was indeed cancelled.

It is further the evidence of PW1 that he paid the cash sum of N26,391.00 (Twenty Six Thousand Three Hundred and Ninety

One Naira) for the purchase of the said Flight Ticket as well as the evidence of payment issued. The evidence of payment was sent to him by the Defendant through his Google mail (sadeeqabbah@gmail.com) was herein pleaded and relied upon during the trial.

That as at the time of filling this suit, there is no communication whatsoever from Defendant as to the cancelation of the flight or reimbursement of the amount spent.

That a few hours before the Defendant cancellation of the Flight, the Defendant still sold tickets to intended passengers, including one Alh. Mustapha Sulaiman, to whom a ticket was issued and the said ticket was herein pleaded and relied upon.

That on the said 22nd day of October, other airlines were operating, in fact Max-Air took off to Yola at about 9:00 hours or thereabout.

PW1 further stated that the 2nd Plaintiff lives and works in Minna, Niger State and that he departed Minna for Abuja on the 21st of October, 2020 in order to meet up with Defendant's flight W3 838 to Yola, scheduled for the 22nd day of October, 2020 at 11:15hrs, and upon arriving the Nnamdi Azikiwe International Airport at about 9am, he discovered that there was no one at the

Defendant's check in counter. When he came back an hour later, the counter was still unmanned and there were no announcements heralding the arrival of flight W3 838 to Yola.

That the 2nd Plaintiff paid the cash sum of N51, 525.00 (fifty one thousand five hundred and twenty five naira) for the purchase of the said Flight Ticket as well as the evidence of payment issued.

PW1 continued that the 3rd Plaintiff also arrived the Nnamdi Azikiwe International Airport at about 9am, ready to board flight W3 838 to Yola at 11:15hrs when he discovered that Defendant's check in counter was empty and that at 11:15hrs it was clear no one would attend to them, they sought the assistance of an airport attendant and confirmed that flight W3 838 to Yola would not be departing the Nnamdi Azikiwe International Airport that day.

That the 3rd Plaintiff paid the cash sum of N74, 772.00 (seventy four thousand seven hundred and seventy two naira) for the purchase of the said Flight Ticket as well as the evidence of payment issued. The said ticket was shown and sent to PW1 by 3rd Claimant through his Google mail (sadiqabbah@gmail.com) was herein pleaded and relied upon during the trial.

PW1 further testified that the 4th Plaintiff lives and works in Kaduna and that on the 21st day October, 2020, he left Kaduna for Abuja to meet up with flight W3838 to Yola scheduled for the 22nd day October, which ticket was issued to that effect. That his trip to Yola was primarily to facilitate his mother's medical emergencies and also to meet with a friend's wedding ceremony for which he had been invited.

That the 4th Plaintiff paid through his Company (Mutual Infrastructure Limited) the cash sum of N51,525.00 (Fifty One Thousand, Five Hundred and Twenty Five Naira) for the purchase of the said Flight Ticket as well as the evidence of payment issued to that effect and was sent to PW1 through his Google mail (sadeeqabbah@gmail.com) and was relied upon at the trial.

That the Plaintiffs went to lay an official complaint at the NCAA desk but there was no one on seat to lodge the complaint and after waiting for about two hours after the scheduled departure time, it was clear the flight was cancelled.

That the Plaintiffs snapped pictures of the Defendant's unmanned check in counters on the 22nd day of October, 2020.

That on that faithful day that was the last flight to Adamawa and that there was no any other flight available for the Plaintiffs to fly on Friday and Saturday (23rd and 24th October, 2020).

That the Plaintiffs have already booked rooms in Damada Hotel and paid the sum of N135,000.00 (One Hundred and Thirty Five Thousand Naira) through Prof A. L. Tukur, receipt had been issued.

It is further the testimony of PW1 that no notices were given to any of them in writing at any time before the 22nd day of October, 2020 by the Defendant intimating them of an impending cancellation or at any other time before the scheduled departure time of flight W3 838 to Yola and they also stated that no reimbursement, compensation or assistance was rendered to any of them in an individual or collective capacity.

