THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPEAL NO.0204 of 2015

(Arising from the Judgment of the High Court (Civil Division) in Civil Suit No.181 of 2012 dated 29th September, 2014 delivered by the Hon. Mr. Justice Nyanzi Yasin)

ETHIOPIAN AIRLINES ::APPELLANT

VS

1. **MILTON ANGUYO**
2. **SOPHIA TIPERU** } **:: RESPONDENTS**

CORAM

HON. MR. JUSTICE KENNETH KAKURU, JA

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE

INTRODUCTION

This is a first Appeal against the Judgment of the High Court (Civil Division) delivered on 26th September, 2014 by the Hon. Mr. Justice Nyanzi Yasin where the court found in favour of the Respondents. The Appellant being dissatisfied with the said decision filed this appeal.

BACKGROUND

The Appellant M/S Ethiopian Airlines is a company carrying on the business of air cargo and passenger transportation whereas the Respondents are a couple who contracted the Appellant to use their services from Entebbe to Bhubaneswar in India via Addis Ababa and then on return to Entebbe. Both Respondents had medical visa as the second Respondent had to undergo spinal surgery in India. When the first Respondent was booking the flight he requested for a wheelchair service to facilitate the movement of the second Respondent after surgery on and off the plane and this request was included in the electronic ticket.

On 13th March 2012, the Respondents took a flight from Entebbe to Mumbai. On arrival at Mumbai they were connected by Air India to Bhubaneswar where the surgery was scheduled to take place. After surgery the second Respondent was issued with a medical certificate that showed that she was fit to travel by air. When they arrived at the airport at Bhubaneswar the first Respondent requested Air India for a wheelchair which they brought for them after Air India was presented with the medical certificate and tickets. They left Bhubaneswar to Mumbai. Since there was a long transit time before the next Ethiopian Airlines Flight they decided to wait from the Hilton Hotel.

At about midnight on 23rd March 2012, the Respondents left for the Appellant airline where they were cleared by police checks and proceeded to the check-in counter. After standing at the check-in counter for two hours they requested a wheelchair. The Appellant's official requested them for medical certificate which they presented to him with their tickets and passports. The Appellant's official then told them that he did not want the medical certificate for Air India but rather one certified by the Appellant's airline's doctors. The

agent of the Appellant yelled at the Respondents calling them "black Africans" and asked them to step out of the queue. The couple obliged. After sometime the Appellant's employee approached them with other five employees and dogs which run towards the Respondents' luggage. One of the men even questioned them as to why they carrying narcotic drugs. To which the Respondents replied that they had drugs for medication. The Appellant's officials later discovered that the said drugs were indeed for medication. The Appellant employees then brought medical personnel who came and confirmed that the second Respondent was fit to fly but by this time their flight to Entebbe had already left. The Respondents had to go back to their hotel and book another flight to Entebbe using Kenyan airways.

The Respondents filed a suit in the High Court alleging that the Appellant breached their contract to transport the Respondents from India to Uganda resulting in negligent and infliction of emotional distress to the Respondents. The trial court found that indeed the Appellant had breached their contract to transport the Respondents from India to Entebbe. The court also found that what happened to the couple amounted to an injury without impact or negligent infliction of emotional distress. The court accordingly awarded the Respondents general damages for breach of contract, general damages for suffering injury without impact, aggravated damages interest at 24% and costs of the suit.

The Appellant being dissatisfied with the findings of the court lodged this Appeal.

GROUNDS OF APPEAL

1. That the trial Judge erred both in law and in fact when he came to the finding that it is the obligation of the Appellant to provide a MEDIF to complete by the traveler.
2. That the trial Judge erred both in law and in fact when he came to the conclusion that the 2nd Respondent failure to travel back to Uganda from Mumbai was caused by the Appellant's conduct /omission there by breaching the contract of travel.
3. That the trial Judge erred both in law and fact when he came to the conclusion that the principle in the ruling of Dr. Wiseman case does not apply in this case.
4. That the trial Judge erred both in law and in fact in the evaluation of evidence and therefore came to a wrong conclusion that it is only Nareen or the Appellant's staff who were present at the Airport at the time who could explain the Appellant's position and not DW1 thereby concluding that on the balance of probabilities PW1 and PW2's evidence on the events was likely the true account of what occurred.
5. That the trial Judge erred both in law and in fact and further misdirected himself when he came to the conclusion that what happened to the Respondents amounted to an injury without impact or negligent infliction of emotion.
6. That the trial Judge erred both in law and fact in awarding general damages of Ug Shs 30,000,000/= to the 2nd Respondent which was in all respects excessive.
7. That the trial Judge erred both in law and fact in further awarding general damages of Ug Shs .100,000,000/= to the first and second

