



**IN THE FAIR COMPETITION TRIBUNAL
AT DAR ES SALAAM**

APPEAL NO. 9 OF 2017

BETWEEN

FAST-JET AIRLINES LIMITED.....APPELLANT

AND

HON.KARUA SAMWELI1ST RESPONDENT

TANZANIA CIVIL AVIATION AUTHORITY.....2ND RESPONDENT

**(Appeal from the decision of the Tanzania Civil Aviation
Regulatory Authority in Complaint No. 02 of 2017 dated 26th day
of May, 2017)**

JUDGMENT

This is an appeal against the decision of the 2nd Respondent that awarded the 1st Respondent the sum of USD 4000 being compensation for the Appellant's failure to transport the 1st Respondent from Dar es Salaam to Mbeya on the 28th day of October, 2015.

The background to this appeal is briefly as follows:- the 1st Respondent was among the passengers who were to travel to Mbeya on 28th day of October, 2015 by the Appellant's plane. On the travel date the 1st Respondent arrived on time at the airport and he was issued with a boarding pass. With his boarding pass he waited at the VIP lounge to board the plane that was scheduled to take off at 0600Hrs. At around 0700Hrs he was informed that the flight had left. Having aired his grievances, the 1st Respondent was offered an afternoon flight but refused because it was no longer suitable for

his program though on the next day he bought another ticket and traveled to Mbeya. Aggrieved with the Appellant's action, the 1st Respondent lodged his complaint to the 2nd Respondent claiming that he was to meet an important investor in mining activities in Mbeya on 28th day of October, 2015 at 0900hours. As a result of his failure to travel, the investor cancelled the meeting thus he suffered damages of USD 500,000 for loss of business. The 2nd Respondent after hearing both parties awarded the 1st Respondent USD 4000, cost of the ticket incurred on 30th day of April, 2016 and the cost of the advocate's representation on the day of the hearing at the committee. The Appellant was not happy with that decision. It lodged this appeal with one ground of appeal, namely: -

That, the Chairperson of the Committee of the Tanzania Civil Aviation Authority on the Consumer Complaint erred in law and facts by awarding an excessive quantum of general damages and compensation to the 1st Respondent.

Basing on the afore ground of appeal, the Appellant prayed for the following relief(s); -

1. That, this Hon. Tribunal be pleased to allow this appeal and set aside the award granted to the first Respondent by the Chairperson of the Committee of the Tanzania Civil Aviation Authority on the Consumer Complaint.
2. Costs of this Appeal to be borne by the Respondents.

3. Any other relief(s) that this Hon. Tribunal deems fit and proper to grant.

At the hearing, learned Counsel Ntemi Masanja for the Appellant told the Tribunal that the Appellant appeals against the USD 4000 and costs of the refund ticket. It was argued by Counsel Masanja that, the award of USD 4000 and costs for the refund of ticket contravened Section 73 (1) and (2) of Law of Contract Act, Cap. 345 (hereinafter referred to as "LC")

Counsel Masanja further told the Tribunal that Section 73 of LC is based on the principles stated in **Hedley vs Baxendale (1884) Ex 570 and Cooper Motor Corporation Ltd vs Moshi Arusha Occupation Health Services (1990) TLR 96 para E**. The principles are the injured person should be restored to the position as if the contract has been performed; and it does not mean that the person should gain from the breach of contract.

Counsel Masanja cited to us the case of **Fast Jet Airlines Limited vs John Mnaku Mhozya Civil Appeal No. 96 of 2016 (unreported)**, in which Mwandambo J observed; -

"...whilst I appreciate the fact that the Respondent is indeed an advocate of this Court and thus the flight cancellation might have subjected him to some anxiety and stress, I do not find any justification in the amount awarded. For whatever reason, that award was not only punitive as against the Appellant but also it meant to put the

Respondent in far better financial position than he was immediately before the breach of Contract contrary to the spirit behind the award of general damages namely; restitution in integrum. That award is accordingly set aside. I have considered the conduct of the Appellant in cancelling the flight without notice prior to and after the date scheduled for the travel and subsequent thereto together with the degree of anxiety the Respondent was subjected to on the said date and I think a sum of Tshs 5,000,000/= will meet the justice of the case as general damages in the circumstances of the case...."

