

**LIABILITY FOR FLIGHT DELAYS: AIRLINE PASSENGERS' RIGHT TO  
COMPENSATION IN NIGERIA  
A PAPER PRESENTATION TO THE CHRISTIAN LAWYERS FELLOWSHIP OF  
NIGERIA (CLASFON), ABUJA BRANCH ON 28 APRIL 2025**

**By**

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## INTRODUCTION

It is a privilege to be invited to deliver this paper, particularly on this subject matter which remains a growing issue for the passengers who travel by air in Nigeria. This is a very touchy subject because statistically, it may be safe to assume that at least 7 out of 10 people in this room have faced flight delays at least more than once in the last year during a flight within and outside Nigeria.

In December 2024, the Director General of the Nigeria Civil Aviation Authority ('NCAA' or 'Authority'), Capt. Chris Najomo at an Aviation stakeholders meeting disclosed that out of 5,513 flights operated in October 2024, 2,791 were delayed<sup>1</sup>. This is an estimate of about 50% of flights within the period. The Directorate of the Consumer Protection Unit of the NCAA has in recent years become more proactive in enforcing sanctions on defaulting airlines but has stressed the need to provide more awareness for passengers to know their own obligations and how to enforce their rights where they have suffered flight delays.<sup>2</sup>

The crux of the matter is not just the flight delay itself but the responsibility the airlines or carriers owe the passengers who suffer these delays. The passengers also have obligations they ought to have met to be qualified for compensation from the airline or carrier.<sup>3</sup> There are statutory provisions under Part 19 of the Nigeria Civil Aviation Regulations 2023 (NCAR 2023) which have codified the Consumer Protection regulations covering airlines and carriers, as well as their obligations towards passengers who have suffered flight delays. Part 19 of the NCAR 2023 prescribes minimum rights and responsibilities of passengers and

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<sup>1</sup> Olasunkanmi Akinlotan, 'NCAA moves to end passengers' maltreatment' Punch Newspaper (19 March 2025) <<https://punchng.com/ncaa-moves-to-end-passengers-maltreatment/>> accessed 28 April 2025

<sup>2</sup> ibid

<sup>3</sup> The term Air Carrier, Carrier or Airlines are used interchangeably in this paper to refer to the operating airline responsible for a flight delay.

airlines' obligations to passengers, where: (a) There is an incidence of Overbooking and passengers are denied boarding against their will; (b) A scheduled flight is delayed; (c) A scheduled flight is cancelled; and (d) Passengers fail to discharge their responsibilities.<sup>4</sup> The focus of this paper would be limited to examining carriers' flight delays and the passengers' rights and enforcement where a flight delay has occurred.

## **1. LAWS APPLICABLE TO AIRLINE LIABILITY FOR FLIGHT DELAYS**

The key sources of laws applicable to airline liability for flight delays are the Civil Aviation Act 2022 (CAA 2022) which has domesticated the International treaties applicable to flight delays, the NCAR 2023 and case laws that have interpreted provisions of the CAA 2022 and NCAR 2023.

### **1.1.The Civil Aviation Act**

The NCAA, established under **Section 4 of the CAA 2022**, serves as the primary enforcement body for passenger rights through its Consumer Protection Unit.

### **1.2.The Montreal Convention**

The Unification of Certain Rules Relating to International Carriage by Air signed at Montreal on 28th May, 1999 (The Montreal Convention) has been domesticated under **Section 55(1) and (2) of the CAA 2022**. The Montreal Convention which is the Second Schedule to the CAA 2022 applies to all International carriage by air to and from Nigeria. In the case of Domestic flights within Nigeria the Montreal Convention has been modified as the Second Schedule to the CAA 2022. The Montreal Convention is the key convention and law applicable to the liability of airlines for flight delays.

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<sup>4</sup> NCAR 2023, s 19.1.1

Article 19 of the Montreal Convention applicable to domestic flights within Nigeria<sup>5</sup> provides that the carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nonetheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 22(1) of the Montreal Convention applicable to domestic flights within Nigeria<sup>6</sup> provides the limits of liability in relation to Delay. It stipulates that in the case of damage caused by delay as specified in article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4150 United States Dollars. Article 23 of the Montreal Convention<sup>7</sup> provides that this amount shall be paid in Naira at the existing exchange rate. Article 22(5) of the Montreal Convention<sup>8</sup> applicable to domestic flights stipulates a proviso to Article 22(1) on the limits of liability in relation to delay. A carrier may not avoid liability if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is proved that such servant or agent was acting within the scope of its employment.

### **1.3.Case Law Authorities on Flight Delays.**

The general common law position regarding carriers' liability to passengers could arise as a result of Injury sustained on board an aircraft; death arising from the

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<sup>5</sup> CAA 2022, Sch 2, Article 19

<sup>6</sup> *ibid*, Article 22(1)

<sup>7</sup> *ibid*, Sch 2

<sup>8</sup> *ibid*

course of a journey; damage or loss of goods; delayed or denied boarding; and interactions in the course of preparing for or the actual conduct of flight operation.<sup>9</sup> There are established case laws dealing with liability of airlines in cases of denied boarding, lost baggage, cancellations of flights and the applicability of International Conventions.<sup>10</sup>

The case law consideration of carriers liabilities for flight delay was considered in the case of ***Mr. Abiodun Rufai v Arik Air Limited (2019)***<sup>11</sup> where the Court of Appeal considered circumstances where a carrier will not be liable for damages occasioned by delay and the responsibility of the Passengers. In the *Abiodun Rufai Case*, the passenger (Mr Abiodun Rufai) booked a ticker for himself and members of his family from Lagos to Port Harcourt on the 6th August, 2008 on Arik Air Ltd's scheduled flight No. W3511. By the air tickets purchased which contains the terms and conditions of the contract between the parties and the subsequent boarding passes issued to him by officials of Arik Air Ltd at the check-in counter at the Lagos Airport, the flight was scheduled to depart Lagos Airport or take off to Port Harcourt at 7:30am. The said flight did not depart or take off from the Lagos Airport at the precise time of 7:30am as scheduled and stipulated on both the air tickets and boarding passes issued to the Mr. Abiodun Rufai.