Respondent as emotional distress and public humiliation amounting to injury without impact which was in all respects excessive.

REPRESENTATIONS

The Appellant was represented by Mr. Fred Busingye while the Respondents were represented by Mr. Arthur Murangira.

DUTY OF THE COURT

This is the first Appeal and this Court is charged with the duty of reappraising the evidence and drawing inferences of fact as provided for under Rule 30(1) (a) of the Judicature (Court of Appeal Rules) Directions SI 13-10. This court also has to caution itself that it has not seen the witnesses who gave testimony first hand. Based on its evaluation this court must decide whether to support the decision of the High Court or not as illustrated in **Pandya v R [1957] EA 336 and Kifamunte Henry v Uganda Supreme Court Criminal Appeal No.10 of 1997.**

Legal Arguments

Ground 1: That the trial Judge erred both in law and in fact when he came to the finding that it is the obligation of the Appellant to provide a MEDIF to complete by the traveler

and

Ground 2: That the trial Judge erred both in law and in fact when he came to the conclusion that the 2nd Respondent failure to travel back to Uganda from Mumbai was caused by the Appellant's conduct/omission thereby breaching the contract of travel

Appellant's submissions

Counsel for the Appellant submitted that the denial to fly the Respondent back to Entebbe Uganda was legal, proper and justified because it was in conformity with the International Conventions, policies and Regulations that govern International carriage by air.

First, he submitted that the contract of carriage was by air and thus was governed by the Warsaw Convention of 1929 which Convention provided for the Rules relating to the liability.

He argued that every passenger must deliver a ticket that contains among other things a statement that the carriage was subject to the Rules relating to liability established by that convention.

Secondly, he submitted that International Air travel was also governed by the Convention on International Civil Aviation also known as the Chicago Convention of 1919. This Convention provided that every contracting state had to collaborate in having uniform regulations, standards, and procedures about aircraft, personal airways and auxiliary services in all matters.

Thirdly, counsel for the Appellant submitted that the Appellant was also a member of the International Air Transport Association hereinafter referred to as IATA which formulates the industry policies and standards to be followed by the airlines.

He submitted that according to the IATA passenger service conference Resolutions Manual medical clearance is required if the airline has received information that any of the passengers have their medical condition

aggravated during the flight and that they must first be cleared before they can travel.

He further submitted that this manual allowed members to deny transportation to passengers who needed medical clearance if they did not meet the requirements of carrying members.

In addition to the IATA Manual, counsel for the Appellant submitted that there was also the Ethiopian Airlines Customer Services Procedure Manual that provided that the medical clearance would be obtained from the Ethiopian medical unit and health services or Ethiopian designated approved physician.

He submitted that concerning passengers who need wheelchairs the Ethiopian airline manual provided that they could be given to a passenger if he/she has a statement from his/her physician certifying that the passenger can make the trip without difficulty. This Manual also provided that the request for the wheelchair should be in the passenger name record at the time of booking.

He relied on the case of **Katumba Ronald v Kenya Airways** SCCA No. 09 of 2008 for the proposition that by issuing an air ticket to the Respondents the Warsaw Convention 1929 and the Chicago Convention of 1949 became applicable to this case.

He argued that the medical form (MEDIF) was not supposed to be filled in by the Passenger as found by the trial court but by the designated/approved Physician by the airline or a licensed physician familiar with the condition of the passenger, in this case, a doctor at Apollo Hospital in Bhubaneswar who attended to the 2nd Respondent.

