

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

HCCS NO. 917 OF 1999

MRS OLOWU MOTUNROLA ::: PLAINTIFF

VERSUS

ETHIOPIAN AIRLINES LTD ::: DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH - AMOKO

JUDGMENT

This is a suit by the Plaintiff, Mrs Olowu Motunrola, against Ethiopian Airlines, an International Carrier to recover:

- a. US \$3,746 or its equivalent in Uganda shillings,
- b. Interest at 30% p.a,
- c. General damages,
- d. Interest on the decretal amount at Court rate from date of Judgment till payment in full,
- e. Costs
- f. Any further or alternative relief the Court may deem fit in the circumstances.

According to the plaint, on or about the 5th day of February 1999, the Plaintiff, a customer of the Defendant and a frequent flyer on the Lagos - Entebbe route did duly check in all her luggage, identified the same before she boarded the aircraft and the same was loaded on the aircraft.

On or about the 6th day of February 1999, when the aircraft finally landed at Entebbe Airport, the Plaintiff discovered that part of her luggage was lost and/or had been converted by servants of the Defendant working in the course of their employment. A list of the lost items and their value was to be produced and exhibited at the trial.

The Plaintiff did address her complaint to the Defendant's Kampala Area Manager, one Solomon Debebe who issued or caused to be issued to the Plaintiff a "LOSS BAGGAGE QUESTIONNAIRE" a copy of which was annexed thereto and marked "A".

The Plaintiff promptly completed the questionnaire and returned it to the Defendant's Kampala office. Despite several reminders and/or demands, the Defendant has refused and/or neglected and/or refused to pay the Plaintiff the sum of USD 3,746 (three thousand seven hundred and fourty six USD) being the value of her lost baggage.

The Plaintiff averred that as a common carrier, the Defendant had a duty to deliver her baggage to its destination and its failure to do so amounted to a gross act of negligence particularised as follows:

- i. Failing to take precautionary measures or safe guards to ensure that the Plaintiff's baggage arrived at its final destination.
- ii. Failing to deliver the Plaintiff's baggage to its final destination.

ALTERNATIVELY but without prejudice to the above, the Plaintiff averred that it shall rely on the principal of Res Ipsa Loquitur.

The Plaintiff averred that she has suffered special damages as a result of the negligence of the Defendant, of USD 3,746 being the value of the missing baggage.

The Plaintiff also contended that she has suffered inconvenience, mental suffering (SIC), and anguish as a result of the Defendant's negligence and claims general damages therefore. That by a letter dated 13th May, 1999 from counsel for the Defendant to counsel for the Plaintiff annexed as 'B' it was alleged by the Defendant that the Plaintiff had excess luggage of 25 kgs which had not been declared at the point of check in.

The Plaintiff averred that if she did check in any excess luggage, which is denied, it was with the express permission of the Defendant's Manager, Airport Services for Lagos one Shemelis Abera who at all material times was acting in the course of his employment with the Defendant. That at Lagos Airport, her luggage was duly weighed, tagged and accepted by the Defendant's servants acting in the course of their employment.

In its defence, the Defendant denied the claim in toto and averred that the Plaintiff is not entitled to the reliefs or at all.

In the Alternative and without prejudice to the foregoing denial, the Defendant averred that:

- a. Even if it is found that the Plaintiff is entitled to any reliefs such relief is limited under the terms of the contract of carriage with the Defendant.
- b. The Plaintiff on 5th February 1999 checked in 30 kgs of baggage which upon arrival at Entebbe was found to be more by 25 kgs.
- c. In the circumstances, the Defendant denies liability for the goods that were not declared at the point of check in. The suit should therefore be dismissed with costs.

Both parties called one witness each, and the suit was heard and completed on 24/4/2001. Mr. Kiapi, learned counsel for the Plaintiff applied and was granted leave to file written submissions. The Court gave both counsel a time within to file submissions. The Defence counsel was to file by 11/5/2001, and the Plaintiff's by 18/5/2001. Defence counsel was to reply by 22/5/2001. The Defendant's counsel filed submission on 10/5/2001. There is no reply from the Plaintiff's counsel to date.