Plaintiffs jointly aver that as a result of Defendant's failure to issue these notices, they (Plaintiffs) suffered irremediable physical and mental torture, steep financial losses and psychological trauma.

PW1 tendered the following documents and were admitted in evidence:-

1. Air Ticket & Certificate of Compliance (Exhibit "A")
2. Invoice prepared by Solicitor (Exhibit "B")
3. Air Tickets of 2nd, 3rd and 4th Claimants (Exhibit "C")

PW1 was cross-examined and subsequently discharged.

PW2 (Mohammed Yahaya Akerosu) being a Subpoened witness testified before the Court that he work with NAMA and he is the Deputy General Manager Air Traffic Operation. He stated that the Subpoena was served on GM and he (PW2) has the documents mentioned in subpoeana.

PW2 continued in his testimony that Max Air Bong 737 300 serves with registration 5NBBM and serve No. Max Air 1608 a schedule flight departed Abuja for Yola on the 22nd October, 2020 at 0904 with 120 persons on board, that includes six crew members.

PW2 further testified that Max Air left Nnamdi Azikiwe Airport on the 23rd, October, 2020 with same particulars and that there was an aviation Service on the 21st, 22nd and 23rd of October, 2020 as the witness affirmed in his testimony before this Court.

PW2 affirmed further that his office is at the General Aviation Terminal at the Airport, and NAMA has many staff that work for it, all their staff were at work on the 22nd and 23rd of October, 2020.

PW2 tendered the following documents and were admitted in evidence.

1. Subpoena dated the 27th January, 2022. (Exhibit "D").
2. Document flight Departure for 21st, 22nd and 23rd October, 2020. (Exhibit "E").
3. General invoice with official receipt from NAMA issued by one Nasir. (Exhibit "F").

PW2 was cross-examined and subsequently discharged.

The Defendants opened their defence and called DW1 (Jackson Ubang).

The case of the Defendants as distilled from the statement of Defence and witness Statement on oath of DW1, is that the Defendant admits that its counter at the Nnamdi Azikiwe Airport was unmanned like the counters of all other airlines on the said 22nd day of October, 2020 as a result of the widespread/

nationwide End SARS protest which rocked the nation and which protest threatened the safety of aviation operations nationwide.

The Defendant, in response to the plaintiffs' averment in paragraph 6(b) and (c) further states that the operations of the Defendant, like all other airlines were shut down because of the attendant violence consequent on the End SARS protest which led to the shutdown of aviation operations and the staff of the Defendant had to shut down operations in order to avert the loss of lives.

The Defendant denies the averment in paragraph 6(e) and (f) of the plaintiffs statement of claim and thereby put them to the strictest proof thereof.

The Defendant denies the averment in paragraph 6(g) of the plaintiffs statement of claim, and states that aviation operations were grounded in order to avert consequential damage to aviation equipment and death of aviation personnel due to the wide spread violence engendered by the nationwide End SARS protest.

The Defendant is not in a position to admit the facts stated in paragraph 6(h) of the plaintiffs statement of claim as they are

facts within the exclusive knowledge of the 2nd plaintiff and thereby puts the 2nd plaintiff to the strictest proof thereof.

The Defendant admits the fact stated in paragraph 6(1) of the plaintiffs statement of claim and states that the Defendant's counter was unmanned like the counter of all other airlines because of the End SARS protest which threatened the safety of aviation operations leading to the shutdown of aviation operations nationwide and the Defendant states further that it would have been preposterous to have continued operations thereby exposing her aviation equipment to possible destruction and exposing her staff to danger and ultimately death.

The Defendant is not in a position to admit the facts stated in paragraph 6(k) of the plaintiff's statement of claim and states that the fact that the plaintiffs found no one to lodge their claims with, at the Nigerian Civil Aviation Authority (NCAA) was because the entire operations of both private aviation operators and staff of institutional regulators of the aviation authority such as the Nigerian Civil Aviation Authority, Federal Airports Authority of Nigeria, Nigerian Airspace Management Agency and the Nigerian Meteorological Agency stayed away from work on the same day

because of the shutdown of aviation operations as a result of the dangers posed by the nationwide End SARS protest.