He concluded his submissions by stating that because of the operation of the above laws the Appellant had to deny boarding to the 2nd Respondent as it could not fly her back to Entebbe without delaying the flight so the denial was legal.

Under ground 2, counsel for the Appellant submitted that the Respondents in their travel used both International flights and domestic flights. He argued that the terms and conditions under domestic flights are different from those under International flights because the International flights are subject to the above Conventions. He argued that the above Regulations required a passenger like the 2nd Respondent who was coming for a major operation to travel by air after six days and also provide a certificate indicating that she was fit to travel by air.

Respondent's Submissions

Counsel for submitted that the findings of the trial Judge that Appellant company breached the contract of carriage between The Appellant Company and the Respondents was correct because it was in tandem with the evidence and the law.

First, counsel for the Respondent submitted that the trial Judge correctly evaluated the testimony Milton Anguyo and Sophia Tiperu. He submitted that the two had made it clear that they needed a wheelchair at the time of booking and buying the tickets yet when they asked for it on 23rd February 2012 it was denied without justification.

Secondly, counsel for the Respondent submitted that the Appellant's evidence was unreliable. This was because the defence witness Angessa Abebe who

appeared for the Appellant was not present at the material time when the acts complained of occurred in India. His testimony was based on a Report made by a one Nareen. Nareen was the actual official who was involved in the checking of the Respondents. In cross-examination this witness had confirmed that the booking tickets showed that the Respondents had requested a wheelchair.

Court's Findings

I have addressed my mind to the submissions of both counsel and the authorities supplied for which I am grateful.

The essence of this Appeal as I see it, is that the Appellant M/s Ethiopian Airlines contend that they did not breach their contract when they denied the Respondents the opportunity to travel back to Entebbe. Secondly, the Appellant also argues that they did not cause negligent infliction of emotional distress to the Respondents. The Appellant submits that the Respondents did not have the required medical certificate for fitness for travel and thus could not be allowed to travel. On the other hand, the Respondents submitted that the Respondent had a medical form from the hospital where the surgery took place which showed that the 2nd Respondent was fit to travel and thus should have been allowed to travel.

I am mindful of the fact that International air travel is subject to several International Conventions and Rules thereunder. These conventions include; The Warsaw Convention of 1929; the Chicago Convention of 1949, the IATA Airport Handling Manual, the IATA medical manual, the IATA passenger Service Conference Resolution Manual, the Ethiopian Airline Passenger and

Baggage service manual as amended in June 2011. We will put all this into consideration when adjudicating this Appeal.

Article 31 of the Vienna Convention on the law of treaties that sets out the general rule of interpretation of treaties as follows;

"...

1. *A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*
2. *The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes.*

   a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty.

   b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. *There shall be taken into account*

   a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provision.

   b) Any subsequent practice in the application of the treaty which established the agreement of the parties regarding its interpretation.

   c) any relevant rules of international law applicable in the relation between the parties.
4. *A special meaning shall be given to a term if it is established that the parties so intend..."*

In this ground the Appellant is disputing the finding of the trial court when it found that it was the duty of the Appellant to provide a medical form to be filled and be completed by the traveler.

The Ethiopian Airlines Customer Service Procedure Manual Article 4.8.1.2 further provides:

"Medical clearance shall be required for passengers who are incapable of caring for themselves without special assistance which is not normally extended to other passengers during flight because of age, physical or mental condition."

Furthermore, Article 4.15.9 of the same instrument states that;

"...A passenger in any of the above categories shall be subject to prior clearance for travel by Ethiopian medical unit and Health service or Ethiopian designated physician based on information in respect of their physical or mental condition obtained through a licensed physician familiar with the condition of the passenger."

Article 4.15.10 of the instrument states that a completed MEDIF is required for each passenger. (Medical Information Form)

"...For which fitness to travel is in doubt as evidenced by a recent instability, disease, treatment or operation or other outlined on the page under medical clearance is required."

Article 7.4.1 of the same instrument provides that;

"...sick and or incapacitated passenger shall not be accepted on Ethiopian Flights unless medical clearance is obtained from Ethiopian medical units and Health services or Ethiopian designated approved physician. At outstation

where Ethiopian has not appointed a designated/approved physician a completed medical information form (MEDIF) shall be sent to the Ethiopian medical unit in Addis Ababa to the attention of the director Medical unit and Health service to secure approval for clearance."

