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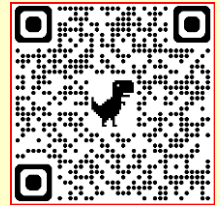
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LITIGATING AIR PASSENGERS' RIGHTS IN NIGERIA: A REFLECTIVE ANALYSIS OF THE RELEVANT LAWS AND INSTITUTIONS

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ABSTRACT

This paper examined the preference of litigating air passengers' rights in courts of competent jurisdiction. The adage that 'customer is king' still holds true in the business world today and applies with equal force in the aviation industry because air passengers are consumers. Nigeria has 11 currently active registered airlines with a fleet of 104 aircrafts, doing business in 20 airports. The Nigerian Civil Aviation Authority (NCAA) revealed in its 2023 First Quarter Assessment that the 11 operating domestic airlines had a total flight of 18,288, with 10,128 delays, 284 cancellations, and 31 delayed/missing baggage (although eventually recovered). The paper employed the doctrinal research methodology wherein primary and secondary sources of law were collected and reviewed. They include the Civil Aviation Act 2022, Nigeria Civil Aviation Regulations 2023, Federal Competition and Consumer Protection Act 2018, Public Complaints Commission Act 1975, books, journal articles, internet sources, and periodicals. The paper found that the goal of customers is to save energy, money, and time, which must be guarded at all costs by air operators, and that up-to-date passenger-driven policies decisions should be made to resolve breach of flying passengers' rights. The paper recommended that to protect the rights of air passengers, judicial activism should mete out strict penalties to defaulting air carriers. Also, Nigerian air carriers should employ the method implemented in the developed countries where damaged baggage are immediately replaced, and compensations and reimbursements for delayed and denied boarding are swiftly settled to avoid third party intervention.

KEY WORDS: Air Passenger/Consumer, Air Carrier, Contract of Carriage by Air, Breach, Rights, Litigation

1.0. Introduction

Air passengers are consumers. The adage that ‘customer is king’ still holds true in the business world today and applies with equal force in the aviation industry. Evidently, the goal of every customer is to save energy, money, and time. More specifically, it is no exaggeration that air passengers form the nucleus of the Nigerian aviation industry. They are fundamental to the success or otherwise of the aviation sector. The records indicate that the aviation industry is very significant to the growth of Nigerian Gross Domestic Product (GDP). Air transport contributes about \$600 million or 0.04% to our GDP. The expenditure by foreign tourists amounts to an additional \$1.1 billion, with an enormous ripple effect, amongst which is the creation of over 241,000 jobs.¹

It is a fact that from antiquity, there have been a gradual progression of the means of transportation, that is, the actual and unhindered travel of people or goods from a physical locality to another. This advancement began with the use of animals, wheels, automobiles, trains, and ships, in lifting peoples and their goods.² From their inception, land and water transportation - which is as old as civilisation, have both facilitated economic growth through trade and exchange.³ However, air transport appears to be more exclusive and novel. Also known as air carriage, it has earned for itself the reputation as the fastest means of transportation.⁴

Situated in Western Africa and sharing boundary lines with the Gulf of Guinea, Benin and Cameroun, the Federal Republic of Nigeria is an amalgamation of diverse ethnic groups. These ethnic categorisations with different traditions and languages include large Islamic kingdoms in the north like Borno, Kano, and Sokoto, in the west are Benin and Oyo empires, while the south and southeast have a more decentralised city states and political entities.⁵ The amalgamated distinct ethnicities, orchestrated by the British in 1914 formed a Colony and Protectorate of Nigeria, and upon independence in 1960 therefrom, became a democratic Federal Republic with 36 States and a Federal Capital Territory (FCT).⁶ Nigeria is renowned as Africa’s most populous country, with a 2023 estimated population of 230,842,743,⁷ comprises of over 250 ethnic groups. About 30% is from Hausa ethnic group, 15.5% of people are Yoruba, 15.2% of the populace are Igbo (Ibo), 6% makes up Fulani, 2.4% comprises of Tiv, 2.4% constitutes Kanuri/Berberi, 1.8% people are Ibibio, 1.8% are Ijaw/Izon, while the remainder population makes up 24.9%.⁸

¹ Sindy Foster, ‘How Nigeria’s Aviation Sector Can Foster Economic Growth’ *BusinessDay* (Lagos 9 March 2023) [How Nigeria’s aviation sector can foster economic growth \(businessday.ng\)](https://businessday.ng) accessed 28 November 2024.

² A Faajir and Z H Zidan, ‘An Analysis of the Issues and Challenges of Transportation in Nigeria and Egypt’ (2016) (7) (2) *The Business and Management Review*, 18-29.

³ *ibid.*

⁴ J D McClean and Others (eds), *Shawcross and Beaumont Air Law* (Vol 1, UK: LexisNexis 2020) 1.

⁵ The World Factbook, ‘Nigeria’ [Nigeria - The World Factbook \(cia.gov\)](https://cia.gov) accessed 28 November 2024.

⁶ *ibid.* The 36 States are Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Editi, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, Zamfara. The FCT is situated in Abuja.

⁷ (n 5).

⁸ *ibid.*

In 2018, the International Civil Aviation Organisation (ICAO) recorded that airlines hit a global score of flying about 4.5 billion passengers on about 45 million flights.⁹ On an average daily, more than 8 million people fly to different end points.¹⁰ Also, about 50 million tonnes of cargo valued at some \$6.4 trillion, (equivalent to 35% of internationally traded goods) is transported annually by air.¹¹ Interestingly, aviation lends support to over 57 million jobs with a generating income power of over \$2.2 trillion in economic activity.¹² More specifically, it is reported that Nigeria carriers on domestic operations earned over N167 billion from ticket fares in the first quarter of 2023, and the International Air Transport Association (IATA) projects airlines to profit by nearly \$22.4 billion in 2023.¹³

However, in the statements from the Air Travel Consumer Report published by the United States Department of Transportation,¹⁴ it is estimated annually that an average of 1 in 150 people have their checked-in baggage misdirected or left behind. In January 2020, there was a mishandled baggage rate of 5.48 per 1,000 checked bags.¹⁵ Moreso, according to the United States Federal Aviation Administration (FAA), whilst turbulence accounts for about 58 accidents annually, falling baggage injures about 4,500 passengers annually.¹⁶ Significantly, Nigerian Civil Aviation Authority (NCAA), in its 2023 First Quarter Assessment revealed the following data: of the 2,791,591 in-bound and out-bound passenger traffic, the eleven (11) operating domestic airlines had a total flights of 18,288, with 10,128 delays, 284 cancellations, and 31 delayed/missing baggage (although eventually recovered), while 39% of international flights delayed passengers, that is, 1,193 delayed flights.¹⁷ On a global estimate, about 0.6 fatal accidents

⁹ John Cox, ‘The Year in Aviation: Billions of Passengers, Two High-Profile Accidents’

<https://www.usatoday.com/story/travel/columnist/cox/2018/12/26/aviation-review-record-number-passengers-flights/2375060002/> accessed 28 November 2024.

¹⁰ ICAO, ‘Future of Aviation’

<https://www.icao.int/Meetings/FutureOfAviation/Pages/default.aspx> accessed 28 November 2024; Wayne Farley, ‘New Year’s Day 2014 Marks 100 Years of Commercial Aviation’

<https://guyanaaviation.com/2013/12/31/new-years-day-2014-marks-100-years-of-commercial-aviation/> accessed 28 November 2024.

¹¹ *ibid.*

¹² *ibid.*

¹³ IATA, ‘Airline Profitability Outlook Strengthens’ [IATA - Airline Profitability Outlook Strengthens](https://www.iata.org/en/pressroom/2023/01/01/airline-profitability-outlook-strengthens) accessed 28 November 2024;

Chinelo Ogbogo, ‘11 Nigerian Airlines Earn N167bn From Ticket Sales in Q1’ *The Sun* (Lagos 7 July 2023) 11 [11 Nigerian airlines earn N167bn from ticket sales in Q1 – The Sun Nigeria \(sunnewsonline.com\)](https://www.sunnewsonline.com) accessed 28 November 2024.