The Defence counsel wrote to Court a letter dated 1/10/2001 applying to Court to proceed under Order 15 rule 4 of the CPR and to decide the suit on the materials on record since the Plaintiff's counsel has failed to file submissions within the time given by the Court. Order 15 rule 4 provides that:

“15 (4). Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witness, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may not withstanding such default, proceed to decide the suit forthwith”

I have proceeded to write this Judgment under the powers of this Court under those provisions. The following points of agreement were reached at the scheduling conference:

1. That on the 5/2/99, the Plaintiff boarded the Defendant's aircraft flight No. ET 950 from Lagos to Entebbe via Addis Ababa and Nairobi.

2. The Plaintiff checked in some luggage.
3. When she arrived at Entebbe Airport, she lodged a claim for cost baggage with the Defendant's servants at Entebbe Airport.

The following points were not agreed upon and the formed the issues for litigation:

1. Whether the Plaintiff checked in the luggage as alleged in the plaint.
2. Whether or not part of the Plaintiff's goods were lost and or converted by the servants of the Defendant.
3. If so, whether the Defendant is liable for the loss.
4. Reliefs if any available to the Plaintiff.

The Plaintiff tendered the following exhibits in support of her case:

1. Lost Baggage Questionnaire dated 26/2/99 - Exhibit 'P'.
2. Air ticket - Exhibit 'P2'.
3. Excess Baggage ticket - Exhibit 'P3'.
4. Baggage tag - Exhibit 'P4'.

The Defendant tendered a copy of a document called Property Irregularity Report (PIR) from the Defendant dated 6/2/99.

The first issue is whether the Plaintiff checked in the luggage as alleged in the plaint. Paragraphs 4 (iii) and 11 contain the description of the manner in which the Plaintiff allegedly checked in the luggage. She avers that:

5. The facts constituting the cause of action are as here below:
 - i.
 - ii.
 - iii.The Plaintiff did duly check in all her luggage, identified the same before she boarded the aircraft and the same was loaded on the aircraft. and then in paragraph 11:-

“11. The Plaintiff shall aver that at Lagos Airport, her luggage was duly weighed, tagged and accepted by the Defendant’s servants acting in the course of their employment.”

According to the Plaintiff’s testimony while returning to Uganda on the 5/2/99, she traveled with the Defendant Airline. At Moritalla airport Lago, she had suit case and one bag. The suitcase contained good items. The bag contained the goods which got lost. At the airport, she went to the Defendants counter to check in the luggages. The luggages were put on the scale and weighed. She was told that they weighed more than what she was supposed to check in. Both luggages weighed 62 kgs. Then the manager called Smeili Shabira told her that she could pay for 10 kgs excess 6,637.10 Nieres and she was issued with an excess P3).

Then her baggage’s were tagged and put on the conveyor with two tags. They went into the tarmac. She checked them before boarding the plane; and found both of them on the tarmac where the plane takes off. They were then put on the trolley ready for loading. Then she boarded the plane.

The defence witness, Mr. Wamala Sulaiman (DW) is a country representative of the Defendant in Uganda. In cross examination he said he did not know what happened in Lagos Airport. Both the air ticket (Exhibit P2 and the Excess Baggage ticket show that the Plaintiff checked in 2/30 pieces of luggage. Exhibit P3 shows that she paid N. 6637.10 for 10 kgs excess weight. She has explained that the Manager allowed her to pay for 10 kgs instead of all the excess weight above her 20 kgs allowance. The luggage weighs 62 kgs. She is not to blame if they rendered only 60 kgs).

In the absence of any contrary evidence, I believe the Plaintiff’s version and find that the luggage was checked at Lagos Airport in the manner described in the plaint and in the Plaintiff’s testimony. The answer to the first issue is therefore affirmative. The second issue is whether or not part of the Plaintiff’s goods were lost and/or converted by the servants of the Defendant. The Plaintiff testified on this issue that on arrival at Entebbe Airport on Sunday 6/2199, she found her suitcase on the conveyor. The bag was missing. She was advised and assisted to fill the Property Irregularity Report (Exhibit DI). She was told to call the next day. She called and she was told to call again. Thereafter she has made all efforts in vain to retrieve her bag. The Defendants