Article 7.4.2 of the same instrument on MEDIF provides;

MEDIF shall be filled in and completed when it is determined that the passenger required special care on grounds and onboard a flight."

According to Article 7.4.5, it provides that;

'This form shall be completed by the attending physician. It should give all the relevant information concerning the nature of the illness, whether the passenger is to be attended by a physician or nurse and /or medication, oxygen stretcher, special food is required."

My understanding of the above provisions is that a traveler is supposed to get medical clearance from a Physician at the airport or one attached to the Appellant's airline. This is a reasonable precondition for air travel so that medical complications midair are mitigated. In this case when the Respondents were discharged from the hospital in India they were given a detailed discharge summary form Exhibit P. 1 the physician who attended to them. When they were asked for a medical form at the airports in India, this was what they presented to the airport personnel. It is the case for the Appellant that this discharge summary form did not meet the Appellant Airlines MEDIF (Medical Information Form).

The trial Judge found that it was the obligation of the defendant (Ethiopian airlines) to provide a medical form to be completed by the traveler. He also

found that the defendant was the person best suited to know if it had a designated /approved physician in Mumbai or not and if none existent to advise on the necessary next steps to be taken. Mr. Kifle Gutema (DW1) who was employed as the airport manager at Mumbai confirmed that they used to employ a doctor but none was in their employment at the time the facts of this Appeal occurred.

It is not clear from the evidence on record how a MEDIF is obtained from the airline and how different it looked in substance from the discharge documents that the Respondents had in their possession. It would appear to me that the essential ingredient in the such a certificate would be that the passenger was fit to fly. The Respondents had taken a domestic Air India flight from Bhubaneswar to Mumbai and were then to take an international flight from Mumbai to Entebbe via Addis Ababa. Mr. Kifle Gutema (DW1) testified that the Air India and the Appellant Airline had a code sharing agreement. He further testified:

"...The code sharing means that the tickets may be shared by the airlines or not. In this present case Air India got the proceeds of the booking.

The two airlines are bound by the same rules (specific rules) ..."

On the Bhubaneswar to Mumbai leg of the flight, the documents presented by the Respondents were accepted and a wheel chair was provided to the Respondents however on the Mumbai to Entebbe leg, the same documents were at first rejected and the Respondents were offloaded from the flight. These two experiences to my mind appear to be contradictory. Mr. Kifle Gutema (DW1) confirmed to court (page 56 of the record of proceedings) that one of his staff called Narine offloaded the Respondents due to the absence of

a medical certificate. He also testified that the airline agent explained to the passenger what is required where a medical visa is involved.

Mr. Anguyo (PW1) testified that he originally booked the flight using a travel agent in Juda South Sudan called Satguru Travel and Tours and notified them that he and his wife would travel to India on a medical visa and hence would require the services of a wheel chair. Mr. Kifle Gutema (DW1) on the other hand testified that the booking history of the Respondents in their airline computer system SSR (Special Service Request Exh. P.1) did not show that they required a special service. Addressing himself to the issue of special requests, the trial Judge looking at Exh. P. 1 held:

"...the relevant part has "<u>other **requests**</u>". Below that heading is a statement meet and assist "travelers with special needs" below that statement is a statement,

*"**<u>Wheel Chair needed</u>**" in the space for specifications there is the phrase "**<u>None specified</u>**". My understanding of none specified means that a wheel chair was needed but no specific type of such a wheel chair would be given at that time. It does not mean with respect that no wheel chair was asked for. I have failed to understand why a clear request in bold print was redundant. Exh. P. 1 clearly shows a wheel chair was requested for a special service request (SSR) at the time of booking..."*

A review of that evidence in Exh. P. 1 however reads as follows:

"Wheel Chairs needed: *Milton Anguyo 0*

Sophia Tiperu 0

"

The reference to the number "0" to my mind means with due respect to the trial Judge that "0" wheel chairs were requested and it did not therefore refer to type of wheel chair.