The Defendant is not in a position to admit or deny the facts stated in paragraph 6(r) of the plaintiffs' statement of claim as the facts stated therein are within the exclusive knowledge of the plaintiffs and which fact the defendant is not privy to.

The Defendant in addition to the facts stated in paragraph 21 states that other passengers affected by the said cancellation of Flight W3 838 had been reimbursed and/or compensated.

The Defendant denies the facts stated in paragraph 8 of the plaintiffs statement of claim and thereby puts the plaintiffs to the strictest proof thereof that they suffered irremediable physical and mental torture, steep financial losses and psychological trauma.

The Defendant in addition to the facts stated in the statement of defence states that it started/resumed operations to some destinations where there were no curfew on the 25th of October, 2020 and that they started operating flights from her second hub from Abuja to Port Harcourt, Ilorin, Benin, Kano and Yola.

The Defendant states that in further response to the averment in paragraph 21, that all tickets within the period of the shutdown remain valid and can be rescheduled for free.

The Defendant states that local airlines, including the Defendants, resumed skeletal services on the 25th day of October, 2020 following the previous week's disruption of economic activities, including scheduled flight services, by the End SARS protest which lasted for one week and which protest interrupted aviation operation.

The Defendant states that it sent a notice cancelling flights effective from October 21, 2020 due to the End SARS protest.

On their part, Claimants filed reply to Defendant's statement of defence. The Plaintiffs deny paragraphs 4, 6, 7, 9, 10, 11, 12, 14, 15, 17, 19, 20, 21, 22, 23, 24, 25, 26 and 27 on the Defendant's Statement of Defense and in answer to that state thus;

That there were other airlines operating and in fact Max-Air took off to the same Yola on the said 22nd day of October, 2020 at about 9:00 hours or thereabout.

That there was no curfew in any part of the Federal Capital Territory Abuja or Adamawa State on the said 22nd day of

October, 2020, and that the End-SARS protest did not affect any business operation within the FCT-Abuja on that very day.

That the operation of Aviation was neither grounded nor shut down in the FCT and Adamawa state and that there was no violence in any part of the FCT and/or Adamawa state on the 22nd of October, 2020.

That there was nothing preposterous on that day to have exposed the aviation equipment to possible destruction and or exposing the staff of the Defendant to danger and or ultimate death.

That in response to paragraph 14 of the Statement of Defense, the Plaintiffs were informed by the security men on duty that the person in charge of the Nigerian Civil Aviation Authority (NCAA) desk left to get some items and that he will return after some times.

That there was no shutdown of Aviation Operations and institutional regulators of the aviation authority on that day or any other day because of the END-SARS protest.

That in response to paragraph 19 of the Statement of Defense, all flights were fully booked and took off from the 22nd to 24th of October, 2020 round the Country except for the Defendant.

That the Plaintiffs are not in position to admit paragraph 22 of the Statement of Defense, thus put the Defendant to the Strictest proof.

That in response to paragraph 24, 25 and 26 of the Statement of Defense, the Plaintiffs state that there was no lock down either in Abuja, Adamawa State and/or any other part of the Country.

That in response to paragraph 27 of the Statement of Defense, the plaintiffs state and maintain that no Notice whatsoever was issued in respect of the cancellation either by the Defendant or any of her agents.

That the suit of the Plaintiffs is not frivolous, vexatious or ill-timed and it is not contrived to waste the precious time of this Court, the Defendant haven admitted virtually all the Claims of the Plaintiffs.

Parties closed their respective cases to pave way for filing and adoption of final written addresses.