Mr. Abiodun Rufai's case was that he fully performed his own part of the contract by presenting himself to Arik Air Ltd to be carried or flown to his destination at the scheduled time indicated in the contract, but that Arik Air Ltd failed to perform its part of the contract by failure to depart Lagos at the scheduled time and thereby breached the contract. The Federal High Court dismissed the claims of Mr. Abiodun Rufai as Plaintiff. Dissatisfied, He appealed to the Court of Appeal. The

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<sup>9</sup> *Emirates Airline V. Uzoaku Kenechukwu Ngonadi* (2013) LPELR-22053(CA)(Pp. 46-47, paras. A-F)

<sup>10</sup>*Harka Air Services (Nigeria) Ltd V. Kaezar* (2011) LPELR-1353(SC); *Mekwunye V. Emirates Airlines* (2019) LPELR-46553(SC); *Cameroon Airlines V. Otutuizu* (2011) 4 NWLR Pt 1238; *Emirates Airline V. Aforka* (2014) LPELR-22686 (CA); (2015) 9 NWLR (Pt 1463) 80

<sup>11</sup> *Mr. Abiodun Rufai v Arik Air Limited* (2019) LPELR-48009(CA)

Court of Appeal dismissed the appeal and affirmed the judgement of the Federal High Court. The Court of Appeal reasoned as follows in coming to its decision:

***Ordinarily, at common law, once there is a breach of a contract entered into by parties, the party in breach would be liable in damages resulting from the breach to the other party to the contract against whom the breach was committed. Obimiami Brick & Stone Nig. Ltd. v. ACB Ltd (supra). A breach of contract simply means that the party in breach has acted contrary to the terms of the contract in the performance of the contract or acted negligently in the performance in such a way that it was not in accordance with the specific terms agreed to by the parties or even failed or refused to perform his own part of the contract as agreed to by the parties. See Pan Publishers Nig. Ltd v. First Bank of Nig. Ltd (2000) 1 SC, 71; Best Nig. Ltd v. Blackwood Hodge Nig. Ltd (2011) 1-2 MJSC, 55. In awarding damages, in an action for breach of a contract, the principle of law applicable is "restitutio in intergnum", that is, to restore the innocent party/claimant, in so far as money can do so, to the position in which he would have been if the breach had not occurred or happened. See Okongwu v. NNPC (1989) 4 NWLR (115) 296; Oshin v. Oshin Ltd. v. Livestock Feeds Ltd (1977) 2 NWLR (486) 162; Udeagu v. Benue Cement Co. Plc (2006) 2 NWLR (965) 600; Cameroon Airlines v. Otutuizu (2011) 2-3 MJSC (Pt. II) 56, (2011) 4 NWLR (1238) 512; Best Nig. Ltd. v. Blackwood Hodge Nig. Ltd (supra). However, in the Appellant's case, the provisions of Article 19 of the 3rd Schedule to the Aviation, Act exempts the Respondent from liability for damages suffered from or occasioned by delay in the flight from Lagos to Port Harcourt which constituted the breach of the contract between the parties if it satisfied the condition for the application of the exemption. It is therefore the statutory exemption which will supercede the general principle of law of contract on damages***

**for breach and would apply to the Respondent's case. Ugwu v. PDP (2013) LPELR-21356; Ibidapo v. Lufthansa Airlines (1997) 4 NWLR (498) 124.**<sup>12</sup>

The defences available to carriers are examined in more detail at the later part of this paper.

## **2. FLIGHT DELAYS, OBLIGATIONS OF CARRIERS AND COMPENSATION TO PASSENGERS UNDER PART 19 OF THE NCAR 2023**

Part 19 of the NCAR 2023 deals with Passengers' Rights and Responsibilities; and the obligations of Airlines', Travel Agents, and Tour Operators to Passengers. It addresses consumer protection issues, including, assistance for Persons with Reduced Mobility, assistance to aircraft Accident victims and their families, compensations for denied boarding, delayed or lost baggage, delays and cancellations of flights. For the purpose of this paper we shall only focus on the relevant portions dealing with Flight Delays on Domestic and International Flights.

The NCAR 2023 differentiated domestic and international airlines by reference to Air Carriers as an enterprise that engages in provision of transportation services by aircraft for remuneration or hire. On the other hand, it refers to Airline as any air transport enterprise offering or operating a scheduled international air service. The terms 'Air Carrier' and 'Airline' are used interchangeably throughout the Part 19 of the NCAR 2023.<sup>13</sup>

The NCAR 2023 provides three categories of flight delays: Domestic Flight Delay; International Flight Delay and Tarmac Delays. Section 19.1.2 of the NCAR 2023 also defines compensation to passengers as direct and/or indirect monetary and/

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<sup>12</sup> *Abiodun Rufai Case* [n 11] (Pp. 32-34, paras. C-A) (Emphasis added)

<sup>13</sup> NCAR 2023, s 19.1.2 provides that 'Note : Notwithstanding the definitions in (2) & (3) above, for the purpose of this part, the words 'Air Carrier' and 'Airline' are used interchangeably.'

or non-monetary benefits offered to passengers whose rights have been infringed upon.

## **2.1. DOMESTIC FLIGHT DELAY**

### **2.1.1. Domestic flight delay within 30 minutes and after 2 hours after the scheduled departure time**

Under Section 19.6.1 of the NCAR 2023 which provides procedures for domestic flight delays, when an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, it shall provide the passengers with reasons for the delay within 30 minutes after the scheduled departure time<sup>14</sup> and after two hours<sup>15</sup>, refreshments such as water, soft drinks, confectioneries / snacks<sup>16</sup> and passengers shall be offered free of charge, two telephone calls, SMS or emails.<sup>17</sup>

### **2.1.2. Domestic flight delay beyond three (3) hours**

Where the delay is beyond three (3) hours<sup>18</sup>, the Passenger is entitled to the choice of reimbursement or re-rerouting. The reimbursement shall be made immediately for domestic flights or within 14 (fourteen) days for international flights. If by electronic bank transfer, bank orders or bank cheques, travel vouchers or other services, reimbursement shall be made within 14 (fourteen) days of the full cost of un-utilised ticket at the price at which it was bought, for the part or parts of the journey not made, and for the part of already made if the flight

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<sup>14</sup> NCAR 2023, s 19.6.1.1

<sup>15</sup> *ibid*, s 19.6.1.1(a)

<sup>16</sup> *ibid*, s 19.10.1.1(a)

