

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 961/96

RAJARATNAN ILLAVENTHAN:.....

PLAINTIFF

—versus—

AIR INDIA:..... DEFENDANT

BEFORE: - HON. THE PRINCIPAL JUDGE — MR. JUSTICE J.H. NTABGOBA

JUDGMENT

The plaintiff in this case is Rajaratham Illaventhana. He brought -this action in negligence and for breach of contract on the part of the defendant, which is Air India, a common carrier.

The facts as alleged by the plaintiff in his plaint and also in his testimony are that on 26.9.96 he purchased an air ticket from the defendant airline. He did this through a travel agent operating in Kampala under the name and style of Speed Bird Travel Agency. The ticket was for the flight to Perth, Australia via Nairobi. The flight was on 27.9.96 and the plaintiff was to fly from Entebbe and connect on Air India flight from Nairobi to Perth on the same day. He left Entebbe as scheduled and arrived at the Jomo Kenyatta International Airport, Nairobi at 6.05p.m. The departure from Nairobi via Bombay was scheduled at 8.30p.m. that evening.

The plaintiff says that on arrival at the Jomo Kenyatta Airport, he straight away reported to the Transit Desk in the Airport. This is the Desk that handles transit passengers by connecting them to their next flights. The desk issues the transiting passenger with a boarding pass which he or she presents to the Boarding Gate so as to be let through the security check point onto the “parting aircraft. The plaintiff testified that at the Transfer Desk the Staff there contacted Air India Staff but they could not be contacted. The Transfer Desk advised the plaintiff to proceed to Gate No.11 which was the Gate for the departure of passengers on the Air India flight. He says he was 4th or 5th in the line of passengers who reported at Gate No.11. When he presented the ticket, and this must have been at the departure time, he was told that he could not proceed to the air craft without a Boarding Pass. At that juncture, the Air India Staff were contacted when they came and rushed to Gate No.9 where Air India Boarding Passes

were supposed to be issued. It was too late! The aircraft had by then been fully booked. The plaintiff could not board it. He says the flight left at 8.50p.m. He had witnessed the rest of the passengers boarding for 1.0 hours. He says when he was left he requested Air India to put him on the next possible flight. He says the Air India Manager to whom he addressed the request arrived half an hour after the plane had left.

The Manager offered his apologies. He booked the plaintiff on a Kenya Airways flight which was leaving the following day via Johannesburg. The Manager appreciated the urgency with which the plaintiff must travel to and reach Perth in time to attend the cremation of his father.

Unfortunately the Kenya Airways flight was cancelled due mechanical problems. The plaintiff says: -

“Thereafter, they abandoned me at the airport where I stayed for the whole of 28/9/96. None of the Staff of Air India came to look for me in the transit lounge. I managed to contact Perth to tell them of my problem.”

As fate would have it, the plaintiff never travelled to Perth. He booked a Uganda Airline ticket back to Entebbe. He lodged a protest and he exhibited in Court his written complaint as exhibit p.1. He says he sent it through the Nairobi Airport Authorities. He says: —

“In the letter I explained the bad experience I had undergone. I held Air India solely responsible for my suffering for almost 14 hours; the loss of my father’s cremation, the embarrassment. The Air India Manager received it. It was acknowledged in writing on 8/10/97”. The plaintiff continues:

“On 28/9/96 I stayed for a night at the Airport. The following day 29/9/96 I tried to contact Air India Staff but since they had no flights, the Staff never appeared. So on 29/9/96 I returned to Entebbe by Uganda Airline. I reached Kampala at 11.00a.m.”

Briefly that is the story of the plaintiff about his ordeal. The defendant agrees with most of the story except for the following, which can also be read in its letter to the plaintiff written to him by the Air India Manager - East Africa on 11/10/96:-

The defendant's version of the story is that when the plaintiff reached Kenyatta Airport he should have reported to Gate No.9 where the Air India Passengers were being issued with a Boarding Pass before they proceeded to Gate No.11 which was the Boarding Gate. The letter of 11th October 1996 states in part: —

“b. Our Staff who had proceeded to the transit area to meet connecting passengers at 1730 hours, made announcements for transit passengers to report at Gate No.9. Unfortunately, as stated by you, you reported at the Kenya Airways transfer desk who guided you to get No.11.

“c. At 1930 hours, you had reported at the seating desk when it was observed that your name was on the manifest, and staff called the control unit to check on the situation. Unfortunately, by this time, all boarding cards had been exhausted and the flight was full to capacity.

“d. The Airport Manager personally met you and proffered our apologies at the unfortunate incident and efforts were made to rebook you via various airlines due to the situation as explained by him. The most convenient route was over Johannesburg on KQ 464 the next day to connect QF 064.

“e. Accordingly your ticket was reissued and a staff was deputed to escort you to the Hilton Hotel, with the transportation arrangements being made by us along with facilities for you to call your destination.