As to the type of form required to show that the second Respondent was fit to fly, Mr Anguyo (Pw 1) testified that they had a document titled "Discharge Summary" (EXH. D 1.) from Apollo Hospital Bhubaneswar where she was operated. At page 77 of the Record of Proceedings the is a part named "Discussion" which reads:

"... clinical pain subsided and able to walk independently. She is fit for discharge..."

On the other hand, Mr. Kifle Gutema (DW1) testified the second Respondent was offloaded for medical reasons. He further testified that he got to know from the passenger manifest that the second Respondent had requested for a wheel chair. He however testified that Exh D 1 does not qualify as a Medical Clearance Certificate and so the Respondents we offloaded by one Narine. Both Respondents testified that when they were offloaded from the plane, they were subjected to humiliating treatment and were made the subject of a possible narcotic violations because they had on them medical drugs. The Appellant airline then made available a nurse and then a doctor to review the Respondents and they were then cleared to travel but by then the Appellant airline had left and the Respondent had to return to their hotel in Mumbai and continue their travel on another carrier Kenya Airways.

It appears to me that the central cause for all this dispute arose from a request for a wheel chair at Mumbai on the return leg to Uganda of the Respondents. That request was honored during the domestic flight from Bhubaneswar to Mumbai but rejected on the international leg from Mumbai to Entebbe via Addis Ababa. The Appellant's agent at Mumbai contested the Discharge Summary that the Respondents presented. However when a Doctor was later brought in to review the Discharge Summary, the Respondents were given an all clear but by then it was too late the Appellate aircraft had left Mumbai. Whereas I accept the request of a wheel chair was not made on the SSR I also find that it was not too onerous a special request to make. A wheel chair service at an airport should not be one that should be unreasonably withheld. So airports are massive and people with some form of disability should be accommodated and not humiliated by service staff who are the face and public relations of an airline. This is the era of customer service. At any rate the doctor at the airport eventually cleared the second Respondent for travel and apologies were made but those who generated the incident had long disappeared. The same doctor could have been called to resolve this issue as an initial step and so that the Respondents could fly out. The said Doctor had no challenges clearing the Respondents on the basis of Exh D. 1 without an exact MEDIF form so I do not see the challenge was all about.

This ground therefore fails but for other reasons stated above.

Ground 3: That the trial Judge erred both in law and fact when he came to the conclusion that the principle in the ruling of Dr. Wiseman case does not apply in this case.

And

Ground 5: That the trial Judge erred both in law and in fact and further misdirected himself when he came to the conclusion that what happened to the Respondents amounted to an injury without impact or negligent infliction of emotion.

Appellant's Submission

First, counsel for the Appellant submitted that the Appellant was not liable to pay damages for infliction emotional distress on the Respondents.

Secondly, he argued that the Appellant was only liable for damage sustained in the event of death or wounding of a passenger or any in case other bodily injury suffered by a passenger if the accident which caused the damage took place on board the aircraft or in the cause of the operations of embarking and disembarking. This was according to Article 17 and 24 of the Warsaw Convention of 1929.

Thirdly, he submitted that it was a long-established principle that compensation for injury to reputation and or hurt feelings were not recoverable in a claim for breach of contract save in exceptional circumstances.

He relied on the case of **Dr. Wiseman and Virgin Atlantic Airways Ltd** case No. Hq05x03112 for the proposition that compensation for injury and hurt feelings is not recoverable in a claim for breach of contract.

Respondents Submissions

Counsel for the Respondent submitted that the trial Judge correctly found that Dr. Wiseman case was inapplicable to the case before us.

This was because it had a different cause of action from the one before us in this case. He argued that Raphael Wiseman versus Virgin Atlantic Airways Ltd case was about a claim for general damages for medical trauma resulting from the breach of a travel contract whereas the case under consideration was an action for damages premised on the tort of negligent infliction of emotional distress.

Counsel for the Respondent submitted that that ground should fail because the facts upon which the Respondent based their claim under the tort of negligent infliction of emotional distress were not challenged by the Appellant. He argued that the Appellant did not produce any witness to rebut the prima facie case that had been established by the Respondents.