<sup>17</sup> *ibid*, s 19.10.1.2

<sup>18</sup> *ibid*, s 19.6.1.1(b)



is no longer serving the purpose in relation to the passenger's original travel plan, together with, when relevant, a return flight to the first point of departure, at the earliest opportunity.<sup>19</sup>

The Passenger shall also be offered the option of re-routing under comparable transport conditions, to their final destination at the earliest opportunity; or re-routing, under comparable transport conditions, to their final destination at a later date at the passenger's convenience, subject to availability of seats.<sup>20</sup>

### **2.1.3. Domestic Flight delays beyond 10pm till 4am**

In cases where the domestic flight delay is at a time beyond 10pm till 4am,<sup>21</sup> or at a time when the airport is closed at the point of departure or final destination, the Carrier is obligated to provide the passenger with hotel accommodation and transport between the airport and place of accommodation (hotel or other accommodation).<sup>22</sup>

### **2.1.4. Domestic Flight delays beyond Six (6) hours**

Where the domestic flight delay causes the expected departure time to be more than six hours after the time of departure previously announced,<sup>23</sup> the carrier shall provide the passenger with compensation of 25% of the fares or passenger ticket price for flights within Nigeria.<sup>24</sup>

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<sup>19</sup> *ibid*, s 19.9.1.1(a)

<sup>20</sup> *ibid*, s 19.9.1.1(b)(c)

<sup>21</sup> *ibid*, s 19.6.1.1(c)

<sup>22</sup> *ibid*, s 19.10.1.1(c) & (d)

<sup>23</sup> *ibid*, s 19.6.1.1(d)

<sup>24</sup> *ibid*, s 19.8.1.1(a)

The proviso available to the carrier in the event of a lengthy delay is that it will not be obliged to pay compensation for a lengthy delay beyond six hours if it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.<sup>25</sup> The term 'extraordinary circumstances' is defined as any 'mechanical, technical, operational, climatic, socio-political or any other conditions beyond the actual control of the party involved'.<sup>26</sup> It is pertinent to note that this proviso is not stipulated for delays under six hours.

## **2.2. INTERNATIONAL FLIGHT DELAY**

Section 19.6.2 of the NCAR 2023 provides for compensation when there are delays in International flights. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure, three delay conditions are provided: delay between two and four hours; delay more than four hours and delays after Six hours.

### **2.2.1. International flight delay between Two (2) and Four (4) hours**

In cases where the delay in an international flight is between two and four hours, the carrier has the obligation to provide compensation of 30% of the passenger ticket price for the international flight<sup>27</sup> and shall be offered free of charge, two telephone calls, SMS or emails.<sup>28</sup>

### **2.2.2. International flight delay more than Four (4) hours**

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<sup>25</sup> *ibid*, s 19.6.1.2

<sup>26</sup> *ibid*, s 19.1.1

<sup>27</sup> *ibid* s 19.8.1.1(b)

<sup>28</sup> *ibid*, s 19.10.1.2

Where the flight delay is more than four hours, the carrier is required to provide the passenger with a meal<sup>29</sup> and shall be offered free of charge, two telephone calls, SMS or emails.<sup>30</sup>

### **2.2.3. International flight delay at least Six (6) hours**

Where the reasonably expected time of departure is at least six hours after the time of departure previously announced, the carrier is obligated to provide the passenger with hotel accommodation and transport between the airport and place of accommodation (hotel or other accommodation).<sup>31</sup>

## **2.3. TARMAC DELAY**

Tarmac Delay is defined under Section 19.1.2.1 of the NCAR 2023 as 'when an airplane on the ground is either awaiting take-off or has just landed and passengers do not have the opportunity to get off the plane'. Under the same definition 'Closed aircraft doors define a tarmac delay. Tarmac delay occurs when passengers are confined, with no immediate opportunity to disembark'. Section 19.6.3 of the NCAR 2023 stipulates the obligations of the Carrier where there is a tarmac delay.

### **2.3.1. Tarmac delay between 30 minutes to 3 hours after the start of the Tarmac Delay**

If a flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the air carrier shall ensure passengers are provided with the following care free of charge while they wait on board the aircraft:

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<sup>29</sup> *ibid*, s 19.10.1.1(b)

<sup>30</sup> NCAR 2023 (n 28)

<sup>31</sup> *ibid*, ss 19.10.1.1(c) and 19.10.1.1(d)

- a. The Carrier must provide information about the reason for the delay and status updates every 30 minutes. The carrier is obligated to provide subsequent updates, including flight status changes, as the carrier deems appropriate.<sup>32</sup>
- b. The carrier must ensure access to lavatories in working order if the aircraft is equipped with lavatories.<sup>33</sup>
- c. The carrier must ensure proper ventilation and heating or cooling of the aircraft;<sup>34</sup>
- d. The carrier must provide food and drink in reasonable quantities no later than 2 hours after the start of the Tarmac delay.<sup>35</sup> This provisions shall not apply when the Pilot- In- command determines that food and water service cannot be provided due to safety or security reasons.<sup>36</sup>

The air carrier shall provide passengers on the flight experiencing a tarmac delay the opportunity to disembark before the tarmac delay exceeds three hours in duration.<sup>37</sup> This obligation does not apply if providing an opportunity for passengers to disembark is not possible, including if it is not possible for reasons related to safety and security or to air traffic or customs control.<sup>38</sup>

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<sup>32</sup> *ibid*, s 19.6.3.1(a)

<sup>33</sup> *ibid*, s 19.6.3.1(b)

<sup>34</sup> *ibid*, s 19.6.3.1(c)

<sup>35</sup> *ibid*, s 19.6.3.1(d)

<sup>36</sup> *ibid*, s 19.6.3.5(d)

<sup>37</sup> *ibid*, s 19.6.3.2

<sup>38</sup> *ibid*, s 19.6.3.5(c)

Where there is a disembarking order, the NCAR 2023 mandates the air carrier to give persons with disabilities along with any persons accompanying them, the opportunity to disembark first.<sup>39</sup> If it is possible to let some but not all passengers disembark (for example, because of capacity limitations of the airport holding area), the airline may make that offer and allow as many passengers as feasible off the plane.<sup>40</sup> An air carrier may also determine a set of reasonable criteria for deciding which passengers will disembark in such circumstances. These criteria should give priority to passengers with a disability that results in difficulties for that passenger during an extended tarmac delay.<sup>41</sup>