¹⁴ DOT, ‘Air Travel Consumer Report: January 2020’

<https://www.transportation.gov/individuals/aviation-consumer-protection/january-2020-air-travel-consumer-report> accessed 28 November 2024.

¹⁵ *ibid.*

¹⁶ DGS, ‘What You Need to Know about In-Flight Injuries’

<https://davesmithlaw.com/what-you-need-to-know-about-in-flight-injuries/> accessed 28 November 2024.

¹⁷ NCAA, ‘Executive Summary on International and Domestic Flights Operations (January – March, 2023)’ [quarterly-report-january-march-2023-3.pptx \(live.com\)](https://www.ncaa.gov/quarterly-report-january-march-2023-3.pptx) accessed 28 November 2024; (n 14); Abdulkareem Mojeed, ‘39% of International Flights Operated in Nigeria in Q1 2023 Delayed – NCAA’ *Premium Times* (Abuja 9 July 2023) [39% of International flights operated in Nigeria](https://www.premiumtimesng.com/news/39-percent-of-international-flights-operated-in-nigeria-in-q1-2023-delayed-ncaa/)

occur per one million flights.¹⁸

Thus, it is uncontroverted that the lucrativeness and viability of the aviation sector places a high level of responsibility on air carriers to exercise utmost care and diligence in their contractual obligations towards air passengers. Notwithstanding the above, there have been many flight mishaps over the years, which has occasioned untold hardship on passengers and their families. Unquestionably, such aggrieved sufferers are not left without legal remedies.

The liability of air carriers to passengers is regulated by law, both domestic and international. Pursuant to *section 55(1)* of the Civil Aviation Act 2022 (CAA 2022), the provisions contained in the Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air,¹⁹ is applicable to international carriage by air to and from Nigeria and shall govern the rights and liabilities of carriers and passengers, amongst others. Remarkably, *section 55(2)* of the CAA 2022 states that the above provisions with some modifications are likewise applicable and shall have force of law 'to non-international carriage by air within Nigeria'. In the circumstance, an air carrier, whether flying domestic or international routes, could be liable in damages to its passengers in the likely event of the following occurrences: cancellation of flight, delayed flight, bumping or denied boarding, flight downgrade, damage or loss of baggage(s), aviation injuries, or death of an air passenger.

2.0. Definition of Key Concepts

To better sharpen our appreciation of the law regulating the aviation industry as it relates to litigating air passengers' rights, it is appropriate to examine concepts such as air passenger/consumer, air carrier, contract of carriage by air, breach, rights, litigation.

2.1. Air Passenger/Consumer

Lowe and Woodroffe,²⁰ define consumer in relation to any services or facilities, to mean any individual who may desire to be provided with a services or facilities otherwise than for the purposes of any business of his. A consumer purchases, utilises, manages, or dispenses with products or services.²¹ Broadly speaking, a consumer may be a person to whom goods or services are supplied or sought to be supplied by another individual in the subsistence of a business transaction embarked upon by the latter and any other individual who utilises it or becomes affected by the goods or services.²² Three elements are distillable. A consumer is a person who does not act in

in Q1 2023 delayed — NCAA (premiumtimesng.com) accessed 28 November 2024; Kabir Yusuf, '10 Airlines Most Culpable for Delayed Flights in Nigeria' *Premium Times* (Abuja 9 July 2023) 39% of International flights operated in Nigeria in Q1 2023 delayed — NCAA (premiumtimesng.com) accessed 28 November 2024.

¹⁸ Flight Safety Foundation, 'U.K. CAA Study Highlights Approach and Landing Phase Risks' <https://flightsafety.org/asw-article/u-k-caa-study-highlights-approach-and-landing-phase-risks/> accessed 28 November 2024.

¹⁹ Modifications to CUCRICA (Second Schedule) Civil Aviation Act 2022.

²⁰ Robert Lowe and Geoffrey Woodroffe, *Consumer Law and Practice* (Sweet & Maxwell 1999) 261.

²¹ F O Akwueze, 'Legal Challenges of Obtaining Consumer Redress in Nigeria' (2012) (1) *Journal of Contemporary Law*, 116

²² S A Apinega, 'Consumer Protection and Remedies in Nigeria: An Appraisal' in Adedeji Adekunle and Shankyula T Samuel (eds), *Law and Principles of Consumer Protection* (NIALS Press: Abuja 2013) 479-503.

a business capacity, the supplier of goods or services must have acted in a business capacity, and the goods or services so supplied must be for private consumption rather than business. Garner,²³ explains consumer to be a person who purchases goods or services for private, family, or household usage, with zero intention of resale. Indeed, a natural person who utilises products for personal, rather than commercial, reasons, is a consumer. In this context, reference is made to a consumer of 'civil aviation services'.²⁴

On the other hand, Passenger means 'a person in whose name a ticket and a reservation is made and/or confirmed, and who is eligible to travel upon the stated flight pursuant to that ticket whether the ticket is purchased by the person or not and whether the ticket is zero fare ticket for which no fees or fare is paid.'²⁵ Air Passenger is any person, except for members of the crew, carried or to be carried in an aircraft with the consent of the carrier, pursuant to a valid contract of carriage.²⁶

2.2. Air Carrier

Regulations 19.1.2.1 of the Nigeria Civil Aviation Regulations 2023 (NCARs 2023) defines air carrier to mean 'an enterprise that engages in provision of transportation services by aircraft for remuneration or hire.' An air carrier is a commercial carrier operating aircraft as its primary instrument of transport.²⁷ Aircraft is 'any machine that can derive support in the atmosphere from reactions of the air other than reactions of the air against the earth surface.'²⁸ Whilst airline means 'any air transport enterprise offering or operating a scheduled international air service.'²⁹ Airline could also refer to a system of commercial scheduled flights transporting people and goods, or a company that operates such a system. It also means a person or corporation engaged principally in the carriage of passengers by aircraft in interstate commerce.³⁰

2.3. Contract of Carriage by Air

A contract is an agreement, whether oral or written, between two or more persons with intention to create legal obligations. To be binding and enforceable however, a contract must be in writing. The following elements makes a contract valid: offer, acceptance, consideration, intention to enter into legal relations, and performance.³¹ A contract could be express, implied, conditional, joint and several, unconscionable, and fixed price.³²

A contract of carriage is created once a passenger purchases an air ticket for travel from an air carrier. The terms of the contract are set

²³ Bryan A Garner (ed), *Black's Law Dictionary* (8th edn, West Group 1999) 335.

²⁴ (NCARs 2023) regs 19.1.2.1(6).

²⁵ *ibid*, regs 19.1.2.1(23).

²⁶ Law Insider, 'Passenger'

<https://www.lawinsider.com/search?q=Passenger> accessed 28 November 2024.

²⁷ Dictionary, 'Air Carrier' <https://www.dictionary.com/browse/air-carrier> accessed 28 November 2024.

²⁸ (NCARs 2023) regs 19.1.2.1.

²⁹ *ibid*.

³⁰ Microsoft Encarta, *Airline* (Microsoft Corporation 2009); Law Insider, 'Passenger Airline'

<https://www.lawinsider.com/search?q=Passenger+airline> accessed 28 November 2024.

³¹ A G Guest (ed), *Chitty on Contract* (24th edn, Sweet & Maxwell Limited 1983) 21-30.

³² LegalMatch, 'What is a Contract'

<https://www.legalmatch.com/law-library/article/what-is-a-contract.html> accessed 28 November 2024.

forth in the said Ticket, any applicable Tariffs, and the Conditions of Carriage or General Rules of Tariff by a carrier.³³ The contract of carriage defines the duties and rights of passengers and carriers. It also provides and limits liability for delay, damage, and loss of baggage; rules of reservation; changes in flight schedule and rerouting; even liability for injury and death.³⁴

2.4. Breach

Breach is an act of law breaking. It could also include a break of agreement, promise, or relationship.³⁵ In *International Messengers (Nig.) Limited v Pegofor Ind. Limited*,³⁶ fundamental breach was defined as a performance that is completely different from what the contract contemplated, or a breach of contract of a more serious nature than one which would entitle the other party merely to damages, but would further entitle him to refuse subsequent performance of the said contract.