Court's Findings

In these grounds counsel for the Appellant is disputing the award of damages for the tort of negligent infliction of emotional distress to the Respondent. He argues that the Appellant was only liable for the damages if they cause death or any physical injury only. On the other hand it was submitted by counsel for the Respondent submitted that the Respondent based their claim on the tort of negligent infliction of emotional distress which was a different cause of action and was not challenged by the Appellant.

According to the pleadings the Respondent brought two claims namely; one was for breach of contract and the second one was for negligent infliction of emotional distress. They claimed that the emotional distress was occasioned when the Respondents were denied the opportunity to continue to check-in and when the Respondents were racially discriminated against and accused of carrying drugs in the presence of a crowd. The trial Judge correctly found that

negligent infliction of emotional distress was a separate cause of action different from the one of breach of contract. We agree with that finding.

We also agree with counsel for the Respondent that that the case of **Dr. Wiseman and Virgin Atlantic Airways Ltd** Case No. Hq05x03112 is distinguishable from the case at hand because in the **Dr. Wiseman case** (Supra) the claim was based on breach of contract whereas in this case before us, two claims are made, namely breach of contract and also the tort of negligent infliction of emotional distress.

There are two main questions the court will ask to decide a claim of negligent infliction of emotional distress. First has the plaintiff demonstrated that he or she has suffered a severe emotional injury? The second question the courts will ask is how closely tied is the plaintiff's injury to the defendant's negligent conduct.

The trial court found that the acts of the Appellant accusing the Respondents of being drug traffickers and the racially biased references amounted to emotional distress. With respect we disagree. Claims of psychological injuries must be accompanied by physical symptoms, such as nausea, headache, or any other physical manifestation of the mental trauma however the modern trend is to permit recovery even without physical symptoms.

In the **Californian case of Thing v. La Chusa** - 48 Cal. 3d 644 The Supreme Court of Canada refined the guidelines for negligent infliction of emotional distress to create greater certainty, as foreseeability was not a meaningful restriction. In the absence of physical injury or impact to the plaintiff

personally, damages for emotional distress would be recoverable only if the plaintiff:

(1) was closely related to the injury victim,

(2) was present at the scene of the injury-producing event at the time it occurs and was then aware that it was causing injury to the victim and,

(3) as a result suffered emotional distress beyond that which would be anticipated in a disinterested witness.

The facts of that case were that; A mother filed for damages for emotional distress against the driver of an automobile who injured her child. The trial court held that a mother who did not witness an accident in which an automobile struck and injured her child could not recover damages from the driver for the negligent infliction of emotional distress suffered when she arrived at the accident scene. On appeal, however, the reviewing court reversed this decision.

The award of damages for negligent infliction of emotional distress is not well developed in Uganda. Indeed this would even be a difficult case to begin a detailed discussion of because on the authorities from North America there has to be an event leading to physical injury that is witnessed by another party which is not the case in this matter. The said principle is therefore not applicable in this matter.

I accordingly allow this ground of Appeal.

Ground Four: That the trial Judge erred both in law and in fact in the evaluation of evidence and therefore came to a wrong conclusion that it

is only Nareen or the Appellant's staff who were present at the Airport at the time who could explain the Appellant's position and not DW1 thereby concluding that on the balance of probabilities PW1 and PW2's evidence on the events was likely the true account of what occurred.

I find that this ground is intrinsically connected to grounds one and two and cover the same evaluation of facts. Since I have already re-evaluated those facts I find it unnecessary to do so again.

This ground like grounds one and two therefore also fails.

Ground 6 and 7

That the trial Judge erred both in law and fact in awarding general damages of Ug Shs 30,000,000/= to the 2nd Respondent which was in all respects excessive.

That the trial Judge erred both in law and fact in further awarding general damages of Ug Shs.100,000,000/= to the first and second Respondent as emotional distress and public humiliation amounting to injury without impact which was in all respects excessive.

Appellant's submissions

Counsel for the Appellant submitted that the award of damages was based on a wrong principle and was thus excessive.