### **2.3.2. Tarmac delay after 3 hours after the start of the Tarmac Delay**

After a three-hour tarmac delay at the airport, an aircraft can stay on the tarmac for up to 45 extra minutes if it is likely that it will take off within that period and the airline is able to continue providing the four main obligations of care as provided in 2.3.1 above.<sup>42</sup> If a passenger requires urgent medical assistance while the flight is delayed on the tarmac after the doors of the aircraft are closed for take-off or after the flight has landed, the air carrier shall facilitate access to that assistance.<sup>43</sup>

The NCAR 2023 makes it mandatory for air carriers to adopt a Contingency Plan for Lengthy Tarmac Delays for its flights at each airport which it operates or markets such air service, and it is mandatorily required to adhere to its plan's terms.<sup>44</sup> Each air carrier that experiences a tarmac delay at an airport within Nigeria of more two hours for domestic flights and three hours for international

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<sup>39</sup> *ibid*, s 19.6.3.5

<sup>40</sup> *ibid*, s 19.6.3.5(a)

<sup>41</sup> *ibid*, s 19.6.3.5(b)

<sup>42</sup> *ibid*, s 19.6.3.3

<sup>43</sup> *ibid*, s 19.6.3.4

<sup>44</sup> *ibid*, s 19.6.3.6

flights are obligated to submit to the NCAA, a completed mandatory tarmac delay report form<sup>45</sup> not later than 10 days after the tarmac delay occurs.<sup>46</sup>

### 3. EXCEPTIONS AND DEFENCES AVAILABLE TO AIRLINES

#### 3.1. Extraordinary Circumstances

Where a lengthy flight delay occurs in a domestic flight over Six hours, the carrier will be exempted from liability if it can prove that the delay is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.<sup>47</sup> The term “extraordinary circumstances” is defined as any mechanical, technical, operational, climatic, socio-political or any other conditions beyond the actual control of the party involved.<sup>48</sup>

It is the author's view that not all situations may be considered as extraordinary circumstances. A comparative analysis of the EU Regulation 261/2004<sup>49</sup> which provides similar obligations to airlines traveling within the European Member states where there are flight delays in Europe. Under the EU Regulation 261/2004 most technical problems which come to light during aircraft maintenance or are caused by failure to maintain an aircraft will not be considered as extraordinary circumstances.<sup>50</sup> Similarly, collision of mobile boarding stairs with an aircraft and strikes by air carrier staff (internal strike action) may also not be considered as

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<sup>45</sup> *ibid*, p. 19-24

<sup>46</sup> *ibid*, s 19.6.3.7

<sup>47</sup> *ibid*, s 19.6.1.2

<sup>48</sup> *ibid*, s 19.1.1

<sup>49</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

<sup>50</sup> European Union, ‘Air Passengers Rights’ <[https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index\\_en.htm#ex-circumstances-delayed-1](https://europa.eu/youreurope/citizens/travel/passenger-rights/air/index_en.htm#ex-circumstances-delayed-1)> accessed 28 April 2025

extraordinary circumstances.<sup>51</sup> Under the EU Regulation 261/2004 any strike external to an air carrier that affects the operation of the airline may be considered as extraordinary circumstances. However, to be exempted from paying compensation, the airline must prove that: i) there is a link between the extraordinary circumstances and the delay or the cancellation, and ii) the delay or cancellation could not have been avoided even if all reasonable measures had been taken.<sup>52</sup>

In the *Abiodun Rufai Case*<sup>53</sup> the carrier relied on extraordinary circumstances in its defence by claiming that there were adverse weather conditions. The Court of Appeal held as follows:

***In the present appeal, the Respondent's witness who gave oral evidence on the reason or cause of the delay of the flight, was a legal officer in the employment of the Respondent who admittedly was not at the Airport, did not see the alleged report of adverse weather condition from the control tower at the material time and was only informed of the report by other officers of the Respondent. He was therefore not a person and witness who saw or heard the report from the control tower of the Airport received by the Flight Crew or other officials or officers in charge of the Flight on that day, but one who claimed, under cross examination, that the incident of that day was brought to my attention by the PSA. Yet, the witness sought to strenuously, by his evidence, to prove or confirm the truth of the fact, the fact pleaded by the Respondent that the adverse weather condition based on the report from the control tower, was the reason or cause of the delay in the Flight.***<sup>54</sup>

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<sup>51</sup> ibid

<sup>52</sup> ibid

<sup>53</sup> *Abiodun Rufai Case* (n 11)

<sup>54</sup> ibid, pp 28-29, Paras E-C

The Court of Appeal thereafter went further to determine the issue as follows:

***...Like I have shown earlier, with the admission of the delay of the Flight by the Respondent, the burden of proof of the reason or cause of the delay was on it and no longer on the Appellant whose scheduled flight was delayed by the Respondent. The Lower Court was in error to have placed the burden on the Appellant when it stated that: - "It is the plaintiff's business therefore at this stage to rebut same and show that there was no bad weather." It may be recalled that the law is that a fact which has been admitted requires no further proof and so the Respondent and not the Appellant, bore the burden of showing and proving the reason or cause of the admitted delay of the Flight asserted by it in order to avoid liability for the delay as provided for in Article 19 of the Aviation Act. In effect, what the Lower Court did was to misplace the burden of proof of the reason or cause of the delay of the Flight, on the Appellant when there was no legally admissible evidence placed before it by the Respondent to establish that the delay was in fact, due to adverse weather condition based on the alleged report from the control tower at the Airport. Until that burden was satisfactorily discharged by the Respondent with admissible, credible and sufficient evidence, the Appellant would have no "business" to "show that there was no bad weather". The error by the Lower Court in misplacing the burden of proof on the Appellant, of the reason or cause of the delay, obviously affected its view of the evidence before it and resulted in the wrong conclusion that "In the circumstance, I accept the reasons given by the Defendant for the delay in taking off at 7.30 am as not being unreasonable given the adverse weather condition", at page 190 of the Record of Appeal. For a Court to misplace the burden of proof on a party in a case constitutes a misapprehension or error which is radical, grave and may be fatal to its view, appreciation, evaluation or***



