The Montreal Convention – Whether Provides the Exclusive Framework for Claims Arising from Carriage by Air

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 17th Day of January, 2025

Before Their Lordships
Mohammed Lawal Garba
Tijjani Abubakar
Chidiebere Nwaoma Uwa
Stephen Jonah Adah
Jamilu Yammama Tukur
Justices, Supreme Court

SC./CV/1191/2022

BETWEEN

MR. FEMI ANIBABA **APPELLANT**
(Suing as Administrator of the Estate of Mrs. Oluwatosin Ibironke Anibaba (Deceased) for and on behalf of the Dependents of the Deceased and the Estate of the Deceased)

AND

1. **DANA AIRLINES LIMITED** **RESPONDENTS**
2. **STACY VEOLETTE SELLERS**
   (Sued as the personal representative of The Estate of Mr. Peter Simon Waxton - Deceased)

(Lead judgement delivered by Honourable Tijjani Abubakar, JSC)

Facts

The 1st Respondent, a domestic air carrier, operated an aircraft, McDonnell Douglas MD-84 with registration number 5N-RAM. On 3rd June 2012, the 1st Respondent contracted to convey a certain Mrs. Oluwatosin Ibironke Anibaba, the wife of the Appellant, from Abuja to Lagos on flight 9J-992. At approximately 3:35 pm, the aircraft crashed in the Iju-

Ishaga area of Lagos State, resulting in the death of all the 153 passengers on board, including Mrs. Anibaba. The Appellant, the personal representative of the deceased and her husband, alleged that the crash was caused by the negligence of the deceased pilot, Mr. Peter Simon Waxton, whose personal representative is the second Respondent. He subsequently instituted an action on 30th May 2014 seeking extensive reliefs spanning funeral expenses, loss of personal belongings, loss of earnings, dependency claims, predeath pain and suffering, and posthumous loss of companionship, among others. The monetary claim was for several millions of Naira and United States Dollars. On 20th February 2020, the Federal High Court awarded the Appellant the sum of US$61,000.00, along with a post-judgement interest of 10% per annum, rejecting many of the other reliefs sought based on insufficient evidence or lack of legal basis.

Dissatisfied with the judgement, the Appellant appealed to the Court of Appeal, which court partially allowed the appeal, revising upward the awards for pain, suffering, and loss of companionship to a total of US$250,000.00. However, it ordered that the naira equivalent be calculated at the exchange rate prevailing as of the date of the cause of action being 3rd June 2012. The Appellant further appealed to the Supreme Court and the Respondent cross-appealed, challenging certain aspects of the judgement of the Court of Appeal.

Issues for Determination

The Appellant formulated the following issues for determination of the appeal:

i. Whether the learned Justices of the Court of Appeal erred in law and occasioned a miscarriage of justice when they directed that the judgement sum in United States dollars be converted to naira at the prevailing exchange rate as of the date of the cause of action, instead of the date of judgement or payment, as required by law.

ii. Whether the learned Justices of the Court of Appeal misconstrued Article 29 of the Montreal Convention (domesticated in the Third Schedule of the Nigerian Civil Aviation Authority Act, 2006) by holding that the Appellant was not entitled to bring an additional claim under the Fatal Accidents Law and the Administration of Estate Law of Lagos State.

iii. Whether the lower court erred in affirming the trial court's refusal to grant several heads of damages claimed by the appellant despite cogent evidence presented.

iv. Whether the Court of Appeal was wrong in only increasing the meagre award of USD60,000 for pain, suffering, and loss of companionship to USD250,000, which the Appellant contends remains inadequate.