2.5. Rights

Garner,³⁷ defines right as ‘something that is due to a person by just claim, legal guarantee, or moral principle.’³⁸ In Woodford and Jackson’s description, right is ‘what is considered to be morally good or acceptable; the claim which a person or animal has to be treated in a fair, morally acceptable or legal way, or to have the things that are necessary for life.’³⁹ In the context of this paper, rights pertains to the legal assurance accorded to an air passenger in the contract of carriage by air.

2.6. Litigation

Garner explains litigation to be the process of carrying on a lawsuit.⁴⁰ It is the act or process of bringing in and contesting a legal action in a law court.⁴¹ Usually, the lawsuit evolves in an organised manner, from the filing of an originating process which includes a writ of summons and pleadings (statement of claim), to a filing of counter pleadings (statement of defence) by the adverse party, from which may necessitate a reply from the claimant. Thereafter, as issues are joined and pleadings are deemed closed, there is the progression to a pre-trial conference, then an actual trial, a judgement, and possibly, an appeal.

3.0. Legal Framework for Rights of Air Passengers in Nigeria

The Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) as amended,⁴² Civil Aviation Act 2022 (CAA 2022), and Part XIX of Nigeria Civil Aviation Regulations 2023 (NCARs 2023) are principal legislation enacted for the protection of air passengers. The

³³ Dana Air, ‘Conditions of Carriage’ <https://flydanaair.com/pdf/Dana-Conditions-of-Carriage.pdf> accessed 28 November 2024.

³⁴ *International Messengers (Nig.) Limited v Pegofor Ind. Limited* (2005) 15 NWLR (Pt.947) 1, per Edozie, JSC.

³⁵ Cambridge, *International Dictionary of English* (The Press Syndicate of the University of Cambridge 2003) 144.

³⁶ (2005) 15 NWLR (Pt.947) 1, per Edozie, JSC.

³⁷ Bryan A Garner (ed), *Black’s Law Dictionary* (8th edn, West Group 1999) 1347.

³⁸ *ibid.*

³⁹ Kate Woodford and Guy Jackson (eds), *Cambridge International Dictionary of English* (Cambridge University Press 2003) 1472.

⁴⁰ (n 37) 952.

⁴¹ Legal Dictionary, ‘Litigation’ [Litigation - Definition, Meaning, Examples, Cases, and Processes](#) accessed 28 November 2024.

⁴² CAP. C23 LFN 2004.

Federal Competition and Consumer Protection Act (FCCPA 2018), and Public Complaints Commission Act 1975 (PCC Act 1975),⁴³ have relevant provisions for air passengers seeking quasi-judicial redress.

3.1. Constitution of the Federal Republic of Nigeria 1999 (as amended)

The CFRN 1999 vests legislative powers over ‘aviation and safety of aircraft’ in the National Assembly.⁴⁴ Consequent upon that, the CFRN 1999 under the Exclusive Legislative List (ELL), elaborated the powers of the National Assembly to cover subjects on ‘aviation, including airports, safety of aircraft and carriage of passengers and goods by air.’⁴⁵ It is therefore safe to conclude that aviation matters are within the exclusive purview of the Federal Legislative arm of Government. To carry out their mandate, the National Assembly is thus empowered to make laws that touches directly on aviation activities. Furthermore, by virtue of *section* 12 of CFRN 1999, the National Assembly is vested with authority to give force of law to bilateral and multilateral treaties entered by Nigeria through a domestication of same into our local enactments. In carrying out their assignment, the lawmakers may make laws for the Federation or any part thereof respecting matters that may not be captured in the ELL, which, subsequently, must be ratified and assented to by a majority of the National Assembly and the President.

Furthermore, by *section* 6 of the CFRN 1999, the superior courts in Nigeria are empowered with judicial powers to hear and determine disputes between persons, or between government or authority and any persons in Nigeria, on their civil rights and obligations. The courts are the Federal High Court, (but in ancillary matter not related to embarkation—the High Court of a State), the appellate courts—Court of Appeal and Supreme Court.

3.2. Civil Aviation Act 2022

In keeping with their constitutional mandate to legislate on aviation matters, the CAA 2022 was enacted by the National Assembly to regulate civil aviation operations in Nigeria. The objectives of the CAA 2022 is to provide for an effective legal and institutional framework for the regulation of civil aviation in Nigeria in conformity with the standards and recommended practices set by the International Civil Aviation Organisation (ICAO), establish operations and divisions of responsibility within the Nigerian civil aviation system for the promotion of aviation safety and security, ensure that Nigeria’s obligations under international aviation agreements are implemented, and consolidate the laws relating to the regulation of civil aviation in Nigeria.⁴⁶

Furthermore, save for foreign State aircraft and the officers and crew, the application of the CAA 2022 extends to all persons holding issued or validated licences, every person, air craft, air operator, aviation training school, maintenance and repair organisation, allied service provider and consumers of aviation services in Nigeria, every Nigerian aircraft whether within or outside Nigeria, and every foreign registered aircraft operating in Nigeria, into and out of Nigeria.⁴⁷ The Federal High Court is bestowed with jurisdiction to try offences, hear and determine proceedings under the CAA 2022, whether or not the offence was commenced in

⁴³ CAP. P37 LFN 2004.

⁴⁴ (n 42) s 251(1)(k).

⁴⁵ *ibid.*, 2nd schedule (Pt 1).

⁴⁶ (CAA 2022) s 1(a)-(d).

⁴⁷ *ibid.*, s 2.

Nigeria and completed outside Nigeria.⁴⁸

3.3. Nigeria Civil Aviation Regulations 2023

The NCARs 2023 was made in furtherance to achieving the goals of the CAA 2022. Consequently, Nigerian Civil Aviation Authority (NCAA) is the corporate body empowered to make regulations to give effect to the provisions of the Convention on International Civil Aviation 1944 on international standards and recommended practices. Effective 10 July 2023, Part 19 of NCARs 2023 is the operational regulation on consumer protection.⁴⁹ Essentially, it deals with passengers' rights and responsibilities, and airlines obligations to passengers. The applicability of NCARs 2023 cover passengers departing from one Nigerian airport to another; passengers departing from an airport in a foreign country to a Nigerian airport, except compensatory assistance was already given; passengers on foreign air transportation with respect to flight segments originating at a point within Nigeria. It also addresses consumer protection issues, including, compensations for denied boarding, delays, and cancellations of flights.⁵⁰

3.4. Federal Competition and Consumer Protection Act 2018

The FCCPA 2018 was enacted to establish the Federal Competition and Consumer Protection Commission (FCCPC), Competition and Consumer Protection Tribunal (CCPT), and for the development and promotion of fair, efficient and competitive markets in the Nigerian economy to facilitate access by all citizens to safe products and secure the protection of rights for all consumers in Nigeria.⁵¹ Moreover, the objectives of the FCCPA 2018 are to promote and maintain competitive markets in the Nigerian economy, promote economic efficiency, protect and promote the interests and welfare of consumers by providing consumers with wider variety of quality products at competitive prices, prohibit restrictive or unfair business practices which prevent, restrict or distort competition or constitute an abuse of a dominant position of market power in Nigeria, and contribute to the sustainable development of the Nigerian economy.⁵²

Consumer rights as contained in Part XV provides for the protection of consumers, which include air passengers. The CCPT shall adjudicate over conducts prohibited under the FCCPA 2018 and exercise its jurisdiction, powers, and authority throughout the Federation.⁵³ Furthermore, the CCPT shall have power to hear appeals from or review any decision of the FCCPC, hear appeals from or review any decision from the exercise of the powers of any sector of specific regulatory authority in a regulated industry in respect of competition and consumer protection matters, issue order, and make rulings.⁵⁴ It therefore follows that the FCCPC can adjudicate over issues pertaining to infringement of air passengers' rights.

3.5. Public Complaints Commission Act 1975 CAP P37 LFN 2004

Established pursuant to *section 315(5)* of the CFRN 1999, the PCC

Act 1975 was enacted to create the Public Complaints Commission, with wide powers to inquire into complaints by members of the public with respect to the administrative action of any public authority and companies or their officials.⁵⁵ The inherent objective of the PCC Act 1975 is the procedure for redress of complaints lodged by aggrieved citizens or residents in Nigeria against administrative injustice. Consequently, the powers thereof are wide enough to accommodate air passengers' complaints of infringements by air carriers.