***assessment of the material evidence placed before it and eventually render its conclusion or decision in a case, erroneous and wrong in law, see Onobruchere v. Esegine (1986) 2 SC, 385; Sanusi v. Ameyogun (1992) 4 SCNJ, 177; R. v. Oshunbiyi (1961) ALLNLR, 453.<sup>55</sup>***

### **3.2. Taking measures reasonably required to avoid damage**

Article 19 of the Montreal Convention Applicable to domestic flights within Nigeria<sup>56</sup> provides that the carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nonetheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

In *Abiodun Rufai Case* the carrier avoided liability under this defence. The Court of Appeal held as follows:

***As seen before now, Article 19 of the 3rd Schedule to the Aviation Act, renders the Respondent liable for damages occasioned by delay in the carriage by air, of inter alia, passengers, subject to proof by it that it took all measures that could reasonably be required to avoid the damage or that it was beyond its control to take such measures. The damage claimed by the Appellant was his inability to connect an international flight from Port Harcourt on the said date of 6th August, 2008 which resulted in expenses for the Appellant's accommodation and transportation in Port Harcourt, among others. In the case presented by the Appellant, he did not say or show that at the time he bought the Air-tickets for the journey to Port Harcourt from the***

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<sup>55</sup> *ibid*, (Per GARBA, JCA), pp. 29 - 31, paras. F-E

<sup>56</sup> CAA 2022 [n 5]

***Respondent or at the check-in counter at the Lagos Airport, he notified the officials or officers of the Respondent in charge of the Flight that he had an International flight to connect and at what time of the morning at his destination in Port Harcourt on arrival of the Respondent's flight from Lagos. His case was that it was after he boarded the flight and at about 7.25 am that he approached one of members of the Cabin Crew to find out the reason for the delay and let her know that he had a scheduled International flight to connect at Port Harcourt that morning. That after consulting one of the Pilots, the Cabin Crew member informed him that his International flight in Port Harcourt was to be informed or intimated of the flight delay in Lagos, which he confirmed on arrival at Port Harcourt. By the chronicle of the events of the delay in the Respondent's flight and the steps or action taken by it when it became aware of the Appellant's need to connect the International Flight in Port Harcourt that morning, although it was unable to discharge the burden of proving that the delay was due or caused by adverse weather condition as asserted, the credible evidence of the action or step taken by it of notifying the station Manager of the International Flight the Appellant was to connect in Port Harcourt when it became aware that the Appellant was to be on the said Flight, shows and proves that Respondent took the measure that was reasonably required in the circumstances, to avoid the alleged damage of the Appellant's missing the Flight in the Port Harcourt. It was not part of the terms and conditions of the contract between the parties that the Respondent had the duty to ensure that the Appellant did not miss the International Flight in Port Harcourt, but the contract was to simply fly the Appellant and the members of his family to Port Harcourt as scheduled and indicated on the Air tickets and the Boarding Passes issued to them. Although there was delay, the Appellant and members of his family were flown to Port Harcourt slightly later than the scheduled time and so the contract between them fully performed; the***

***breach notwithstanding. In the above circumstances, even though the Appellant may have suffered damages from or due to the delay of the Flight in question, the Respondent has proved that it had taken the measure reasonably required to avoid the damage to the Appellant and so the provisions of Article 19 of the 3rd Schedule to the Civil Aviation Act, 2006 avail to exempt it from liability for such damage. The above apart, the Appellant should really blame himself for missing the International Flight from Port Harcourt on the day in question because it was his duty to ensure that he presented himself for the Flight in good and sufficient time for check-in and other Airport formalities just like he did for the Respondent's Flight from Lagos to Port Harcourt rather than take the risk of "last minutes" flying to Port Harcourt on the morning the International Flight was scheduled to depart. He gambled with the time, took the risk and lost out and so should keep his peace, having learnt a lesson that would be useful in future. In the final result, although the Appellant's Flight was delayed by the Respondent, the Respondent has proved that it took measures reasonably required to avoid the damage occasioned to the Appellant resulting from the delay and so exempted from liability for the damage by dint of the provisions of Article 19 of the 3rd Schedule to the Civil Aviation Act, 2006.<sup>57</sup>***

The Court of Appeal in coming to its decision in the *Abiodun Rufai Case* considered the provisions of Article 19 of the 3rd Schedule of the Civil Aviation Act 2006 which is in pari materia with Article 19 of the 2nd Schedule of the CAA 2022. This stipulates clearly the circumstance where the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures. This is a stronger defence for airlines and Carriers where there is a claim for delay by a passenger. The position

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<sup>57</sup> *Abiodun Rufai Case* (n 11) pp 34-37, Paras B-F

of the law is that for a carrier to avoid liability for a flight delay, the carrier must prove on the balance of probabilities that extraordinary circumstances occurred, or that the carrier took measures reasonably required to avoid damage resulting from the delay.

#### **4. HOW PASSENGERS CAN ENFORCE THEIR RIGHTS WHERE THERE ARE FLIGHT DELAYS**

A passenger may lodge a complaint with the Authority, or any other competent person designated by the Authority, about an alleged infringement under Part 19 of the NCAR 2023.<sup>58</sup> A complaint is defined under Section 19.1.2 of the NCAR 2023 as an allegation in writing made by an air passenger, a group of passengers or their legal heirs or representatives.

##### **4.1. Complaints Procedure<sup>59</sup>**

Every airline is required to have a designated officer for the purpose of receiving and resolving complaints from its passengers. Such designated officers may liaise with the Authority where necessary. Every airline shall submit to the Authority its consumer complaint procedure manual which shall be in accordance with its business module. A passenger may make a complaint with the Authority against an airline in relation to the breach of that air passenger's rights by filling and submitting a Complaint Form (available online<sup>60</sup> and at all airports in Nigeria), after the consumer must have notified the air carrier of such a breach and the complaint remains unresolved.

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<sup>58</sup> NCAR 2023, s 19.22.1.1

<sup>59</sup> *ibid*, ss 19.24.1.1 to 19.24.1.6

<sup>60</sup> The authority has a comprehensive online portal for reports. The Consumer protection Report Form can be accessed on the authority website at <https://cpd.ncaa.gov.ng/>

A complaint shall be made in writing or electronically and transmitted to the Authority and shall be accompanied by: A copy of the airline ticket (where applicable); A copy of the letter to the air carrier stating a claim for breach of air passenger rights; Any response or responses or correspondence and any other relevant document. Where a complaint has been made in a representative capacity, the representative shall provide the complainant's written authority to act on his or her behalf. Complainants may present a class action before the Authority, but must appoint a representative for the class.