“f. On 28th September, our Staff arranged for your transportation back to the airport and after you had checked in for flight KQ 464 it was announced that this flight would not operate due to operational reasons beyond their control.

“g. This aspect was totally unforeseen and renewed efforts for alternates proved unsuccessful. Our Staff was with you up to 1430 hours and, you, being naturally upset refused any further assistance from him, including lounge facilities and lunch.

“H. Although the staff concerned had from time to time endeavoured to check on your welfare and to assist you, unfortunately, till the evening you could not be located and it was ultimately observed that you had returned to Kampala.

“Notwithstanding the above, please accept our sincere apologies once again for the unfortunate incident. We have cautioned our Staff to ensure that such incidents are not repeated in future. However, had you reported at Gate No.9 for which announcements were made, you would have most certainly been accepted for the flight, since we give priority to passengers in transit, although at times, we do have such transit passengers not arriving on connecting flights”.

The main thrust of the W.S.D. is to be found in paragraph 9 thereof as follows:-

‘9. The defendant denies the contents of paragraph 4; the defendant shall aver that at all material times the defendant operated a check-in-desk at Gate No.9 manned by its staff. The defendant shall contend that it was the duty of the plaintiff to report at the desk in time to be served by the Staff of the defendant. The defendant shall further aver and contend that the plaintiff reported late at the check-in-desk and that was the reason he was not able to obtain a boarding pass”.

“5. The defendant shall aver that the plaintiff failed to obtain a boarding pass due to his negligence”.

Particulars of the plaintiff’s alleged negligence are given as:-

- (a) Failing to report to Gate No.9 in good time.
- (b) Getting lost and going to Gate No.11 instead of Gate No.9

The following were the issues framed at the commencement of the hearing:-

- (a) Whether or not there was a breach of contract by the defendant Airline.
- (b) Whether or not the defendant airline was negligent
- (c) Whether or not the plaintiff is entitled to recover damages.
- (d) What quantum of damages?

It appears inevitable to me to start with the third and fourth issues in light of the defendant’s apparent willingness to pay the special damages and general damages, and the refusal to accept them by the plaintiff.

In their letter to plaintiff’s Counsel, the defendant’s Counsel stated (Exh. D2):-

“Our clients are forwarding settlement proposals as follows: -

- 1). Your client is refunded his unutilised ticket.
- 2). He is refunded all his expenses incurred during transit.
- 3). In form of general damages, our client offers a return client’s class ticket on any of our client’s routes.

4). Each party bears its own Costs”.

The prayer of the plaintiff is: —

“1. Special damages as stipulated in paragraph 10 above

(a) US 1826 cost of Airticket to Perth

(b) US 129 cost of Uganda Airlines flight back to Entebbe from Nairobi

(c) UG. Shs. 50,000/= cost of special hire taxi from Entebbe to Kampala.

(d) Telephone calls (6) total US \$ 60 calling Perth, Nairobi office and Kampala.

I take into consideration the words of Counsel for the defendant at P.10 of his final submissions under (COSTS OF THE SUIT”) where Counsel states:-

“There is evidence to show that the defendant through correspondence between advocates tried to settle this matter out of Court, but because of the conduct, attitude and desire of the plaintiff to punish the defendant it was not possible to do so” (underlines supplied by me). “The defendant was reluctantly dragged to Court. In these circumstances--- we pray that the Court does consider these circumstances and deny the plaintiff any cost even if he is the successful party”.

I think from the start the defendant acknowledged that the plaintiff would be a successful party. Hence the offer of an out of Court settlement which included an offer of general damages. However, I do agree that the plaintiff was combative and noncompromising. I take this from his testimony in cross-examination where he testified: -

“It is true that they tried to settle. I had put to them a proposal contained in my lawyer’s letter to the defendant’s advocate dated 28th May 1997 (Exhibit D3). In the first letter of intention to sue I wanted US 10,000 (demanded by Isonga Musumba) Later I asked for shs.50m/= because their refusal to pay US \$ 10,000 angered me

because they were unrepentant. I increased it to Shs.50m/= to punish them”.

It can be clearly seen why the Amended plaint prays for a bid exemplary damages. This must be in a bid to punish the defendant for not being repentant. Yet it is absolutely clear from the correspondences to the plaintiff from the defendant (see Exhibits P2 and P3) that the Management of the defendant airline were apologetic.

In Exhibit P2 (paragraph 2) the Manager, E.A. stated: -

“At the outset, kindly accept our sincere apologies for the inconvenience caused to you---”.

In Exhibit P3, the Manager repeats:-

“Please accept our sincere apologies once again for the unfortunate incident--”

It is therefore an exaggeration on the part of the plaintiff to say that he was angered by the defendants because they were unrepentant. I do not accept that as a ground for exemplary or punitive damages. As I will have the occasion to demonstrate while discussing general damages the case was a case of negligence and not necessarily of wanton breach of contract. Since therefore, it appears to me that there is no difference between what the defendant offered as special damages and what the plaintiff demanded, I will commence with the issue of special damages.