Learned counsel for the Defendant filed written address wherein four (4) issues were formulated for determination to wit:

- 1. Whether the Plaintiffs on the preponderance of facts vide the pleadings and the evidence adduced, the Plaintiffs have proved their claims on the balance of probabilities to be entitled to reliefs sought in this suit.***
- 2. Whether the 2nd, 3rd and 4th Plaintiffs having failed to adopt their evidence before this Honourable Court their claims are not bound to fail.***
- 3. Whether the Plaintiffs have proved the ancillary reliefs sought in this suit and if not whether their claims are not bound to fail.***
- 4. Whether the Plaintiffs are entitled to damages for Solicitors fees.***

On issue 1, learned counsel submits that cognizant of the state of pleadings and the evidence adduced by the Plaintiffs in this suit, they have not established on the balance of probabilities that they are entitled to the reliefs sought in this suit.

It is the argument of learned counsel, that it is an indubitable fact that in civil proceedings, proof of all relevant facts lies on the Plaintiff. A Plaintiff is to succeed on the strength of his own case and not on weakness of the case of the adversary. ***OLADUGBAGBE VS. OBI (2020) ALL FWLR (Pt. 1072) P. 848 at 883*** was cited.

Learned counsel submits, that the case of the Defendant does not by any scintilla of evidence support the case of the Plaintiffs. The Defendant remained stoic in its defence that the failure of the Defendant to operate the scheduled flights on the 22nd day of October, 2022 was due to the End SARS protests.

Learned counsel argued that in paragraph 6(a) of the statement of claim, the 1st Plaintiff averred that he purchased air tickets from the Defendant with the intention of attending the wedding ceremony of one Mubarak Abdullahi. However, in a volte face, the 1st Plaintiff under cross examination stated that he doesn't have the evidence of the purported wedding. Counsel therefore submits that it is an effort on the part of the 1st Plaintiff to approbate and reprobate. ***APC V. AGWELE (2021) ALL FWLR (Pt. 1116) 382*** was cited.

Learned counsel further submits, that the burden of proof lies on the 1st Plaintiff to prove his claim that he was to attend a wedding, a duty which he failed to establish. In the same breadth, the Plaintiff failed to establish the fact that they paid for hotel bills as per their relief sought in paragraph (i) of their Statement of Claim.

UNITED BANK FOR AFRICA PLC VS. OLA-OLUWA AINA WIRE INDUSTRY (NIG.) LTD & M. O. AINA (2021) ALL FWLR (Pt. 1111) Page 629 at 658 was cited.

Learned counsel submits, that by the provisions of Sections 131-133, 134 and 136(i) Evidence Act. 2011 in all civil cases, the burden of proof is on the Plaintiff, and it is on balance of probabilities or preponderance of evidence.

It is the learned counsel's submission that cognizant of the arguments on issue 1 and the admission by the PW1 of the fact that the desk of the NCAA and that of the Defendant were both unmanned on the 22nd day of October, 2022 was an unusual event, conduces to the fact that it was as a result of the End-SARS protest.

The Court is urged to resolve issue one in favour of the Defendant.

On issue two, it is the submission of the learned counsel that having failed to adopt his witness deposition on Oath, the 2nd Defendant's claims is deemed abandoned and the 3rd and the 4th Defendants having failed to present any Witness Deposition in evidence and in proof of their claims, their claims are bound to fail. He cited provisions of **Order 34 Rule 1(1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.**

Order 34 Rule 1(1) is further amplified by the provisions of Order 34 Rule 1(3).

Learned counsel argued that it is pertinent to observe that Order 34 Rule 1(1), (2), (3) and (4) made copious use of the modal auxiliary "shall". The import of the use of the word "shall" is to the effect that the duty cast on a witness with respect to his evidence is obligatory and not optional. The case of ***SALIK VS. IDRIS (2015) ALL FWLR (Pt. 790) Page 1307 at 1340*** was cited.