## **4.2. Assessment**

The Authority will cause an investigation to be carried out on the substance of the complaint and the consideration given by the air carrier within a reasonable period of time after the complaint is received.<sup>61</sup> In carrying out any assessment under the NCAR 2023, an officer designated by the Authority shall have all the powers of investigation contained in Section 95(6)(i) of the CAA 2022<sup>62</sup>, and in addition may request for submissions to be made by any interested person in relation to a complaint.

The Authority will amongst other things: notify the Respondent that a request has been lodged under these regulations; require the Respondent to respond to the complaint within 7 days; and require the Respondent to describe the procedure it has taken to resolve the matter.<sup>63</sup>

## **4.3. Determination of Complaints<sup>64</sup>**

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<sup>61</sup> NCAR 2023, ss 19.25.1.1 (a) and (b)

<sup>62</sup> This section gives the authority the powers to investigate and determine upon its own initiative or upon receipt of a complaint impose such fines or penalties as may be prescribed by this Act or regulations made under it.

<sup>63</sup> NCAR 2023, ss 19.25.1.1(b) (1), (2) and (3)

<sup>64</sup> *ibid*, ss 19.26.1.1 (a) and (b)

After every assessment, the investigator shall make an assessment report and recommendations. Upon a consideration of the assessment report, the nature of the conduct alleged against the Respondent, the extent of the claim by the complainant, public interest and other relevant factors, the Authority shall make a determination in any of the following ways: (1) the complaint lacks merit pursuant to which the complaint would be struck out; (2) the complaint is of such a nature as to advise the parties to resolve the dispute through mediation; (3) the complaint is of such a nature as to be subjected to the Authority's administrative hearing procedure set out in Section 19.27 of the NCAR 2023; and (4) take any other such actions as the Authority may deem necessary.<sup>65</sup> The Authority will give notice of its determination to the interested parties.<sup>66</sup>

#### **4.4. Administrative Hearing Procedure<sup>67</sup>**

In the event that the interested parties do not agree to submit to the mediation procedure, the complaint shall be subject to the Administrative Hearing Procedure of the Authority.<sup>68</sup> If the Authority is of the view that the matter raised in the complaint are those over which any provision of the Act applies, the Authority shall set the complaint for Administrative Hearing.<sup>69</sup>

The Authority will serve the parties a notice requesting a statement in support of their claim or case together with any evidence in support.<sup>70</sup> The Complainant shall within 7 days of the receipt of the notice transmit a statement of his case in writing to the Authority and the Respondent together with any evidence to be relied

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<sup>65</sup> *ibid*, s 19.26.1.1 (a)

<sup>66</sup> *ibid*, s 19.26.1.1 (b)

<sup>67</sup> *ibid*, s 19.27

<sup>68</sup> *ibid*, s 19.27.1.1

<sup>69</sup> *ibid*, s 19.27.1.1 (a)

<sup>70</sup> *ibid*, s 19.27.1.1 (b)

upon.<sup>71</sup> The Respondent shall within 7 days of the receipt of the Statement of the case of the Complainant, transmit a statement of his case together with any evidence to be relied upon to the Authority and the Complainant. The Authority will fix a date for the hearing and shall so inform the complainant and the Respondent.<sup>72</sup>

At every hearing fixed pursuant to the NCAR 2025, the person who made the complaint, or in whose behalf it was made, and each person to whom a notice was sent and any other person whose presence at the hearing is considered by the Authority to be desirable, is entitled to attend and participate personally or, in the case of a company or a firm, be represented by a person who, or by persons each of whom, is a director, officer, or employee of the company or firm.<sup>73</sup> A person participating in the hearing is entitled to have another person, who may be a legal practitioner, or other persons present to assist him.<sup>74</sup>

The Authority will provide for as little formality and technicality at every hearing, as permitted under the CAA 2022 with proper consideration of the complaint. Where the complainant fails to appear before the Authority on the date of hearing, the Authority may recommend that the complaint be dismissed for default, or decide it on merit. Where the Respondent fails to appear before the Authority on the date of hearing, the Authority would make recommendations based on the available records. The Authority will cause such records of the hearing to be made as is sufficient to set out the matters raised by the persons participating in the hearing.<sup>75</sup>

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<sup>71</sup> *ibid*, s 19.27.1.1 (c)

<sup>72</sup> *ibid*, ss 19.27.1.1(d) and (e)

<sup>73</sup> *ibid*, s 19.27.1.1(f)(1)

<sup>74</sup> *ibid*, s 19.27.1.1(f)(2)

<sup>75</sup> *ibid*, ss 19.27.1.1(g), (1) and (2)

Every complaint shall be heard as expeditiously as possible and a determination made thereon within a reasonable time after the termination of the hearing. No adjournment of hearing shall be granted by the Authority unless sufficient cause is shown and the reasons for grant of adjournment has been recorded in writing by the Authority; The Authority may make such a decision as to the cost for the adjournment as may be considered appropriate.<sup>76</sup>

The Authority may terminate the hearing after it is satisfied that every person participating in the hearing has been given a reasonable opportunity to state or explain his or its position. Where the Authority is of the opinion that no provision of the CAA 2022, or any Regulations has been violated by the person against whom the complaint was made, the Authority shall make a determination to that effect. Where the Authority is of the opinion that any provision of the CAA 2022, or any Regulations under it has been violated, the Authority shall make a determination to that effect and make recommendations as it deems fit and reasonable to ensure that the violation ceases and that the injured party is accorded a reasonable remedy for his injury.<sup>77</sup>

The Authority will on the basis of any recommendation made pursuant to the hearing, issue a directive which may relate to: the payment of compensation or restitution to a complainant; the payment of fines and/or penalties; the referral of any persons for criminal prosecution; or any other directive that may grant redress to a complainant. Every directive of the Authority shall be complied with within 30 days of it being issued.<sup>78</sup>

#### **4.5. Legal action**

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<sup>76</sup> *ibid*, ss 19.27.1.1(i), (1) and (2)

<sup>77</sup> *ibid*, ss 19.27.1.1(j), (1) and (2)

<sup>78</sup> *ibid*, ss 19.27.1.1(k), (1),(2),(3) and (4)



A passenger who has suffered a flight delay may also institute a legal action against the carrier by bringing an action at the Federal High Court which has exclusive jurisdiction over aviation matters under Section 251 of the 1999 Constitution (As Amended).