Counsel Masanja maintained that the award by the 2nd Respondent was based on Regulation 25 of the Civil Aviation (Carriage by Air) Regulations, 2008 which puts a limit of USD 5000 to the carrier's liability. He also told the Tribunal that Regulation 25 makes reference to Regulation 22 of the Civil Aviation (Carriage by Air) Regulations, 2008 which they should be read together with Regulation 23 of the Sawe Regulations that deals with delays and exoneration of the carrier.

Counsel Masanja went on to submit that the 1st Respondent was left by the Appellant while he was waiting at VIP lounge at the airport where the Appellant is not responsible for VIP passengers and the Appellant did announce for boarding of passengers. He argued, the Appellant offered alternative ticket to the 1st Respondent but the 1st Respondent declined it and opted to travel the next day by purchasing a new ticket. Counsel Masanja took into account all these factors and came to the conclusion that there was

no damage to the 1st Respondent as the Appellant checked and gave a boarding ticket to him. It was the counsel's contention that the passenger is under obligation to observe the time for plane departure and it is not entirely left to the Appellant to remind passengers on their departure time. According to Counsel Masanja, there is no basis for awarding USD 4000 since it does not comply with the principles of restitution as such contravened Section 73 (1) of LC.

In opposing, Fikiri Liganga Advocate for the 1st Respondent objected the appeal and was of the following submission: That, it is not in dispute on 28th day of October, 2015 the 1st Respondent was left stranded. He could not travel on that day. These facts put the Appellant in contravention of Regulation 22 of the Civil Aviation Regulation which entitles the 1st Respondent to compensation. Mr. Liganga was of position that the award was proper within the confines of the law. There were sufficient materials for the Committee to award damages and compensation.

It was further contended by Mr. Liganga that the act of leaving stranded the 1st Respondent caused him panic, anxiety and trauma which justifies for the damages awarded. That, Section 73 (1) and (2) of LC was complied by the Committee because the damages sustained by the 1st Respondent as a result of Appellant's failure to transport him to Mbeya at that particular date naturally arose from the failure by the Appellant to transport the 1st Respondent on that particular day.

Mr. Liganga reiterated that the 1st Respondent would not be subjected to those injuries if the Appellant transported him on that particular date. That proves the injuries arose from the Appellant's breach. Mr. Liganga was of view that the authorities cited favors the 1st Respondent because Section 73 was wrongly interpreted by the Appellant.

Mr. Liganga averred further that Regulation 25 of the Civil Aviation reads together with Regulation 22 of the Civil Aviation that, a mere fact by the Appellant not to transport the 1st Respondent on that particular date in itself entitles the 1st Respondent damages. It does not require proof of sufferings.

It was submitted by Mr. Liganga that in assessing the quantum of damages there is no hard and fast rules, each case has to be decided according to the circumstances prevailing to that particular case. To Mr. Liganga, positions of law of contract applies in general transactions. There are particular laws set to govern proceedings originating from carriage by air.

It was further submitted by Mr. Liganga that the general principle requires wherever there is a conflict between specific and general law, specific law supersedes. The reason is that the law was specifically meant to govern that particular transaction. Therefore, in view of Mr. Liganga, reference to LC was wrongly applied by the Appellant in this proceedings. The applicable law is Regulation 25 that is damages awarded should not exceed USD 5000.

Learned Counsel Patricia Chenga on behalf of the 2nd Respondent, objected the appeal and prayed for their skeleton arguments be adopted. As it applied to the 1st Respondent, Patricia Counsel invited this Hon. Tribunal to consider the provisions of Regulation 22 of the Civil Aviation (Carriage by air) Regulations, 2008 which states; -

"The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures"

Patricia went on to invite this Hon. Tribunal to consider the provisions of Regulation 25 of the Civil Aviation (Carriage by air) Regulations, 2008 which states; -

"In the case of damage caused by delay as specified under regulation 22 in the carriage of persons, the liability of the carrier for each passenger is limited to the equivalent in Tanzanian shillings of USD 5000"

In rejoinder, Learned Counsel Ntemi Masanja maintained that, there was no delay. The 1st Respondent missed his flight because of his own doing. He checked in on time; he was given boarding pass that shows boarding time.