Learned counsel submits that the 2nd, 3rd and 4th Plaintiffs having failed to comply with the provisions of Order 34 Rule 1 of the Rules of this Court, are deemed to have abandoned their suit and ipso facto their claims against the Defendant are bound to fail

and should accordingly be dismissed. The 2nd, 3rd and 4th Claimants ought to speak to their documents and having failed to do so, their case goes to no issue. In ***OMISORE VS. AREGBESOLA (2015) IS WWLR (Pt. 1482) 1 at 323-324.***

Learned counsel further submits that it is trite that a Witness Statement on Oath must be tendered to assume the status of an evidence by the Deponent. The 2nd Plaintiff did not adopt his witness statement on Oath and it is ipso facto deemed abandoned and cannot assume the life of an evidence before the Court. He cited ***SPLINTERS (NIG.) LTD VS. OASIS FINANCE LTD (2013) 18 WWLR (Pt. 1385) Page 188 at 224.***

The reliefs sought by the 2nd 3rd and 4th Plaintiffs in the endorsement in their statement of claim are bound to fail as it is deemed abandoned.

The Court is urge to resolved this issue in favour of the Defendant.

On issue three, it is the submission of the learned counsel that the ancillary reliefs claimed by the Plaintiffs are bound to fail as their claim is not supported by evidence.

In paragraph (i) of their claims endorsed in the Writ of Summon, the Plaintiffs claimed the sum of N5,000,000.00 (Five Million Naira) only in General Damages, counsel submits that the Plaintiffs have not proved by credible evidence the said deprivation to warrant the Court to afford them the reliefs claimed. The 1st Plaintiff who gave evidence has not provided evidence with respect to the expenses incurred on hotel bills. He did not prove by evidence, his having suffered mental torture or psychological trauma by seeking psycho-social counseling. He cited the case of ***OBE V. MTN (NIG.) COMMUNICATION LTD (2021) ALL FWLR (Pt. 1111) Page 580.***

Learned counsel submits that the Plaintiffs have a bounden duty to specifically plead and ipso facto prove their claims in paragraph (i) in their endorsement on their Writ of Summons, Having failed in this regard, the Court is urge to dismiss the reliefs sought herein in paragraph (i). He cited ***FIRST BANK PLC V. MOMOH (2021) ALL FWLR (Pt. 1080) Page 979.***

The Court is urge to resolve the issue three in favour of the Defendant as the Plaintiffs have failed to prove their claims.

On issue four, learned counsel contends that the Plaintiffs per their endorsement in paragraph 6(j) claimed the sum of

N1,500,000.00 (One Million, Five Hundred Thousand Naira) only as solicitors fees.

It is the learned counsel's submission, that it is liable to be dismissed. This is because the decision to hire a Solicitor to prosecute this suit was an act of volition undertaken by the Plaintiffs of their own freewill. Under cross-examination, the 2nd Plaintiff admitted that it was his own decision to approach the court to seek redress. Having conceded to the volitional act of seeking redress at the Court, it would be preposterous for the Plaintiffs to seek to transfer the cost of prosecuting their matter to the Defendant. This is contrary to public policy. He cited the case of ***THEKWOABA VS. ACB (1998) 10 NWLR (Pt. 571) Page 610 at 611.***

Learned counsel submits that judicial system frowns at situations in which there is an attempt to pass Solicitors fees to an adversary. He cited ***ADEBIYI VS. DASILVA (2019) ALL FWLR (Pt. 993) Page 354.***

Learned counsel submits that the Plaintiffs claim for the sum of N1,500,000.00 (One Million, Five Hundred Thousand Naira) only being Solicitors fees in respect of this suit be dismissed as it is antithetical to the sacred tenets of public policy.

In conclusion, and as can be gleaned from the totality of the pleadings, evidence, (documentary and oral) statutory and judicial authority, it is the learned counsel's submission that the Plaintiffs have failed to prove, on the preponderance of evidence that their case against the Defendant are therefore not entitled to any of the reliefs sought from the Court. The Defendant on the other hand has proved her case before this Court and consequently, the Court is urge to dismiss the Plaintiffs case in its entirety as it lacks merit, is frivolous and the claim unconscionable.

COURT:-

I have read and assimilated the claims of the Claimants and the Defendant's on the one hand and have equally juxtaposed the evidence led by both parties in prove of their respective pleadings.