4.0. Institutions Saddled with the Responsibility of Safeguarding Rights of Air Passengers in Nigeria

The domestic institutions fundamental to the framework for litigating air passengers' rights in Nigeria are the Federal Ministry of Aviation and Aerospace Development (FMAAD), Nigerian Civil Aviation Authority (NCAA), Federal Competition and Consumer Protection Commission (FCCPC), Public Complaints Commission (PCC), and the Judiciary.

4.1. Federal Ministry of Aviation and Aerospace Development

The FMAAD is the government department charged with the comprehensive responsibility to formulate and manage government policies on aviation.⁵⁶ The FMAAD is headed by a Minister, whose appointment is made directly by the President. The extant Minister is Festus Keyamo, SAN.⁵⁷ Upon due consultation with the NCAA and consistent with the sacrosanct provisions of CAA 2022, the Minister is responsible for overseeing air transportation, airport development, maintenance, provision of aviation infrastructural services, fostering sound economic policies that assure the provision of efficient and safe services by air carriers and other aviation and allied service providers, aviation security, improvement of airspace management.

4.2. Nigerian Civil Aviation Authority

The NCAA is the principal regulatory body for aviation in Nigeria. The NCAA assumed its autonomy with the passage of the CAA 2022.⁵⁸ The mission of the NCAA is to provide aviation safety and economic regulation in the most efficient, effective, quality and technology driven manner to the satisfaction and benefit of all stakeholders, consistent with the highest international standards and the sustainable development of the industry and national economy. Its vision is to be one of the leading civil aviation authorities in the world.⁵⁹

The NCAA is responsible for oversight in these areas *inter alia*: air navigation, registration of aircrafts, licensing of aerodromes, regulating, supervising and monitoring of the activities of both Nigerian and foreign air carriers operating in Nigeria alongside their travel/other aviation agents and to keep a register thereof, establishing a personnel licensing system for the licence or

⁴⁸ (n 46) s 86.

⁴⁹ NCAA, 'Publication and Implementation of Nig.Cars 2023' [Publication and Implementation of Nig.Cars 2023 – Fourth Amendment to Nigeria Civil Aviation Regulations](#). NCAA accessed 29 November 2024.

⁵⁰ (n 28) regs 19.2.1.1 (a-c); introduction.

⁵¹ (FCCPA 2018) preamble.

⁵² *ibid*, s 1(a)-(e).

⁵³ *ibid*, s 39.

⁵⁴ *ibid*, s 47.

⁵⁵ (PCC Act 1975), preamble.

⁵⁶ (n 46) s 3; Muideen Olaniyi, 'FG Renames Aviation Ministry' [FG renames aviation ministry - Daily Trust](#) accessed 29 November 2024.

⁵⁷ FMAA, 'Festus Keyamo Assumes Office as Minister of Aviation and Aerospace Development' [Ministry of Aviation and Aerospace](#) accessed 29 November 2024.

⁵⁸ (n 46) s 4(1); NCAA, 'Who We Are' <https://ncaa.gov.ng/about/> accessed 29 November 2024.

⁵⁹ NCAA, *ibid*,

otherwise of aircraft maintenance personnel, flight crew, air traffic controllers, flight operation officers and allied personnel, inspection of training facilities of aviation personnel, compelling air carriers to maintain reasonable and adequate compensation rates and allied conditions of service for their employees in conformity with prevailing labour practices, regulating charges made in respect of air traffic control and weather forecasting services, prohibitions on certain operations of aircrafts and persons, registration of births, deaths and missing persons in aircraft, regulating the security control and screening of air passengers and their baggage prior to boarding.⁶⁰

Furthermore, the powers conferred on the NCAA rest on the Director-General,⁶¹ who exercises them either directly or through Directorates, Units, Technical Committees, Working Groups, Task Forces, and Inspectorates.⁶² In exercising and performing the powers, functions, and duties conferred on it, the NCAA may appoint, contract, liaise, or cooperate with experts, including specialised agencies, resource persons, academic and technical institutes, advisory committees.⁶³ The NCAA have powers to impose civil and criminal penalties, also to carry out investigations on its own initiative or upon receipt of a complaint or upon any other occurrence, except for accidents and serious incidents which requires due notice to the person concerned.⁶⁴

4.3. Federal Competition and Consumer Protection Commission

The FCCPC is responsible for the administration and enforcement related to competition and protection of consumers, initiating broad based policies and review economic activities in Nigeria to identify anti-competitive, anti-consumer protection and restrictive practices which may adversely affect the economic interest of consumers,⁶⁵ advise the Federal Government generally on national policies and matters respecting all goods and services, carry out investigations or inquiries in connection thereto, resolve disputes or complaints, issue directive and apply sanctions where necessary, protect and promote consumer interests, collaborate with consumer protection groups and associations for consumer protection purposes.⁶⁶

Also, the FCCPC is to ensure consumers' interests receive due consideration at appropriate fora and provide redresses to obnoxious practices or the unscrupulous exploitation of consumers by companies, firms, trade, associations, or individuals, ensure the adoption of appropriate measures to guarantee that goods and services are safe for intended or normally safe use,⁶⁷ act generally to reduce the risk and injury which may occur from services rendered to consumers which action may include restriction or prohibition, ensure that all service providers comply with local and international standards of quality and safe service delivery,⁶⁸ and cause an offending company, firm, trade, association, or individual to protect, compensate, provide relief and safeguards to injured consumers or communities from adverse effects of technologies that are inherently harmful, injurious, violent or highly hazardous.⁶⁹ The FCCPC is

clothed with powers to establish specialised Departments and Units for the effective and efficient discharge of afore-stated functions, compel manufacturers, suppliers, importers, wholesalers, retailers, providers of services to comply with the FCCPA 2018. It is equally empowered to summon and examine witnesses, call for and examine documents, administer oaths, and so on.⁷⁰

4.4. Public Complaints Commission

The mission of the PCC is the promotion of an effective and efficient service, responsible and responsive to the needs of the citizenry through investigation and resolution of complaints against federal, state, local governments, public corporations and private sector organisations and their officials. The vision of the PCC is the restoration of the dignity of man through the enthronement of rule of law and protection of individuals and organisations against administrative injustice.⁷¹

The PCC consists of a Chief Commissioner and other Commissioners as appointed by the National Assembly. The mandate of the Commissioners so appointed include power to investigate by personal initiative or following complaints lodged by other persons concerning any administrative action carried out by any department or ministry of the Federal or any State Government, local government, public institution set up by any Government in Nigeria, any public or private company duly incorporated under the CAMA 2020, and any officer or servant of the above bodies.⁷² The powers bestowed on the Chief Commissioner and other Commissioners are limited to complaints within their term of reference, not those pending before the National Assembly, any Court of law in Nigeria, the Armed Forces Act or the Police Act.⁷³ In simply terms, therefore, the PCC is the regulator of regulators.

4.5. The Judiciary

The Federal High Court (FHC) is vested with exclusive jurisdiction on aviation and safety of aircraft. The CFRN 1999 provides that in addition to the jurisdiction to be conferred by the national assembly, the FHC shall have jurisdiction and exercise same in aviation and safety of aircraft, to the exclusion of any court.⁷⁴ Moreover, the Federal High Court Act 1973 (as amended) made similar provision.⁷⁵ In *Aviation Logistic & Management Ltd v. United Bank for Africa Capital Plc. & Ors*,⁷⁶ the erudite Justice of the Court of Appeal unequivocally held that FHC has exclusive jurisdiction with respect to aviation matters. Furthermore, an akin provision is contained in *section 7(1)* of the FHC (Amendment) Decree No. 60 1991, with the inclusion of meteorology.⁷⁷

It should be noted that to succeed in a claim for damages before the FHC, a plaintiff's suit must be founded on the basic statute regulating the aviation industry. Pursuant to *section 7(1) (L)* of Decree 60 of 1991 and 230(1) (k) of the 1979 Constitution of the Federation (as amended), only the FHC have jurisdiction on aviation matters including carriage of goods and passengers.⁷⁸ Furthermore,

⁷⁰ (n 55) s 18.