There was no substantial material to award damages. Even the suffering is marginally. Thus the Appellant offered ticket to mitigate the risk but the 1st Respondent refused. The award did not stipulate any injuries suffered by the 1st Respondent.

Counsel Masanja questioned as to whether is sound for an airline to wait for a single passenger? Awarding damages has a hard and fast rule that it is in *restitutio*. That, laws of aviation do not cover particulars of contract but in awarding damages is fixed in aviation laws. Regulation 25 complements the law of contract. So there is no conflict of laws.

From the afore submissions by the parties, we wish to state from the outset that regulation 25 of the Civil Aviation (Carriage by Air) Regulations, 2008 provides a threshold of equivalent to USD 5000 as liability of the carrier but it does not lay down principles to be considered in assessing the quantum of breach of contract. In that regard, regulation 25 (supra) has to be read in conjunction with Section 73(1) and (2) of LC. We do agree with Liganga Advocate that wherever there is a conflict between specific and general law, specific law supersedes. But in this matter, the Civil Aviation Regulations 22 and 25 complements each other with section 73 (1) and (3) of the LC as far as the principle of awarding damages are concerned and they are not in conflict. Regulation 25 of the Civil Aviation (Carriage by Air) Regulations, 2008 put a cap of not more than USD 5000 and Section 73 (1) and (2) of LC provides for principles to be considered in awarding damages. The principles are such that compensation for loss or damage caused by breach of contract

must be naturally arisen in the usual course of things and it should not be given for any remote and or indirect loss or damage.

In the case of **Tanzania Electric Supply Company Limited vs Nyaronyo Mwita Kicheere and Energy and Water Utilities Regulatory Authority, Tribunal Appeal No. 1 of 2012 (unreported)** at page 12 it was observed by this Tribunal that: -

"Legally, general damages are not required to be specifically proved and they cannot be quantified. Thus, general damages may be awarded where the fact of a loss is shown without producing evidence as to its amount."

Further in the case of **Tanzania Saruji Corporation vs African Marble Company Limited (2004) TLR 155 the Court of Appeal of Tanzania** it was held at page 157; -

"The position is that general damages are such as the law will presume to be the direct, natural and probable consequence of the act complained of,...the defendant's wrong doing must, therefore, have been the cause, if not the sole, or a particularly significant, cause of the damage."

Applying the above case laws to the matter at hand, it is on record that the 1st Respondent arrived on time at the airport and he was issued with a

boarding pass that showed him the time for boarding the plane. It is further on record that the 1st Respondent after securing his boarding pass went to wait at VIP lounge. Further, there is information from the Appellant which information is not denied by the 1st Respondent that the Appellant did announce for boarding but such announcement did not reach VIP passengers. It was contended by the Appellant that she has no control over VIP passengers and it appears in the proceedings that the Appellant notified the 2nd Respondent that it is Swissport who handles VIP passengers. Moreover, it is on record that the 1st Respondent was offered another ticket on the same date but declined it.

With these facts and having in mind Regulation 22 of the Civil Aviation (Carriage by Air) Regulations, 2008 that exonerates the Appellant we find that the Appellant did take all reasonable measures and we are certain that the failure of the 1st Respondent to board the plane was not caused by the Appellant. In that respect, we see no justification on the 2nd Respondent's decision to stand.

We, therefore, allow the appeal with costs and proceed to quash the 2nd Respondent's decision.

Dated at Dar es Salaam this 18th day of January, 2018.



Judge Barke M.A Sehel - Chairperson



Mrs. Butamo K. Phillip - Member



Mr. Yose J. Mlyambina - Member

18/01/2018

Delivered this 18th day of January, 2018 in the presence of Beatrice Mpepo, Advocate for the Appellant also holding brief of Fikiri Liganga Advocate for the 1st Respondent and in the absence of the 2nd the Respondent.



Judge Barke M.A Sehel - Chairperson



Mrs. Butamo K. Phillip - Member



Mr. Yose J. Mlyambina - Member

18/01/2018