Arguments

On the first issue, the Appellant submitted that the lower court was right to set aside the trial court's award of the respective sums of US$20,000.00, US$30,000.00 and US$10,000.00 in favour of the Appellant for the pain, loss of companionship and affection suffered by the Appellant, his daughter and the deceased's parents respectively for being meagre and that the lower court was right in increasing the sums awarded. However, counsel for Appellant contended that the justices erred by *suo motu* converting the increased judgement sums from United States Dollars to Nigerian Naira at the prevailing exchange rate on the date the cause of action arose. Counsel argued that the court also erred in interpreting the phrase "shall be converted to Naira at the existing official exchange rate" of Article 23 of the Montreal Convention, as referring to the exchange rate at the date of the cause of action. In response, the Respondents submitted that the lower court erred in increasing the judgement sum especially because the basis for the heads of damages for which they were granted were not recognized or recoverable under Nigerian law, being contrary to Article 29 of the Montreal Convention, as domesticated and that damages for pain and suffering are non-quantifiable; and as such, not recoverable. Further, that pain, suffering, loss of companionship, and affection, constitute non-compensatory damages specifically excluded under Article 29 of the Convention.

On issue two, the Appellant submitted that the matter at the trial court was brought pursuant to the Montreal Convention for the Unification of certain Rules for International Carriage by Air, 1999 (the Convention) as incorporated into the Nigerian Law by Section 48(2) of the Civil Aviation Act, 2006 (the “NCAA” or the “Convention as domesticated”); the Fatal Accident Law of Lagos State, Cap F1 laws of Lagos State and that the lower court failed to properly interprete and apply the provisions of Article 29 of the Montreal Convention and Article 24 of the Warsaw Convention to the facts of the case. Responding, it was contended for the Respondents that the Fatal Accidents Law of Lagos State 2003 and the Administration of Estates Law of Lagos State 2003 were inapplicable to aviation-related matters and Article 29 of the Convention as domesticated expressly precluded the application of domestic laws to claims governed by the Convention.

On the third issue, the Appellant highlighted that at page 44 of the judgement of the lower court, the court labelled as speculative all heads of damages refused by the trial court, which included claims for future dependence on the deceased's earnings, income, pension, and services, as well as claims for future healthcare costs and the deceased's pre-death pain and suffering. The Appellant posited that these claims, except for the deceased's pre-death pain and suffering, were economic claims that would have continued to accrue had the deceased not died in the air disaster. He argued that the trial court erred by dismissing these claims as speculative without evaluating the substantial oral and documentary evidence adduced in their support and that this was further compounded by affirming the decision of the trial court on the ground that the claims were couched in future but that the mere fact that the claims were future-oriented does not render them speculative. As a rebuttal, the Respondents argued that the lower court properly evaluated the evidence before it and correctly dismissed the Appellant's claims for lack of proof.

On issue four, the Appellant contended that despite the upward review of the judgement sum by the lower court, it failed to consider material evidence, including the uncontroverted testimony that the family of Peter Simon Waxton, the pilot of the ill-fated Dana flight, was compensated with the sum of US$4,400,000.00 in similar circumstances and the unchallenged evidence that the deceased was pregnant at the time of her death, which resulted in a compounded loss to the Appellant and the other dependents of not only the deceased but also their unborn child. The Appellant highlighted the precedent of Supreme Court of Texas, which affirmed a jury's award of $500,000 for mental anguish suffered by a deceased from the time of a plane's breakup until it hit the ground and urged the apex court to substantially increase the sums awarded as damages and resolve all the issues for determination in his favour. Reacting to the submission, the Respondents argued that Section 48(2) of the NCAA 2006 and Articles 17 and 29 of the Convention as domesticated, all claims regarding a carrier's liability in respect of the death of a passenger are subject to the compensation limits in Article 21 thereof. The compensation must be linked to actual damage sustained, which must be strictly proved.