⁷¹ PCC The Nigerian Ombudsman, 'Mission and Vision' [Mission & Vision | Public Complaints Commission Nigeria](#) accessed 29 November 2024.

⁷² (n 55) s 5(1)(2).

⁷³ *ibid*, s 6(1).

⁷⁴ (n 42) s 251(1)(k), Second Schedule, item 39.

⁷⁵ (FHC Act 1973) s 7(1)(k).

⁷⁶ (2018) LPELR-44790 (CA), *per* Georgewill, JCA.

⁷⁷ By reason of s 315(1) of the CFRN 1999, now Federal High Court (Amendment) Act 1991.

⁷⁸ *Sudan Airways Co. Ltd v Abdullahi* (1997) LPELR – 6130, 10-11.

⁶⁰ (n 46) ss 8, 9.

⁶¹ *ibid*, s 31(1).

⁶² *ibid*, s 16.

⁶³ *ibid*, s 15.

⁶⁴ *ibid*, ss 78, 91.

⁶⁵ *ibid*, s 17(a, b).

⁶⁶ *ibid*, s 17(c, e, h, l, r).

⁶⁷ *ibid*, s 17(s, t).

⁶⁸ *ibid*, s 17(x, y).

⁶⁹ *ibid*, s 17(z).

for an action to lie before a judge of the FHC, there must be a connection between the passenger and the aircraft. It was explained in *Kotsamalis v Singapore Airlines*,⁷⁹ that there must be a close nexus between an incident and the physical act of entering an aircraft. A formal contract of carriage is invoked when the passenger has boarded or embarked on the aircraft. In the circumstance, any issue that arises before the passenger enters the aircraft does not come within the contemplation of embarkation,⁸⁰ and thus is not reckoned as carriage of persons by air to clothe the FHC with exclusive jurisdiction. The judgement of the FHC is subject however to appeals to the Court of Appeal and Supreme Court. Hence, the FHC has a sacred duty to interpret the language of a statute to convey the intent of the law maker.⁸¹

5.0. Rights of Air Passengers

From a combined reading of the Constitution of the Federal Republic of Nigeria (CFRN 1999) as amended,⁸² the Nigeria Civil Aviation Regulations 2023 (NCARs 2023), and the Federal Competition and Consumer Protection Act 2018 (FCCPA 2018), the rights of passengers include right to life, right to dignity, right to care, right to compensation, right to full, fair, and clear disclosure of terms and conditions, right to information about passengers' rights, right to reimbursement, right to rerouting, right to reimbursement for the cost of ticket for downgrading, and right to file complaint about the air carrier upon infringement of passengers' rights. Accordingly, these rights will be discussed *anon*.

5.1. Right to Life

The CFRN 1999 guarantees to every person 'a right to life.'⁸³ Consequently and pursuant to the contract so entered between the parties, an air passenger is entitled to quality and safe flight services from air operators. Reciprocally, an air carrier is obligated to ensure the safety of all passengers on board its aircraft from the point of embarkation, whilst airborne, and onto final disembarkation.

5.2. Right to Dignity

Section 34 of the CFRN 1999 provides every individual with an entitlement to respect for the dignity of his person. Therefore, an air passenger has a right to the timely performance and completion of air carriage services from departure point to arrival destination. Again, a passenger is entitled to 'timely notice',⁸⁴ in the probable event of unavoidable delays by air carriers to effect performance of flight services as agreed by the parties. Save for exceptional circumstances, it is most humiliating and totally unacceptable for an airline to delay passengers for extended period with little or no explanation or alternate arrangements. Granted, what may amount to 'timely notice' was not clearly specified in the FCCPA 2018, however, the NCARs 2023 complements with its provision that within 30 minutes after the scheduled departure time, reason(s) must be provided to passengers, along with some specified assistance.⁸⁵ Furthermore, the performance of air carriage services by airlines should be in a manner and quality that reasonable persons are

generally entitled to anticipate.⁸⁶

5.3. Right to Care

In the event of flight delay and following a specified timeframe, air passengers reserve a right from air carriers to free-of-charge refreshments such as water, soft drinks, confectioneries/snacks, a meal, hotel accommodation, transport between airport and hotel or other accommodation.⁸⁷ In addition, passengers are entitled to these airlines' offer of certain essential care provisions—free of charge, which said offers continue to increase in scope as well as financial value, at longer delay periods.⁸⁸

5.4. Right to Compensation

Air passengers whose flights are cancelled and those denied boarding involuntarily, have a right to certain percentage in compensation of the actual price of tickets for domestic and international flights respectively.⁸⁹ The right to compensation is activated where the operating air carrier fails to inform passengers of the cancellation at least twenty-four hours (for domestic flights) and at least seven days (for international flights) before the scheduled departure time.⁹⁰ Nonetheless, it should be noted that the situation is remarkably different when passengers' flights are re-routed. However, where the operating carrier informs passengers of the cancellation at least seven days before, or between three and seven days before the scheduled departure time with an option of re-routing, the right to compensation will not lie in favour of the passenger.⁹¹

Above all, an operating airline shall not be obliged to pay compensation where exceptional circumstances are alluded to be the cause of the cancellation, despite all reasonable measures taken.⁹² Meanwhile, for delayed, lost, and damaged baggage, a passenger shall be entitled to adequate compensation.⁹³ Where a passenger's baggage is not delivered by an air carrier within twenty-four (24) hours from the flight arrival, a refund of checked baggage fee enures.⁹⁴

5.5. Right to Full, Fair, and Clear Disclosure of Terms and Conditions

Regulations 19.21.1.1 of the NCARs 2023 provides that every passenger is entitled before the purchase of a ticket to the full, fair, and clear disclosure of all the terms and conditions of the carriage. Pertinent to the disclosure are documents to be presented for check-in, provisions on check-in deadlines, refund and rebooking policies, and procedures and responsibility for delayed and/or cancelled flights. They may also include exclusionary clauses limiting liability, deadlines for filing claims, and other essential conditions. These provisions must not be overreaching.

Furthermore, article 26 of Modifications to the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1999 (Modifications to the CUCRICA 1999),⁹⁵ is to the effect that any provision exculpating an air carrier of liability or attempts to fix a lower limit than that which is laid down in the Convention is

⁷⁹ (1997) NSWSC 303.

⁸⁰ *KLM Royal Dutch Airlines v Taher* (2014) 3 NWLR (Pt 1393) 137, 190-1.

⁸¹ *Jonathan v FRN* [2019] 10 NWLR (Pt 1681) 533; *Owners of MV "Arabella" v Nigeria Agricultural Insurance Corporation* [2008] 11 NWLR (Pt 1097) 182.

⁸² CAP C23 LFN 2004.

⁸³ (n 42) s 33.

⁸⁴ (51) s 130(1)(a).

⁸⁵ (n 28) regs 19.6.1.1.

⁸⁶ (n 51) s 130(1)(b).

⁸⁷ (n 28) regs 19.6.1.1 & 19.10.1.1(a-d).

⁸⁸ *ibid*, regs 19.6.1.1(iii) & 10.1.2.

⁸⁹ *ibid*, regs 19.8.1.1(a)(b).

⁹⁰ *ibid*, regs 19.7.1.1(c)(d).

⁹¹ *ibid*, regs 19.7.1.1(d).

⁹² *ibid*, regs 19.7.1.3.

⁹³ *ibid*, regs 19.18.2.1(a)(d).

⁹⁴ *ibid*, regs 19.17.4.

⁹⁵ (n 19).

a nullity. Therefore, leaving the flight time and schedule of departure at the full discretion of an air carrier is impermissibly oppressive, being a clear infringement of an implied, yet fundamental term of a contract of carriage, which the law will not condone.