Secondly, counsel for the Appellant relied on the case of **Flint v Lovell** [1935]1KB for the preposition that in order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong

principle of law, or that the amount of damages awarded was so extremely high or so very small as to make it, in the Judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

Thirdly, he submitted that the law could not take account of everything that follows a wrongful act, but it regards but it regards some subsequent matters as outside the scope of its selection because it is infinite for the law to judge the cause of causes or consequence of consequences.

Fourthly, he submitted that in cases of breach of contract the aggrieved party is entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach.

Fifthly, he submitted that the general rule regarding the measure of damages applicable to both contract and tort is that he sum of money which will be put the party who has been injured, or who suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting the compensation or reparation.

Lastly, he submitted that if the Appellant is to be found liable its liability would be limited to reasonable expenses which include hotel accommodation, meals, drinks, transport and telephone charges only and nothing more.

Respondent's submissions

Counsel for the Respondent submitted that ground 6 and 7 of the Appeal were framed wrongly because they had the word excessive appearing before general damages. He argued that the word excessive was a pre-Judgment by the Appellant and was prejudicial to the Respondent's case because it created a bias in the mind of the court.

In the alternative, he submitted that the principles governing the award for damages were followed when making the award and that it was commensurate to the damage suffered by the 2nd Respondent. He submitted that the figure arrived at by the trial Judge was fair in the circumstances of the case.

He argued that the provisions of the Warsaw Convention and the IATA regulations relied upon by the Appellant were inapplicable to the facts before the court when determining the question of the entitlement to and quantum of general damages due to the second Respondent for breach of contract and

He relied on the authority of **Flint v Lovell** [1935]1KB at page 360 for the proposition that an Appellant court will be disinclined to reverse the findings of a trial court as to the number of damages merely because it thinks that had it tried the case in the first instance it would have given a greater or lesser sum. *To justify reversing the trial Judge on any of amount of damages it will generally be necessary that the appellate court should be convinced either that the trial judge acted upon some wrong principle of law or that the amount awarded was so extremely high or very small as to make it, in the Judgment of the Appellate court, an entirely erroneous estimate of the damage to which the plaintiff was entitled.*

Court's findings

In these grounds counsel for the Appellant submits that the trial Judge awarded general damages based on a wrong principle of law justifying the reversal by this court. On the other hand counsel for the Respondent submitted that the principles governing the award of damages were followed

and also submitted that award was commensurate to the damage suffered by the Respondents.

We will follow the principle laid down in **Robert Cuossens versus Attorney General** SCCA No. 8 of 1999 where Oder JSC held that;

"The general rule regarding measure of damages applicable both to contract and tort has its origin in what Lord Bluckbum said in Livingstone versus Ronoyard's Coal Co.(1880)5 Appeal cases 259."

He there defined measure of damages as;

"That sum which will put the party who has been injured, or who has suffered in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

Article 19 of the Warsaw Convention provides that the carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage or goods. The award has to be commensurate to the damage suffered by the 2nd Respondent.

In the case of **Abnett vs. British Airways Plc. (Scotland)** the House of Lords made the following findings about the Warsaw convention;

"The language used and the subject matter with which it deals demonstrate that what was sought to be achieved was a uniform international code, which could be applied by the courts of all the High Contracting Parties without reference to the rules of their own domestic law. The Convention does not purport to deal with all matters relating to contracts of international carriage by air. But in those areas with which it deals - and the liability of the carrier is one of them -

the code is intended to be uniform and to be exclusive also of any resort to the rules of domestic law.

An answer to the question which leaves claimants without a remedy is not at first sight attractive. It is tempting to give way to the argument that where there is a wrong there must be a remedy. That indeed is the foundation upon which much of our own common law has been built up. The broad principles which provide the foundation for the law of delict in Scotland and of torts in the English common law have been developed upon these lines. No system of law can attempt to compensate persons for all losses in whatever circumstances. But the assumption is that, where a breach of duty has caused loss, a remedy in damages ought to be available.