It is morethan true that from the ensuing evidence, the transaction between the Plaintiffs and Defendant is contractual in nature.

I shall therefore limit my searchlight to the salient ingredients of contract and determined whether or not there was any breach of the said Contract.

The law on the primary function of contract is most elementary for all intent and purposes.

Indeed, the function of contract is governed by the making of an offer by the offeror, and the corresponding acceptance constitutes an agreement if the two parties are ad-idem.

I shall attempt to consider the basic elements that ought to be in place for there to be a valid and enforceable contract in law.

It is settled that offer, acceptance, consideration, mutuality of purpose and intention must be present for there to be a valid contract.

JOHNSON WAX (NIG.) LTD. VS. SANNI (2010) 2 NWLR (Pt. 235) SC.

An offer is a definite indication by one person to another that he is willing to conclude a contract on the terms purposed which when accepted, will create a binding legal obligation, the offer may be oral, written or even implied from the conduct of the offeror. The offeree has the option of outright rejection of the offer.

AMANA SUITES HOTELS LTD. PDP (2007) 6 NWLR (Pt. 1031) 453 at 476 Paragraph F – H.

Acceptance may be demonstrated by conduct of parties; by words or by documents that have passed.

It is the element of acceptance that underscores the bilateral nature of a contract.

It is instructive to note, that the reliefs 1, 2, 3, 4, 5, 6 and 7 claimed by the Plaintiffs are declaratory in nature.

Where the Court is called upon to make a declaration of right, it is incumbent on the party claiming to be entitled to the said declaration to satisfy the court by evidence and not the admission in pleadings that he is entitled, as declaratory reliefs are not granted as a matter of course.

See ***IYOLA OGUNJUMO VS. MURTALA ADEMOLU (1995)4 NWLR (Pt. 389) 254.***

The fulcrum of the Plaintiffs' claims from the totality of evidence led before this Court is hinged on the alleged express Breach of contract with the Defendant in particular respect to all the Plaintiffs in this suit when it failed to transport the plaintiffs from Nnamdi Azikwe International Airport on the 22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3 838 on the said 22nd as the air tickets have clearly

shown. That PW1 stated that he was at the check-in-counter with all the Claimants and other passengers till 12:00hrs when they discovered that the flight had been cancelled, with no correspondence of any sort made by the Defendant to any of them in respect of the cancelled flight and no notice whatsoever had been given to them in advance about the cancellation.

That till 11:15hrs when the flight was scheduled to depart, there were no announcements for boarding and they had received no notices from the Defendant at any point in time with reasons for the cancellation, after it was confirmed from the airport authorities that the flight was indeed cancelled.

That a few hours before the Defendant cancellation of the Flight, the Defendant still sold tickets to intended passengers, including one Alh. Mustapha Sulaiman, to whom a ticket was issued.

On their part, the Defendant is of the view; that this suit ought to be dismissed as it is frivolous, vexatious, ill-timed, contrived to waste the time of the honourable court.

That the operations of the Defendant, like all other airlines were shut down because of the attendant violence consequent on the End SARS protest which led to the shutdown of aviation operations and the staff of the Defendant had to shut down

operations in order to avert the loss of lives. Furthermore, aviation operations were grounded in order to avert consequential damage to aviation equipment and death of aviation personnel due to the wide spread violence engendered by the nationwide End-SARS protest.

It is pertinent to state here that Claimants tendered Exhibit 'E' i.e Departure records for 21st, 22nd and 23rd October, 2020 to prove their assertion that there were other airlines operating and in fact Max-Air took off to the same Yola on the said 22nd day of October, 2020 at about 9:00 hours or thereabout.

The Defendant stated that it sent a notice cancelling flights effective from October 21st, 2020 due to the End SARS protest but failed to furnish evidence of the act.

It is trite that he who asserts is saddled with the responsibility of proving his assertion in order to succeed in his claim. Civil suits are determined on preponderance of evidence and balance of probability. Section 131 (1) Evidence Act, 2011.