5.6. Right to Fair Dealings

Flowing from passengers' right to full disclosure in clear and understandable language, *section* 124(1) of the FCCPA 2018 prohibits the use of physical force, coercion, undue influence or pressure, harassment, unfair tactics, or any other conduct against any person in connection with marketing of any services to a consumer of services, supply of services to a consumer, negotiation, conclusion, execution or enforcement of an agreement to supply any services to a consumer, demand for, or collection of payment for services by a consumer, or the conduct of a legitimate business transaction. Furthermore, the fact that a potential consumer was substantially unable to protect its own interests due to physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement, or any other similar factor, shall not operate against the consumer where the service provider attempts to take advantage.⁹⁶

Drawing on that inference, air carriers or their agents are by law disallowed from leveraging on passengers' ignorance or their inability to understand the language of the contract of carriage to insert clause(s) that may be unfair to the interests and welfare of a consumer passenger. Any of such actions will be invalidated and unenforceable against the passenger. Accordingly, airlines' obligations to passengers are not open to limitations or waivers through a derogation or restrictive clause inserted in the contract of carriage. For compensation purposes, the situation is especially stringent where a passenger acted on misinformation on his rights and incorrectly accepted less than the ideal damages. There is bound to be a reversal and the passenger shall be entitled to pursue any available remedies.⁹⁷ However, passengers must be wary of flight tickets-purchasing agencies not directly affiliated to air carriers. In the event of failed or vague bookings, any available remedy for breach of contract will only lie against the agency, but certainly not the airline.

5.7. Right to Information About Passengers' Rights

Air operators are obligated, at check-in, to provide a clearly legible written notice displayed in a conspicuous manner to passengers. The text should read thus: 'If you are denied boarding or if your flight is cancelled or delayed for at least one hour, ask the airline officials for a written statement of your rights, particularly with regard to compensation and assistance.'⁹⁸ Further, in the case of denied boarding, or cancellation of flight, affected passengers must be issued a written notice enumerating the rights that they are so entitled and the procedures for compensation and assistance.⁹⁹ However, for illiterate passengers, visually impaired, and the disabled, the notice of their rights shall be communicated by appropriate alternative means.¹⁰⁰

It is observed that what may appear to be 'appropriate alternative means' is not clearly defined. Consequently, in compliance with the NCARs 2023, each operating air carrier may vary on what it considers appropriate in the circumstance for those categories of

passengers.

5.8. Right to Reimbursement

For flight delay, a passenger becomes entitled to reimbursement after a specified timeframe.¹⁰¹ Air passengers whose flights are cancelled are entitled to reimbursement. In the circumstance of reimbursement, payment in cash (for tickets paid in cash only) on domestic flights is immediate, while international flights will be reimbursed within fourteen days,¹⁰² either by cash, electronic bank transfer, bank orders or cheques, or in travel vouchers or other services based on a signed agreement with the passenger.¹⁰³

5.9. Right to Rerouting

Air passengers whose flights are cancelled are likewise entitled to rerouting. In the event of flight rerouting, passengers will be rerouted under comparable conditions to their final destinations at the earliest opportunity or at a later date and the passenger's convenience, albeit subject to availability of seats.¹⁰⁴ In practice, however, an unused ticket arising from a delayed and/or cancelled flight is left open to passengers use within an extended period of 12 months. Regardless, the right to compensation still enures, although reduced by a certain percentage.

5.10. Right to Reimbursement of the Cost of Ticket for Downgrading

Passengers flying higher class of seats purchased by a more expensive ticket become entitled to reimbursement when they are downgraded to a class lower than what they paid for. The operating airline is thus obligated to immediately reimburse, within 30 days from the date of travel, the difference to the passenger,¹⁰⁵ along with a given percentage as compensation calculated by the distance of travel, both payable either by cash, electronic bank transfer, bank orders or cheques, or in travel vouchers or other services based on a signed agreement with the passenger.¹⁰⁶

5.11. Right to File Complaint about Air Carrier upon Infringement of Passengers' Rights

Every passenger has a right to file a complaint to an air carrier about the flight services rendered.¹⁰⁷ Such complaint could be sent to the airline's designated officer via a formal letter, electronic mail, or through a form on the carrier's website. Furthermore, where the complaint remains unresolved, passengers are at liberty to channel further complaints in writing to the NCAA.¹⁰⁸

6.0. Enforcement Options Available for Aggrieved Air Passengers in Nigeria

Air passengers' rights, like other lawful rights, are sacrosanct and enforceable against any defaulting party. In Nigeria, rights of air passengers are enforced by redress through litigation in the courts of law. Also, regulators such as NCAA, Federal Competition and Consumer Protection Commission (FCCPC), and Public Complaints Commission (PCC) have quasi-judicial powers. However, in keeping with the scope of the paper, redress through litigation will be solely examined.

¹⁰¹ (n 28) regs 19.6.1.1(a)-(d).

¹⁰² *ibid*, regs 19.9.1.1(a).

¹⁰³ *ibid*, regs 19.8.1.3.

¹⁰⁴ *ibid*, regs 19.9.1.1(b)(c).

¹⁰⁵ *ibid*, regs 19.11.1.1(a).

¹⁰⁶ (n 103).

¹⁰⁷ *ibid*, regs 19.22.1.1.

¹⁰⁸ *ibid*, regs 19.24.1.1-3.

⁹⁶ (n 51) s 124(2).

⁹⁷ (n 28) regs 19.19.1.1-2.

⁹⁸ *ibid*, regs 19.17.1.1.

⁹⁹ *ibid*, regs 19.17.1.2.

¹⁰⁰ *ibid*, regs 19.17.1.3.

6.1. Redress through Litigation

The phrase, ‘Judiciary is the last hope of the common man’, although cliched, remains apposite, constant, and true. The CFRN 1999 recognises the importance of the judiciary—represented by the courts, with conferment of ‘judicial powers.’¹⁰⁹ These powers are extensive in scope and include all express and implied powers and sanctions of a court with respect to matters between persons or government, authority and to any person within Nigeria, including all actions for the determination of questions on the civil rights and obligations of a citizen.¹¹⁰

For this reason, an aggrieved air passenger whose civil rights have been infringed by a service provider airline may approach the courts for redress. Likewise, the right to judicial redress is provided for in the CAA 2022. *Section* 86(1) avers that jurisdiction to hear and determine proceedings arising therefrom, lies with the FHC. Therefore, the FHC is empowered to adopt all legitimate measures that may be necessary to avoid unnecessary delays and abuse in the conduct of proceedings.¹¹¹ Furthermore, the FCCPA 2018, in recognising the constitutional powers of the judiciary provides room for an aggrieved consumer to jettison the option of enforcement by the FCCPC and directly approach a court with appropriate jurisdiction to seek redress. In the alternative, also, a passenger reserves the right to, and may so elect to pursue a civil action for compensation and restitution in addition to the action by the FCCPC.¹¹²

Consequently, in determining whether there has been violation(s) of passengers’ rights necessitating either an award of damages, restitution, penalties, even criminal liability, the courts are guided essentially by the CFRN 1999, CAA 2022, Modifications to the CUCRICA 1999,¹¹³ NCARs 2023, and FCCPA 2018. Likewise, the court will consider seriously the issue of jurisdiction before it takes on any matter for determination. This is because jurisdiction is the life-wire of any cause, without which a suit lacks oxygen and becomes comatose. In determining a court’s jurisdiction, the following ingredients, as enunciated in the time-honoured case of *Madukolo v Nkemdilim*,¹¹⁴ must uncompromisingly be present:

- a) It is properly constituted as regards number and qualifications of the members of the bench and no member is disqualified for one reason or another.
- b) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction.
- c) The case comes before the court initiated by due process of law; and
- d) Upon fulfilment of any condition precedent to the exercise of jurisdiction.

Also, in *Onuorah v K.R.P.C Ltd*,¹¹⁵ it was decided that a court is said to be competent when the subject matter before it is within its powers to hear. On the authority of *Soyanwo v Akinyemi*,¹¹⁶ jurisdiction is such a fundamental issue that could be brought up by

any of the parties, at any stage of the proceedings, even *suo moto* by the court. It may even come up at the Supreme Court for the first time and succeed, since a defect in jurisdiction is fatal to an entire judicial proceeding, no matter how finely conducted.