Alongside these principles, however, there lies another great principle, which is that of freedom of contract. Any person is free, unless restrained by statute, to enter into a contract with another on the basis that his liability in damages is excluded or limited if he is in breach of contract. Exclusion and limitation clauses are a common feature of commercial contracts, and contracts of carriage are no exception. It is against that background, rather than a desire to provide remedies to enable all losses to be compensated, that the Convention must be judged. It was not designed to provide remedies against the carrier to enable all losses to be compensated. It was designed instead to define those situations in which compensation was to be available. So it set out the limits of liability and the conditions under which claims to establish that liability, if disputed, were to be made. A balance was struck, in the interests of certainty and uniformity.

We have already found that the Appellant was not justified in denying the Respondents the opportunity to board the airplane back to Uganda they are therefore liable for delaying the Respondents.

The trial Judge made the following orders as to the damages. First he awarded general damages of Ug Shs 30,000,000/= (thirty million Shillings) for breach of contract by the defendant for failure to transport on the return journey. I find that amount of damages compared to the value of the contract of carriage (price of the tickets is excessive and reduce it to Ug Shs 15,000,000/= (fifteen million shillings) for the 2nd Respondent and Ug Shs 5,000,000/= for the 1st Respondent.

Secondly the trial Judge awarded the general damages of Ug Shs 100,000,000/= (one hundred million) for emotional distress and public humiliation. Giving my finding before I disallow this attempt as not applicable to the circumstances of this case.

The trial court also awarded special damages. The Trial Judge however only allowed the return airfare for the second Respondent on the grounds that the first Respondent only stayed back for moral reasons. I am totally unable to following the reasons for denying the first Respondent the value of his return one way ticket on Kenya Airways. He was travelling with his wife who had just recovered from surgery and it would be strange to say that he proceed on the flight because he did not need a wheel chair. I award both Respondents the value of their air tickets on Kenya Airways being USD 2,000 (two thousand dollars). I further award special damages special damages the cost of their layover in Mumbai until they got another flight at 15,272.13(Indian Rupees) which at the time was equal to 289 USD.

Final Result

This Appeal partially succeeds with the following orders:

1. General damages awarded of Ug Shs 20,000,000/=
    a) 5,000,000/= for the first Respondent
    b) 15,000,000/= for the second Respondent
2. Interest on general damages at court rate from the date of the Judgment at the trial court till payment in full.
3. Special Damages awarded at USD 2,289
    a) USD 1,000 for the first Respondent
    b) USD 1,000 for the second Respondent
    c) USD 289 for the hotel services.
4. Interest on special damages at the rate of 4%p.a. from the date of filing the suit until payment in full.
5. Costs here and the trial court to the Respondents.

I so Order.

Dated at **Kampala** this 28th Day of Aug 2020.

.....

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO.0204 of 2015

ETHIOPIAN AIRLINES .....APPELLANT

VERSUS

1. **MILTON ANGUYO**
2. **SOPHIA TIPERU.....RESPONDENTS**

(Arising from the Judgment of the High Court (Civil Division) in Civil Suit No.181 of 2012 dated 29th September, 2014 delivered by the Hon. Mr. Justice Nyanzi Yasin)

CORAM: **Hon. Mr. Justice Kenneth Kakuru, JA/JCC**

Hon. Mr. Justice Geoffrey Kiryabwire, JA/JCC

Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment on my learned brother Hon. Kiryabwire JA.

I agree with him that this appeal ought to succeed for the reasons he has set out in his Judgment. I also agree with the orders he has proposed.

I have nothing useful to add.

As Hon. Madrama Izama JA also agrees. This appeal is allowed. The Judgment of the High Court is hereby set aside and substituted with the Judgment of this Court, with orders as set out in the Judgment of Kiryabwire JA.

Dated at **Kampala** this ..... day of ..... 2020.

.....

Kenneth Kakuru

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 0204 OF 2015

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

ETHIOPIAN AIRLINES} .....APPELLANT

VERSUS

MILTON ANGUYO & ANOTHER} .....RESPONDENTS

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA and I agree with his analysis of the facts and the law.

I concur with the decision of my learned brother Kiryabwire, JA that the appeal only partially succeeds with the orders he has proposed in his judgment and I have nothing useful to add.

Dated at Kampala the 28th day of Aug 2020

Christopher Madrama

Justice of Appeal