***ISEOGBEKUN VS. ADELAKUN (2013) 10 NWLR (Pt. 1363)
Page 423.***

PW1 in his testimony stated that no notices were given to any of them in writing at any time before the 22nd day of October, 2020 by the Defendant intimating them of an impending cancellation or at any other time before the scheduled departure time of flight W3 838 to Yola and they also stated that no reimbursement, compensation or assistance was rendered to any of them in an individual or collective capacity.

What then stopped the Defendant from issuing a notice of cancellation same way that it sent passenger itinerary receipts to the email of the Claimants as evidenced in Exhibits 'A' and 'C'?

The Claimants have been able to prove the fact that Defendant failed to discharge its own contractual obligation, as per the aforementioned exhibits.

Indeed, documents tendered before a trial court are certainly meant for scrutiny by the Court. A trial Court has the onerous duty of considering all documents placed before it in the interest of justice. It has a duty to closely examine documentary evidence placed before it in the course of its evaluation and comment or act on it.

MOHAMMED VS. ABDULKADIR (2007) Vol. 43, 58 at 104, Line 20 – 30.

The case of the Claimants and Defendant is predicated upon all the exhibits tendered before this Court.

I am in no difficulty arriving at the decision that the Defendant's non-completion of a valid contract entered into with the Claimants i.e failure to transport the plaintiffs from Nnamdi Azikwe International Airport on the 22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3838 on the said 22nd as the air tickets have clearly shown...as per all the exhibits amounts to breach of contract.

The law is settled on the importance of sanctity of contract and its bindingness.

See ***MR. SEGUN BABATUNDE VS. BANK OF THE NORTH LTD. NSCQR Vol. 48 2011 Page 640.***

Furthermore, the Defendant was in express Breach of its contract in particular respect to the 2nd, 3rd and 4th Plaintiffs when it failed to return them from Yola International Airport on the 24th, 25th and 27th of October, 2020 respectively, to Nnamdi Azikwe International Airport, on flight W3 839 as the air tickets have clearly shown.

In law, a breach of contract is committed when a party to a contract, without lawful excuse fails, neglects or refuses to perform an obligation he undertook in the contract or either performs the obligation defectively or incapacitates himself from performing the contract or by wrongfully repudiating the contract.

See ***KENTAS NIG. LTD. VS. FAB ANIEH NIG. LTD. (2007) ALL FWLR (Pt. 384) 320 at 342 Paras B – C CA;***

OBAJIMI VS. ADEDIJI (2008) 3 NWLR (Pt. 1073) 1 at Pp. 16 – 17 Paras H – B.

Having established the fact that there was a valid contract between Claimant and Defendant; that the said contract has been breached, Claimant naturally in law would have been entitled to restitution in damages.

The general rule for measuring damages for breach of contract was established by the case of ***HADLEY VS. BAXENDALE (1854) 9 exch. 341***, which is that a party in breach is liable in damages in the amount which flows directly and naturally from his failure to keep his own part of the contract or bargain provided that such damage could reasonably have been within the contemplation of the parties at the time when the contract was made.

See ***BALOGUN VS. NATIONAL BANK OF NIGERIA LTD. (1978) ALL N.L.R 63;***

ECOBANK NIG. PLC. VS. EKPELIKPE (2013) LPELR 20327 (CA).

Damages can be general or specific. General damages is the kind of damages which the law presume to be the consequence of the act complained of and unlike special damages, a Claimant for general damages does not need to specifically plead and specially prove it by evidence. It is sufficient if the facts thereof are generally averred.

EFCC VS. ALH. BABA INUWA & ANOR (CA)...

The law will not stand still whilst the rest of the world goes on and that will be bad for both... the law is an equal dispenser of justice, and leaves none without a remedy for his right.

It is a basic, fundamental and elementary principle of common law that wherever there is a wrong, legal wrong or injuria that is, there ought to be a remedy to redress that wrong... this expressed in the common law principle of Maxim, ubi jus ibi remedium.