servants failed to locate her bag. Later on she was made to fill a Loss Baggage Questionnaire (Exhibit P1). She listed all the goods in the bag. She also gave them the air ticket (Exhibit P1), the excess baggage ticket (Exhibit P3) and the baggage tag for the lost bag (Exhibit P4). They promised to send the information to Entebbe and Addis. She has never seen her luggage to date. The Defendant's employees informed her that the Defendant was not even going to pay her. In Cross examination she told Court that the '2/30' on the air ticket and the excess baggage ticket (Exhibit P2) means she had two pieces of 30 kgs each. Her testimony was consistent. She maintained that she had two pieces of luggage, a bag and a suitcase. The suitcase arrived, and the bag did not. DW1 also confirmed that the ticket indicates 2 pieces of 30 kgs from Lagos. He also told Court that the Plaintiff arrived at Entebbe with two baggage tags but she received only one bag. The two baggage tags indicate that she had two bags. That his duties include supervision of handling agents at Entebbe Airport. These agents off load the baggage from the plain and place them on the conveyor belt where the passenger then takes his luggage. They also receive complaints from passengers who have lost their baggage. That when Mrs Olowu lost her bag, he was around. During that period, Ethiopian was at war with Asmara, so the Defendant shifted its hub from Addis Ababa to Nairobi. That day, there was a delay and the flight arrived at Entebbe at night.

The Plaintiff received only one bag. On receiving her complaint, they checked on the plain, but the bag was not there. The handling agent then filled the PIR (Exhibit DI) for her. She was also given a Loss Baggage Questionnaire (Exhibit P1). They also made a photocopy of her air ticket and both baggage tags. They used the computer system to trace the bag; but it could not be located. From this testimony of the two witnesses, it is crystal clear that the Plaintiff did check in two pieces of luggage. One did not reach Entebbe and has never been traced to date. The answer to this issue is therefore also in the affirmative.

The third issue is, if so, whether the Defendant is liable. The Plaintiff has proved that she checked in her bag. She was given a bag tag. (Exhibit P4). She was a passenger of the Defendant, the Defendant an international carrier. Under Article 18 (1) of the Warsaw Convention, the carrier is strictly liable, without need of proving negligence, for the destruction or loss of damage to registered baggage if the occurrence which caused the damage took place during carriage by air. This last phrase is defined to mean the period during which the baggage is in charge of the

carrier, whether in an aerodrome, or on board an aircraft, or in the case of a landing outside an aerodrome, in any place whatsoever. See: **Chitty on contracts Vol. 11 para 2730**. Applying this principle to this case, the evidence shows that the Plaintiff's bag got lost between Lagos and Entebbe while being transported by the Defendant airline. It therefore falls squarely within the class of loss envisaged by article 18 (1) of the convention. As a result, this issue is also answered in the affirmative.

Which brings me to the last issue, that is, the reliefs, available to the Plaintiff if any. Under the convention, the financial liability of carrier is limited to 250 francs per kilogram, or US \$20 per kilogram for checked baggage, unless the passenger made at the time the baggage was handed to the carrier, a special declaration of interest in delivery at destination and paid a supplementary sum if required. In that case, the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the passenger's actual interest in delivery at destination. See paragraph 2731 of Chitty on contract (supra). The evidence on record shows that the Plaintiff checked in 2/30 or two pieces of 30 kgs each. She did not make any special declaration to the airline, neither did she pay any supplementary sum, although her list indicates valuable items including gold jewellery. She is therefore only entitled to the 30 kgs she lost. Thirty kilos times 20 USD per kilo comes to USD 600.

Under article 22 of the convention, she is also entitled to costs in addition; and it is hereby awarded to her.

The Plaintiff has also adduced evidence on how she suffered between Entebbe and Kampala office to try and trace her bags. I find that she was greatly inconvenienced and is entitled to recover general damages for inconvenience and suffering. I award her the sum of Shs.3m. In the result, I enter Judgment for the Plaintiff against the Defendant for,

- a. USD600.
- b. Ug. Shs.3m - general damages.
- c. Costs.
- d. Interest on the decretal amount at Court rate from date of Judgment till payment in full.

M.S. Arach - Amoko

JUDGE

25.9.02