Court's Judgement and Rationale

The Supreme Court examined the first issue raised and held that the wordings of the convention, specifically Article 29 were clear and unambiguous to the effect that claims for damages arising from international air carriage must be governed exclusively by the terms of the Convention. The apex court cited **SIDHU v BRITISH AIRWAYS PLC [1997] 1 ALL ER 193** where the House of Lords held that the Warsaw Convention (the predecessor to the Montreal Convention) provided the sole remedy for passengers in claims arising from international carriage by air. As such, the Supreme Court held that

given the comprehensive nature of the liability regime established by the Convention as domesticated in Nigeria, it operates as the exclusive framework for addressing claims arising from carriage by air. Accordingly, claims for damages in Nigeria arising from the death of a passenger in carriage by air must be brought solely under the Montreal Convention as domesticated, subject to its conditions and limits. Their Lordships also noted that Article 29 of the Convention recognises the role of domestic laws in determining eligible claimants i.e. determining the persons entitled to bring claims and their respective rights. *Thus, while the Convention serves as the exclusive framework for establishing liability, domestic laws like the Fatal Accidents Laws and Administration of Estates Law act as necessary adjunct in determining the procedural and distributive aspects of claims.*

Deciding issue two, Their Lordships held that damages for pain, suffering, loss of companionship, and affection fall within the ambit of general damages, which are compensatory in nature and that these heads of damages are distinct from punitive or exemplary damages which is prohibited by the convention. The court adjudged that the trial court's findings on pain, suffering, loss of companionship, and affection were properly grounded in the evidence presented, and the reassessment by the lower court did not violate the limitations imposed by Article 29 of the Montreal Convention, to the contrary, it ensured that the claimant was adequately compensated for the harm suffered, consistent with the established principles of law. On the argument that the lower court *suo motu* increased the award of damages, the Supreme Court held that the record of appeal showed that the decision of the lower court to increase the award was a direct response to the issues formulated and the arguments canvassed by the Appellant that the award of US$60,000.00 was manifestly inadequate.

Determining other issues raised, the Supreme Court held that (i) the sum awarded by the lower court was adequate in the circumstance, and required no further upward review and that (ii) the claims for future dependence on the decease''s earnings, income, pension, and services, as well as claims for future healthcare costs and the deceased's predeath pain and suffering, were correctly deemed speculative as the inherent uncertainties of life, including potential loss of employment, health issues, or remarriage were legitimate considerations that negate the plausibility of such claims; and they were not supported by any concrete or compelling evidence.

Finally, on the exchange rate to be adopted in converting the award of damages into Naira, the currency of enforcement, the Supreme Court examined the provisions of the original text of Article 23 of the Montreal Convention which provide that *in judicial proceedings, conversion of the sums into national currencies shall be made according to their value in terms of Special Drawing Rights (SDRs) as defined by the International Monetary Fund (IMF) at the date of judgement.* Therefore, in construing the domesticated version of Article 23, *it* *is axiomatic that domestic legislation implementing an international convention must, as far as possible, be interpreted in harmony with the purpose and intent of the convention, particularly where no conflicting domestic provisions exist.* Accordingly, Their Lordships held that the absence of specificity in the domesticated text of Article 23 cannot be divorced from the clarity provided by its parent provision under the Montreal Convention. Additionally the court highlighted the principle that *judicial awards do not become enforceable until judgement is delivered* as being relevant and firmly held that the lower court fell into grave irredeemable error in holding that conversion to Naira must occur at the official exchange rate prevailing at the date of the cause of action rather than the date of judgment. The Court held that the appeal succeeded in part as the judgment sum was awarded in favour of the Appellant *at the existing exchange rate on the date of the judgment of the trial Court, being the 20th day of February 2020* with post-judgement interest at rate of 10% per annum until full liquidation of the judgement sum.

Their Lordships also considered the Respondents' cross appeal which issue was considered with the issues in the main claim on propriety of the award of the sum of US$250,000.00 as general damages for pain, suffering, loss of companionship, and affection, which are claimed to be non-pecuniary, non-quantifiable, and non- recoverable under aviation claims or Nigerian law. The court found the cross-appeal unmeritorious and dismissed same.

Appeal allowed in part.

Representation

Babatunde Ajibade, SAN with Kolawole Mayomi, Esq. and Peter Olalere, Esq. for the Appellant.

Taiwo Kola-Balogun (Mrs), Esq with O. Onuigbo, Esq. for the Respondents/Cross Appellants.

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