6.1.1. Jurisdiction Over Aviation Claims—Federal High Court or State High Court

In *KLM Airline v Kunzhi*,¹¹⁷ and *Kabo Air Ltd v Oladipo*,¹¹⁸ the courts expounded on the import of *section* 251(1)(k) of the CFRN 1999 (as amended) and *section* 7(1)(l) of the FHC Act, (as amended by Decree No. 60 of 1991), to the effect that the scope of FHC jurisdiction with respect to ‘aviation; safety of aircraft and carriage of passengers and goods by air and meteorology’ is expansive. As a general rule, the very provisions which expressly bestows exclusive adjudicatory powers on the FHC on aviation concerns also by an ouster clause strips SHC of jurisdiction over same subject matters. Furthermore, it is stated that for a claim to succeed for breach of contract of carriage by air, the said contract must have commenced, in whole or in part, for the FHC to become seized with jurisdiction.

In *KLM Royal Dutch Airline v Idehen*,¹¹⁹ the respondent purchased tickets from the appellant for a round trip. However, the return ticket was cancelled by appellant, after the first leg of the flight had been concluded. The claim was held to rightly fall within the exclusive jurisdiction of the FHC, rather than the State High Court (SHC). In clarifying the difference, Nimpar, JCA held that where the contract relates to carriage by air, the actual carriage must have commenced. The cause of action must be closely connected with being onboard an aircraft, in the likely occurrence of aviation injuries or loss of baggage. Only then could an action lie before the FHC.¹²⁰ From the decision of their Lordships at the Court of Appeal, it logically follows that in a situation where the contract has not been part-performed, the claim could rightly fall within the jurisdiction of the SHC.

In like manner, in *KLM Royal Dutch Airlines v Taher*,¹²¹ the respondent purchased air tickets for a flight to Canada and United States of America from Mallam Aminu Kano International Airport, Kano. Unfortunately, he was denied boarding for suspected fake passport. Respondent instituted an action at the FHC claiming several reliefs. Despite appellant’s objection on grounds of jurisdiction, judgement was entered in respondent’s favour. On appeal, the learned Justices of the Court of Appeal dealt with the issue whether an aggrieved party to a claim for breach of contract, created by denied boarding can seek redress at the FHC. Their Lordships further considered whether the breach falls within the class of simple contract in respect of which the FHC is bereft of jurisdiction to adjudicate over. In allowing the appeal, the cerebral Justices held that for there to be a carriage of passenger by air to invoke the jurisdiction of the FHC, there must have been an entrant or boarding into the aircraft by such passenger and he must be in the process of being carried or conveyed.

In *Delta Airline v Josef & Anor*,¹²² the 1st respondent, a minor, sued the appellant through his next friend at the SHC for denied boarding on his return trip from Atlanta, Georgia, USA to Lagos, Nigeria. The alleged reason for denial was that the ticket was procured for 1st respondent from a stolen credit voucher. The appellant brought a

¹⁰⁹ (n 42) s 6(1)(2).

¹¹⁰ *ibid*, s 6(6)(a)(b).

¹¹¹ (n 46) s 87(1).

¹¹² (n 51) s 146(2).

¹¹³ (n 19).

¹¹⁴ (1962) SCNLR 341.

¹¹⁵ (2005) 6 NWLR (pt 921) 393.

¹¹⁶ (2001) 8 NWLR (pt 714) 95, 116 paras H-B.

¹¹⁷ (2004) 8 NWLR (pt 875) 231.

¹¹⁸ (1999) 10 NWLR (pt 624) 517.

¹¹⁹ (2017) LPELR 4357 CA, *per* Yargata Byenchit Nimpar, JCA.

¹²⁰ (n 119) 14, paras B-D.

¹²¹ (2014) 3 NWLR (1393) 137.

¹²² (2019) LPELR-46921 CA.

preliminary objection challenging the jurisdiction of the learned trial Judge, which was dismissed. On appeal, it was allowed. In arriving at its decision, the learned Justices of the Court of Appeal took into consideration the fact that the ticket was not one-way, but a return ticket. That means the first leg of the contract with 1st respondent had been completed by appellant, and thereby qualifies as an aviation contract. Owei, JCA held that for a contract to qualify as contract of carriage, the person must have been carried by the aircraft. Therefore, a personal check-in is insufficient to prove actual carriage, since anything could happen in the interval between check-in, embarkation and actual carriage. Factors such as delays, cancellations, or change of mind by passenger may cause a breach of contract, which certainly gives the SHC jurisdiction to hear and determine the matter.¹²³

It is distillable from the cerebral pronouncement of His Lordship that cases of return tickets—indicative of a round-trip—do not have the same principle as a one-way ticket. Whilst the former is an aviation contract due to part-performance of carriage by air, thereby bringing it within the exclusive jurisdiction of the FHC, the latter is a simple contract without any performance whatsoever, thus invoking the sole jurisdiction of the SHC. What is more, an examination of *section 272(1)* of the CFRN 1999 is to the effect that with deference to *section 251* and other Constitutional provisions, the SHC has jurisdiction to hear and determine any civil and criminal proceedings on the existence of a legal duty, power, liability, interest, obligation, claim, and so on.

Emphatically, the jurisdiction of the SHC is made 'subject to the provisions of *section 251* and other provisions of the Constitution.' Thus, where an aviation contract had been partly performed such as denied boarding on a round trip, the jurisdiction to hear and determine the cause is exclusive to the FHC *simpliciter*. However, it is submitted that in other instances such as claims for denied boarding on a one-way trip, reimbursement of unused ticket, intimidation, and allied matters, which are devoid of performance of any kind whatsoever, could be properly instituted at the SHC, since they do not expressly involve actual carriage or embarkation.

6.1.2. Principles on Damage to/Loss of Baggage

In another development, an action in damages for negligence and damage/loss of baggage by an air passenger against a carrier airline will succeed where all the conditions for the action are fulfilled. A scrutiny of the second and third paragraphs of article 17 of Modifications to the CUCRICA 1999 makes a carrier liable for damage caused by destruction, loss, or damage to checked baggage so long as the said destruction, loss, or damage occurred on board the aircraft while the baggage is in the care of the carrier. The situation with checked baggage places liability on the carrier or its agents where such damage is due to their fault. Therefore, where a checked baggage has not arrived after 7 days, the passenger is entitled to enforce the rights arising from the contract of carriage against the carrier.

In *International Messengers (Nig) Ltd v Pegofor Ind. Ltd*,¹²⁴ the supreme court held that the act of a carrier would amount to a fundamental breach if the performance can be shown to be of such nature that is totally different from that which the contract contemplated or is one which would entitle the passenger to damages. Significantly, the period for lodging complaint for damage or loss of baggage include the time after such discovery. For damage to baggage, a written complaint must be made within two days of

¹²³ (n 122) 17-18, *per* Tobi Ebi Owei, JCA.

¹²⁴ (2005) 15 NWLR (Pt 947) 1 *per* Edozie, JSC.

receipt of checked baggage or seven days in the case of cargo.¹²⁵ Noteworthy also is the fact that a carrier's exclusion of liability through the insertion of very wide exclusionary terms would not be allowed by the courts.¹²⁶ The protection sought by a carrier will fail if the limiting clauses so inserted defeats the performance of a fundamental or basic obligation created by the contract.¹²⁷

6.1.3. Applicability of the Exclusion of Liability Rule

By the doctrine of fundamental terms, no clauses, which exclude liabilities from warranties and conditions, will avail a party from his breach of a fundamental obligation under the contract.¹²⁸ Clearly, where the consideration wholly fails, the central purpose of the contract disappears.¹²⁹ Against this backdrop, in *British Airways v Atoyebi*,¹³⁰ the appellant failed to deliver the respondent's checked baggage upon his arrival in Lagos, and after several fruitless trips by respondent to the airport in Lagos over a period of three days on the appellant's promise that the baggage would arrive, it still failed to deliver the said baggage to his duly authorised agents in London when eventually it was located at their office at Heathrow Airport. The appellant continued to withhold the baggage until respondent had to travel back to the United Kingdom to retrieve it at great personal expense. In dismissing the appeal, the Supreme Court found that the appellant was not entitled to avail itself of the provisions of the International Civil Aviation Organisation (ICAO) to limit or exclude its liability towards the respondent as it was clear that the appellant had no intention of delivering the respondent's baggage to him in Lagos, having abandoned same at its Lost Baggage store in London.