The plaintiff demanded the following: -

- (a) US \$ 1826 being cost of air ticket to Perth

- (b) US \$ 129 being cost of Uganda Airlines

- (c) Ug. Shs. 50,000/ being cost of special taxi hire from Entebbe to Kampala.
- (d) A sum of US 60 being cost of telephones on its part the defendant was prepared “to pay for the special damages claimed in paragraph 10 of the plaint (see paragraph. 9 of the W.S.D.).

In these circumstances, it is not clear where the two parties disagreed with regard to special damages. I do award to the plaintiff, (as agreed)

- (a) US 1826
- (b) US 129
- (c) UG Shs. 50,000=
- (d) US \$ 60.

I will now pass on to General damages because, it appears, this is where the parties could not agree. This item, I think, should be handled with, in the background, the behaviour of the parties, which means therefore considering the extent of liability of the defendant, or, if you wish, the extent of negligence, since it appears, by offering general damages, the defendant admit liability.

I want, from the outset, to disagree with the defendant that the plaintiff missed his flight from Nairobi to Perth because of his own negligence. I find that it was due to the negligence of the defendant’s Staff at the Jomo Kenyatta International Airport. There are my reasons for so holding:-

I take judicial notice of the fact that any transit passenger disembarking at that airport to connect to the next flight must, first and foremost, report to the Transfer Desk.

The transfer desk would normally issue the passenger with a Boarding pass and direct him or her to wait at the Boarding Gate, in this case Gate No.11. The passenger is supposed to report at the Boarding Gate when departure is announced. Here, I should not be understood to be

saying that no other arrangement cannot be made such as, for instance, Air India, directing its transiting passengers to get the Boarding passes at Gate No. 9 and not the Transfer desk. The defendant says exactly that. It says that it made an announcement calling out all its transit passengers to proceed to Gate No.9 to get their Boarding passes. But the plaintiff says that when he arrived at the airport the Transfer desk called for the Air India Staff but they were not at their station. The Transfer Desk therefore sent him to the Boarding Gate promising him that he would get his Boarding pass there. True, the Air India might have announced for its transiting passengers to get their passes at Gate 9 but it has not said how far Gate 9 was from Gate 11 where the plaintiff could have been waiting when such announcement was made. Equally, the defendant has not stated the distance from where the announcement was made to Gate No.11 where the plaintiff could have been waiting. Is there no possibility that the plaintiff did not hear the announcement? Indeed he says that he did not hear it.

But he also says that in line at Gate No.11 he could have been between 4th and 6th. He was on the list of transiting passengers from Entebbe. He had with him his confirmed air ticket. Why wouldn't the defendant's Staff issue him with a Boarding pass at Gate No.11? They say they were completely finished, but was it his fault that the airline over booked?

I do not accept the explanation that when the plaintiff's ticket was taken to Gate No.9 to get him a Boarding pass they found the plane fully occupied. They must have made over booking at the risk of being held responsible for leaving behind a confirmed passenger.

Having thus decided then it is necessary to determine the quantum of damages. Offering the plaintiff an unquantified club class air ticket on any of the plaintiff's routes cannot be adequate or determinate compensation.

As I have pointed out, the plaintiff had demanded US \$10,000 and he says he was angered by non-payment of this sum by the defendant. He then increased the figure to Shs.50,000,000/= in order to punish the defendant. In awarding damages, Court should not be swayed by emotions or idiosyncracies of the parties or of any of them. Courts should look at the

circumstances of the loss as the guidelines. In this case, it is not gain said that the plaintiff's failure to participate in his father's cremation left him a psychological mark which he will leave with for the time to come.

Additionally, the 14 hours stay in the airport without anyone caring for him was depressive. I agree with plaintiff's Counsel that he must have had disappointment, mental anguish and he has to be fully compensated. As far as I am concerned, it is not of any consequence to start arguing whether or not the defendant knew that the plaintiff was on a mission to Perth to attend the cremation of his father. The fact that the plaintiff requested for a ticket that would take him to Perth within a specified period was in itself proof that time was of essence. He cannot have obtained the ticket for mere joy - riding. I agree that the general damages must be assessed objectively basing on the peculiar facts of this case. I have considered the plaintiff's side of the case, the effect on him of failure to reach his destination and perform the traditional and cultural rites of his community. I have also considered his ordeal at Nairobi in the air port. I am prepared to award him a sum of She. 14,000,000/= as general damages.

In the result, he will collect from the defendant the special damages of US \$1826 plus US \$129 plus US \$60 and Ug. Shs.50,000/= and general damages of Uganda shs.14,000,000/=. The total decretal sum will carry interest at the rate of 20%p.a. from the date of filing this suit with regard to the special damages till payment in full.

With regard to the general damages the same interest rate will apply from the date of this judgment till payment in full. The defendant will also pay to the plaintiff the Costs of this suit.

J.H. NTABGOBA
JUDGE

PRINCIPAL

21/10/98