Above was espoused by Lord Denning, M.R, in ***PARKER VS. PARKER (1954) Page 15 at Page 22.***

It is this Court's honest assessment of the situation and facts in this case, that, the Claimants are entitled to general damages in the amount of N4,000,000.00 (Four million Naira) only;

In summation, Judgment is hereby entered for the Plaintiff against the Defendant as follows:-

- a. A Declaration by this Honourable Court that there was a valid and legal contract between the Plaintiffs and the Defendant to transport the Plaintiffs from Nnamdi Azikwe International Airport on the 22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3 838 on the said 22nd as the air tickets have clearly shown **is hereby granted.**
- b. A Declaration by this Honourable Court that there was a valid and legal contract between the 2nd, 3rd and 4th Plaintiffs and the Defendant to return them from Yola International Airport on the 24th, 25th and 27th of October, 2020 respectively, to Nnamdi Azikwe International Airport, on flight W3 839 as the air tickets have clearly shown **is hereby granted.**

- c. A Declaration by this Honourable Court that the Defendant is in express Breach of its contract in particular respect to all the Plaintiffs in this suit when it failed to transport the plaintiffs from Nnamdi Azikwe International Airport on the 22nd of October 2020 at 11:15 hours and arrive Yola International Airport at 12:35hours on flight W3 838 on the said 22nd as the air tickets have clearly shown **is hereby granted.**
- d. A Declaration by this Honourable Court that the Defendant is in express Breach of its contract in particular respect to the 2nd, 3rd and 4th Plaintiffs when it failed to return them from Yola International Airport on the 24th, 25th and 27th of October, 2020 respectively, to Nnamdi Azikwe International Airport, on flight W3 839 as the air tickets have clearly shown **is hereby granted.**
- e. A Declaration by this Honourable Court that the Defendant is in breach of the National Civil Aviation Regulations and in violation of the Plaintiffs rights when it failed to notify the Plaintiffs of the cancellation of flight W3 838 to Yola at least 24 hours before the scheduled time of departure **is hereby granted.**

- f. A Declaration by this Honourable Court that the Defendant is in direct breach of the National Civil Aviation Regulations and in violation of the Plaintiffs rights when it failed to offer the Plaintiffs immediate reimbursement in cash following the abrupt cancellation of flight W3 838 to Yola **is hereby granted.**
- g. A Declaration by this Honourable Court that the Defendant is in direct breach of the National Civil Aviation Regulations and in violation of the Plaintiff's rights when it failed to offer assistance in the form of Hotel accommodation and transportation within the time limits set out by the regulations to the plaintiffs following the cancellation of flight W3 838 to Yola **is hereby granted.**
- h. An Order of this Honourable Court directing the Defendant to pay the sum of N204,213.00 (Two Hundred and Four Thousand Two Hundred and Thirteen Naira) for specific damages, representing the total amount paid for Flight Tickets by all the Plaintiffs as follows;
 - i. 1st Plaintiff = N26,391.00 (Twenty Six Thousand, Three Hundred and Ninety One Naira).

- ii. 2nd Plaintiff N51,525.00 (Fifty One Thousand, Five Hundred and Twenty Five Naira).
- iii. 3rd Plaintiff N74,772.00 (Seventy Four Thousand, Seven Hundred and Seventy Two Naira).
- iv. 4th Plaintiff N51,525.00 (Fifty One Thousand, Five Hundred and Twenty Five Naira)...**is hereby granted.**
- i. An Order of this Honourable court directing the Defendant to pay the sum of **N4,000,000. 00 (Four Million Naira)** in General damages to the Plaintiffs following the irremediable inconvenience, transportation, Hotel accommodation, loss of valuable time, physical and mental torture, steep financial losses and psychological trauma occasioned by the actions and inactions of the Defendant **is hereby granted.**

Above is the Judgment of this Court.

Justice Y. Halilu
Hon. Judge

16th July, 2025

APPEARANCES

Musa Danladi, Esq. – for Plaintiffs.

Dr. Ayodele Gatta, Esq. with **Zainab Ibrahim, Esq.** – for the Defendant.