Thus, where a service providing air carrier seeks to find protection in some provisions of the Modifications to the CUCRICA 1999 which excludes his liability, the law is that such limiting clauses shall not apply if:

- i) The damage is caused by his willful misconduct or by such default on his part as it accords with the law of the Court seized of the case, and considered to be equivalent to willful misconduct.¹³¹
- ii) The damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.¹³²
- iii) The damage is adjudged by a Court seized of the case to be caused by his willful misconduct.¹³³
- iv) The default is of such magnitude that it amounts to a willful misconduct.¹³⁴

In *Horabin v British Overseas Airways Corporation*,¹³⁵ willful misconduct was defined as a misconduct to which the will is a party and arises when the person involved appreciates that his actions or omissions are wrongful, but persists in so acting or omitting to act,

¹²⁵ (n 19) art 31(2).

¹²⁶ Okay Achike, *Nigerian Law of Contract* (1st edn, N.P. Publishers 1972) 107.

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ (2014) 13 NWLR (PT 1424) 253, *per* Kekere-Ekun, JSC.

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ (1952) 2 AER, 1016.

the consequences regardless, or acts or omits to act with reckless indifference to what the results may be. Still, it was explained that the mere fact that an act was done contrary to a plan or instruction, or even to safe flying standards, to the knowledge of the person doing it, may not constitute willful misconduct on his part, unless and until it is shown that he knew that he was doing something contrary to the best interests of the passengers and of his employers or involving them in a greater risk than if he had not done it.

In *Mekwunye v Emirates*,¹³⁶ the respondent was by a contract of carriage obligated to carry the appellant aboard its flight on 17th December 2007 en route from Dallas, Texas in U.S.A. to Lagos, Nigeria, and back, upon purchase of the flight ticket by the appellant. However, on the said flight date and despite reassuring validations from the respondent, the appellant was denied boarding pass involuntarily. Left stranded, the appellant faced great embarrassment, beside the stress of providing food and hotel accommodation for two days on self-sponsorship. Thereafter, she was put through extra financial strain of having to purchase a fresh over-the-counter ticket from another airline, which was more expensive and for a longer route, which took extra 48 hours. The Supreme Court, in reversing the Court of Appeal's judgement, considered the respondent's acts of willful misconduct and breach of contract and upheld the decision of the trial Federal High Court in favour of the appellant.

From the foregoing, as illustrated by *British Airways v Atoyebi*,¹³⁷ and *Mekwunye v Emirates*,¹³⁸ there is no doubt whatsoever that the air carriers acted with apparent wrong intentions toward their passengers. Therefore, the legal remedies sought and obtained against them in the courts of law were justified and well deserved.

6.1.4. The Rule on Proper Venue of Court for Aviation Claims

Equally important and not to be overlooked, also, is the adjudication venue or proper country before which an action can be rightly instituted. Article 33(1) of the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1999 (CUCRICA 1999),¹³⁹ provides that an action for damages must be brought, at the option of the plaintiff, in the territory of one of the State Parties to the CUCRICA 1999, which could be the court where the carrier airline is domiciled, or where the carrier airline has its principal place of business, or at a place where the carrier airline has a business presence, that is, a correspondence office address where the contract was entered with the plaintiff, or the court at the place of destination. However, for damages arising from death or injury of a passenger, the appropriate court to approach is more expansive in scope.

Article 33(2) of the CUCRICA 1999 provides that besides the courts mentioned above, a passenger may bring an action before a court where he/she has his/her principal and permanent residence from which the carrier airline carries out its service operations, whether on its own aircraft or on a leasehold. This 'principal and permanent residence' must not necessarily be a passenger's country of origin but suffices as properly so called if at the time of the accident, the passenger is resident therein. Another option open to an aggrieved passenger is a court situate in the place where the carrier airline

¹³⁶ (2019) 9 NWLR (PT 1677) 191.

¹³⁷ (n 130).

¹³⁸ (n 136).

¹³⁹ (CUCRICA 1999)

<https://www.icao.int/Meetings/AirCargoDevelopmentForum-Togo/Documents/9740.pdf> accessed 29 November 2024.

conducts its business of carriage of passengers, either from premises leased or owned by the carrier itself or in conjunction with another carrier under a commercial agreement.

While the place of carriage leading to the claim is not of much consequence, it is noteworthy that the carrier must have some sort of business presence—formal or informal—in the said residence of the passenger before the jurisdiction of court can be properly invoked. Illustrative of this principle is *Erwin-Simpson v AirAsia Berhad*.¹⁴⁰ In that case, Mary Erwin-Simpson, a resident of the District of Columbia, U.S.A., sued a Malaysia-based airline, AirAsia, in her principal and permanent place of residence, claiming damages for injuries sustained while onboard the flight from Malaysia to Cambodia. The alleged injuries arose from spilled boiling water by a flight attendant. The claim was founded on the CUCRICA 1999 which deals with airlines' liability to passengers, a multilateral treaty ratified by the United States.

In spite of this, her case was dismissed for lack of both subject matter jurisdiction and personal jurisdiction. The court held that the alleged injuries of the passenger was not sustained from any activity of the airline while in the U.S. District of Columbia. It further held that the only presence of the said airline in that jurisdiction is simply its website, which is grossly insufficient to render the airline corporation subject to its jurisdiction. However, in the case of *British Airways v Atoyebi*,¹⁴¹ where the baggage of respondent was negligently misplaced at Heathrow airport, Great Britain, by the appellant—a foreign airline, the Nigerian court rightly assumed jurisdiction and adjudicated over the matter due to the fact that the foreign airline has business presence in Nigeria.

7.0. Conclusion and Recommendations

The 'customer is king' adage places passengers on a high pedestal, which makes it justified for them to have their travel demands met on their schedule, rather than being forced to adapt to the dictates of airlines. The legal framework for protecting air passengers' rights, *inter alia*, is strongly enshrined in the CFRN 1999, CAA 2022, NCARs 2023. The rights of air passengers include right to life, right to dignity, right to care, right to compensation, right to full, fair, and clear disclosure of terms and conditions, right to information about passengers' rights, right to reimbursement and re-routing, right to file complaint about the air carrier upon passenger rights' infringement. Despite the obvious rights of passengers, their needs are still unmet with poorly scheduled flights, cancellations, denied boarding and delays. Passengers are put through untold hardships, left stranded at various unsavory airport locations, even late into the nights without adequate care and support. This anomaly needs to change. Hence, the lackadaisical attitudes of most air carriers and the business-as-usual approach by aviation institutions to passenger-driven policies and their implementation must give way to a more concrete enforcement, as innovative solutions remain an all-time necessity.

Consequently, it is on this note that the following recommendations are hereby proffered for consideration:

1. The National Assembly should amend the CAA 2022 by inserting stricter penalty clauses to be meted on defaulting air carriers in the event of any breach in honouring contractual obligations to air passengers. Also, there should be judicial activism in protecting and enforcing air passengers' rights to the maximum since the effects of a

¹⁴⁰ (2019) 375 F. Supp. 3d 8, 10-11.

¹⁴¹ (n 130).

breach by air carriers can be far-reaching on all citizens irrespective of status and very relatable to judicial officers.

2. The National Assembly in collaboration with the Minister of Federal Ministry of Aviation and Aerospace Development (FMAAD) and NCAA, should include veteran academics in decision-making on aviation matters so as to give the requisite elevation of professionalism in the industry. Moreover, passenger awareness campaign should be made on social media and other widely-circulated platform so air passengers are informed on the methods available for seeking a redress in the event of violations of their rights by air carriers. Also, Continuing Aviation Education should be strictly promoted for officials having oversight duties, such as pilots and crew, and every worthy stakeholder. Such professional capacity building will assure quality service delivery in keeping with updated ICAO standards and recommended practices.
3. Giant and miniature air carriers should take full responsibility for their advertent or inadvertent infringements on air passengers' rights in such instances as cancellation of flights, delayed and/or denied boarding, through instant reimbursements and compensations, just as it is mostly practiced in the United States of America. On compensation for and/or replacement of damaged/lost baggage, it should be immediate and swift to avoid interventions by third party—the NCAA, FCCPC, PCC, or the Courts.