Where a legal action is brought by a passenger, the lawyer must consider the facts and circumstance of each case. The law is that where domestic/common law right has been enacted into a statutory provision, it is to the statutory provision that resort must be had for such right, and not the domestic/common law, Hence an air passenger is not at liberty to choose as between the provisions of the convention and the domestic/common law, for claims for damages against the carrier. Such claims have to be asserted only in accordance with and subject to the terms and conditions of the convention and cannot be pursued under any other law.<sup>79</sup>

Another consideration when commencing a legal action is the award of damages the court may grant based on the facts and circumstances of the case. There are case law authorities on the principles governing award of damages in aviation claims where damages were granted as a result of wilful misconduct of the airline. In such cases the defence of the airline to limit its liability under the Conventions and Statutory provision of the Civil Aviation Act were not accepted by the court.

In the case of ***Miss Promise Mekwunye v. Emirates Airlines (2019) LPELR-46553 (SC)***, the Appellant, through Mr. Clement Dolor an officer/employee of the Respondent at the Respondent's office in Victoria Island, Lagos, bought the Respondent's airline return ticket (electronic) for \$2,067 USD to enable her travel from Dallas - Houston - Dubai - Lagos and back. The ticket, through Clement Dolor, was confirmed more than three (3) times before the Appellant's travel date on 17th December, 2007.

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<sup>79</sup> See *Akinjokun v. Lufthansa German Airlines & Anor* (2018) LPELR-46729(CA), pages 25-26

The Appellant, a student of the North Texas University, Denton, Texas USA, came to the Dallas airport on the said 17th December, 2007 to commence her travel to Nigeria whereat she presented the flight ticket for issuance of boarding pass. She was denied boarding, and no reason was given to her; notwithstanding that her ticket, Exhibit PM.2, was three times confirmed with clear inscription thereon "17 Dec OK". She was merely told that the ticket had been cancelled. She was previously, not communicated of this fact/development. The Respondent made no alternative travel plans for her. The Appellant, greatly embarrassed, was constrained to stay over without accommodation offered by the Respondent. She had also, through her father, to buy another electronic ticket from American Airlines on 18th December, 2007 for the sum of \$3,200.00 to enable her travel on 19th December, 2007 through a longer route: Dallas - Fortworth - London Gatwick - Dubai - Lagos and back. The longer route took stressful 48 hours to complete.

On these facts, the Appellant's attorney wrote, on 4th January, 2008, Exhibit PM.5, wherein she demanded refund of moneys paid for the two tickets. The Appellant, at all material times, communicated the Respondent through their said desk officer/employee, Clement Dolor. The Appellant handed to the Respondent, through the said Clement Dolor, the tickets for refund. By 25th January, 2008 it came to the Appellant's knowledge that Clement Dolor had left the services of the Respondent and was operating his personal travel agency, Simba Travel & Tours.

The Respondent through the said Simba Travel and Tours, as it is apparent that Clement Dolor was dealing with the Respondent through the said Simba Travel and Tours, unilaterally paid the sum of \$1,777.00 USD purporting to be the refund of their (Respondent's) own ticket. It withheld the ticket of the American Airline and made no effort to refund the money paid to purchase that ticket. Appellant's attorney rejected the sum of \$1,777 USD alleged to be the refund of the Respondent's own ticket. Clement Dolor, PW.2, on behalf of Simba Travel & Tours collected the sum of \$1,777 USD from the Respondent. When the Appellant's

attorney rejected the said sum of \$1,777 USD, he directed the PW.2 to return it to the Respondent. The Respondent also refused to take the said sum of money from the PW.2.

At the suit of the Appellant the Federal High Court, in its judgment delivered on 15th November, 2010, found that the Respondent's "refusal to carry the (Appellant) from Dallas on the 17th December, 2007 amounts to a breach of contract of carriage with (her)," and that "No limitation to liability applies here". Consequently, the trial Court ordered "the ticket refund to the (Appellant) should be in full without any deduction or charge," and a "further grant of N2.5 million in general damages and N250,000.00 in legal costs" to the Appellant. Against these judgment and orders therein the Respondent lodged its appeal, as of right, to the Court of Appeal wherein the Court found in favour of the Respondent. Dissatisfied with the decision, the Appellant appealed to the Supreme Court.

The Supreme Court allowed the Appeal, and held that the Respondent was liable to not only refund the flight ticket but also pay compensatory or general damages to the appellant. **Ejembi Eko, JSC (Delivering the Leading judgment)** held as follows:

***The Respondent seems, in my view, to concede that under the Montreal Convention "compensatory damages may include special and general damages". It, however, argues that "in aviation claims, as in the law governing the award of damages awardable in breach of contract cases, there is no distinction between special and general damage" and that "any claim for damages must be subsumed in and is circumscribed by the provisions of the statute as provided by Arts 22 and 29 of the Montreal Convention". The Appellant and the Respondent, on this, appear not too distant apart except for semantics. Appellant's counsel in paragraph 4.1.9 of the Appellant's Brief submits - that Article 29 of the Montreal Convention does not prohibit the grant of general damages***

*but punitive, exemplary or non-compensatory. For the Appellant it is further submitted, and I agree, that compensatory damages and general damages are the same. They are damages recoverable as payment for actual injury or economic loss. They do not include punitive or exemplary damages. In BRITISH AIRWAYS v. ATOYEBI (2014) 13 NWLR (Pt. 1424) 253 this Court held that general damages are compensatory damages. At page 286 of the Report Kekere-Ekun, JSC states it clearly - General damages, such as the law presumes to be the natural and probable consequences of the Defendant's act, need not be specifically pleaded. It arises by reference of law and need not therefore be strictly proved by evidence and may be availed generally. In the earlier decision of this Court, in UBN PLC V. AJABULE (2011) LPELR - 8239, per Fabiyi, JSC, stating that general damages are compensatory damages, states poignantly: Generally damages are said to be damages that the law presumes and they flow from the type of wrong complained about by the victim. They are compensatory damages for harm that so frequently results from the tort for which a party has sued; that the harm is reasonably expected and need that not be alleged or proved. They need not be specifically claimed. They are also termed damages; necessary damages. See also ODIBA v. AZEGE (1998) 9 NWLR (Pt. 566) 370, WAHABI v. OMONUWA (1976) LPELR - 3469 (SC). In the instant case the Appellant had bought the Respondent's flight ticket and had, between the date ticket was purchased and the scheduled flight date, three times gotten the Respondent to confirm the ticket and the flight schedule. Exhibit PM.2 attests to this. However, on the flight date and notwithstanding Exhibit PM.2, the Appellant was denied boarding involuntarily and for no reason at all, except only (much later) that the ticket had been cancelled. She was embarrassed and stressfully inconvenienced for two days by the Respondent's reckless breach of contract. The Respondent provided neither alternative arrangement nor accommodation and feeding. The Appellant was put to extra*

*expenditure of having to buy another ticket more expensive and for longer route. For all the stress, inconvenience and embarrassment caused the Appellant by the Respondent the trial awarded general damages in the sum of N2,500,000. It also ordered refund of the tickets. The Lower Court, however, denied the Appellant the general damages holding that ordering the Respondent to pay general damages in addition to the ticket refund amounted to double compensation for the breach of contract by the Respondent. The facts of BRITISH AIRWAYS v. ATOYEBI (supra) the Lower Court relied on to hold that the award of the sum of N2.5million as general damages, in addition to the tickets refund, amounted to double compensation are clearly distinguished from the facts of this case. The ATOYEBI case was about loss or delayed delivery of checked-in baggage, which Appellant carrier, after finding it, insisted that the Plaintiff/Respondent, who was resident in Lagos, must personally collect it from their London Office. The Plaintiff, Mr. Atoyebi, had to travel to London on First Class ticket to collect his lost and found baggage. The parties were ad idem that the provisions of the Warsaw Convention 1929, domesticated in Nigeria by the Air (Colonies, Protectorates and Trust Territories) Order, 1953 (CAO) contained in Vol. II, 1958 LFN applied. The effect of Articles 19, 22, 24 and 25 of CAO is that "the liability of the carrier" for loss of baggage is limited statutorily. Article 24 (1) of CAO specifically provides: In cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention. Article 22 of CAO sets the rates payable as the carrier's liability for loss of registered luggage etc. Article 19 of CAO then provides - 19. The carrier is liable for damage occasioned by delay in carriage by air passengers, luggage and goods. In the peculiar circumstances of the ATOYEBI case the passenger was held not entitled, in view of the provisions of the CAO, to compensation for delayed delivery of his registered luggage and at the same time general*

***damages for the same delay. Significantly, Kekere-Ekun, JSC, emphasised that a person who has been fully compensated under one head of damages for a particular injury cannot be awarded damages in respect of the same injury under another head. Such, it was held, would amount to double compensation. With all deference to the Lower Court ATOYEBI case lays down no general principle to the effect that a party whose conduct results in the other suffering not only special damages, but also general damages cannot be awarded both where the circumstances demand. Accordingly, I am of the firm view that the Respondent's flagrant breach of contract whereby it unreasonably denied boarding to a confirmed passenger for no good cause, previous notice and without explanation whereby the passenger, as the Appellant herein, was not only put to extra expenditure of having to buy a more expensive ticket for a longer route, but also to endure the embarrassment, stress and inconvenience for two days of being stranded clearly entitles the passenger to both general damages and the ticket refund. I have read KAYDEE VENTURES LTD v. HON. MINISTER FCT (2010) 7 NWLR (Pt. 1192) 171; (2010) LPELR - 1681 (SC) cited by the Appellant to the effect that where a breach of contract is of a fundamental nature, such as the one on appeal, the Plaintiff, who suffered as a result, deserves to go home fully compensated. Though in the KAYDEE VENTURES case there was no award of special damages, and no issue of double compensation arose therein; however, there was in that case like the instant, a case of flagrant or reckless breach of contract. In the instant case, the Appellant, as the Plaintiff, paid for flight ticket. She was denied boarding even after confirming the flight three times (Exhibit PM.2). In consequence thereof she was stranded for two days without explanation, apologies and alternative arrangement, and was constrained to pay for a longer route on a more expensive ticket. It would therefore in my view be unfair and unjust for the Respondent, as the carrier, to merely refund the flight ticket without compensatory or***

***general damages for the loss of time, stress, embarrassment and inconvenience she suffered in consequence of the breach of contract by the Respondent. Award of damages for breach of contract is based on resitutio in integrum. That is: in so far as the damages are not too remote, the Plaintiff should be restored, as far as money can do it, into the position in which he would have been if the breach had not occurred: GABRIEL ATIVIE v. KABELMETEL NIG. LTD (2008) 10 NWLR (Pt. 1095) 399 (SC). Damages which are natural and probable consequences of breach of contract are awardable as general damages: MOBIL OIL (NIG.) LTD v. AKINFOSILE (1969) 1 NMLR 227; XTOUDOS SERVICES NIG. LTD ANOR (2006) LPELR 3504 (SC). I hold therefore that the trial Court was right in ordering the Respondent, as the Defendant, to pay in the circumstances N2.5Million as general damages in addition to the ticket refund.***

The *Promise Mekwunye Case*<sup>80</sup> is a clear example of where the Court will award damages against an airline above the statutory limitation where the passenger proves in court from facts and evidence that the airline acted in a matter outside the defences of exceptional circumstance or failed to take measures reasonably required to avoid damage to the passenger.

## **5. CONCLUSIONS AND RECOMMENDATIONS**

The robust statutory provisions and case laws provide very clear compensation for passengers who suffer flight delays both within the statutory liability and damages under common law where there is evidence that the airline's actions did not come under exceptional circumstances and there was failure to take measure to reasonably avoid damage to the passenger.

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<sup>80</sup> *Miss Promise Mekwunye v. Emirates Airlines* (2019) LPELR-46553 (SC)

Even with these developments, there are still ongoing challenges of airlines not complying with the regulations and lack of awareness of passengers on how to enforce their rights. While the NCAA has enforcement powers under the NCAR 2023 and the CAA 2022, there may be need for more resources to put into enforcement. More importantly, there should be larger resources geared towards awareness.