IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON FRIDAY THE 31ST DAY OF MARCH, 2017
BEFORE HIS LORDSHIP HON. JUSTICE G.O. KOLAWOLE
JUDGE

SUIT NO.: FHC/ABJ/CS/544/2012

BETWEEN:

LT. COL. IBRAHIM GARBA LASSA ::::::::: PLAINTIFF

AND

LUFTHANSA GERMAN AIRLINES ::::::::: DEFENDANT

JUDGMENT

By a "Writ of Summons" dated and filed on 3/9/12, the Plaintiff commenced the instant proceedings against the Defendant who is one of the foreign airlines that ply the Nigerian air routes. The Plaintiff seeks against the Defendant, four (4) reliefs as endorsed on the "Writ of Summons" filed. The reliefs are:

1. *"The sum of $1,299.90 (One thousand, two hundred and ninety nine thousand ninety Dollars) being the value of Plaintiff's LG Cinema Screen 47 LM 7600 damaged by the Defendant."*

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2. *"The sum of $200.00 (Two hundred Dollars) being the sum paid by the Plaintiff to the Defendant as excess luggage Charge;"*

3. *"Cost of litigation in the sum of N800,000 (Eight Hundred Thousand Naira); and*

4. *"General damages in the sum of N3,000,000 (Three Million Naira).*

The Plaintiff's "Writ of Summons" was accompanied by a "Statement of Claim" undated but filed with the "Writ of Summons" on 3/9/12. In its paragraph 21, the Plaintiff re-pleaded the four (4) reliefs endorsed on the "Writ of Summons".

The Defendant when served with the Plaintiff's "Writ of Summons" and "Statement of Claim", filed its "Statement of Defence". It's dated and was filed on 27/11/12.

Based on these pleadings, the Plaintiff's suit was heard on 18/2/14 with the Plaintiff testifying for himself. The Plaintiff identified his "witness statement on oath" which he deposed to on 3/9/12 and he applied to "*adopt the statement on oath as my oral evidence in this case*".

The Plaintiff as his own witness thereafter tendered a number of documents which were admitted in view of the fact, that the Defendant's Counsel, D. Oturu, Esq. did not object to them as Exhibits and were marked as: (1) Exhibit "P" – being the E-Ticket issued in favour of the Plaintiff by the Defendant on his flight from Abuja to Frankfort in Germany,

and from Frankfort to Washington D.C in the USA on 28/3/15 and a return trip from Washington D.C on 19/5/15 to arrive in Abuja on 20/5/15; (2) Two (3) Boarding Passes issued in favour of the Plaintiff by United Airlines and a slip to acknowledge payment of U.S.$200.00 for the Plaintiff's excess baggage Ticket Receipt which were admitted as Exhibits "P1"; "P1A" and "P1B" respectively; (3) A Computer printout of an e-mail correspondence by AMAZON.com which relates to shipment of certain goods to the Plaintiff as Exhibit "P2"; (4) Four (4) Coloured Prints of a factory Package of an "LG Cinema Smart TV" was admitted as Exhibit "P3" series; (5) A Computer printout of an e-mail correspondence to the Plaintiff on 1/6/12 was admitted as Exhibit "P4" and its attachment, as "P4A"; (6) A Coloured printout of Plaintiff's letter dated May 2012 addressed to the "*Director General, Nigerian Civil Aviation Authority*" and titled: "*Complaint Against Lufthansa Airline*" was admitted as Exhibit "P5"; (7) A letter dated 13/6/12 from the Nigerian Civil Aviation Authority (NCAA) to the Plaintiff to acknowledge Exhibit "P5" was tendered and was marked Exhibit "P6"; (8) A second letter from the NCAA dated 27/7/12 addressed to the Plaintiff in which the offer made by the Defendant to the Plaintiff in respect of his damaged "*LG Cinema TV*" was admitted as Exhibit "P7"; and e-mail letter dated 12/7/12 from the Defendant to the NCAA was taken in as Exhibit "P7A"; (9) An e-mail letter from "CPU NCAA" dated 6/8/12 was admitted as Exhibit "P8"; (10) A letter from "*Credence Attorneys*" dated 23/7/12 to the Defendant was admitted as Exhibit "P9"; (11) Defendant's letter dated 26/7/12 addressed to "*Credence Attorneys*" was adopted as Exhibit "P10"; and (12) The Plaintiff's TV whose photographs of its packaging were

produced as Exhibit "P3" series was also tendered as Exhibit. It was admitted as Exhibit "P11". Exhibit "P11" was removed from its packaging carton for the Court to see. It was noted in the Court's record, that it has "*a slight dent on its screen*". Although, the Defendant's Counsel did not object to all the tendered documentary exhibits, but in view of some of the exhibits which were computer generated evidence, it is doubtful if they are admissible when interrogated on the basis of the conditions prescribed by Section 84(4) of the **Evidence Act, 2011**. I say this in relation to Exhibits "P2"; "P4"; "P4A"; "P7A" and "P8". After this was done, Plaintiff says that he is asking for "*the claims as stated in my witness statement on oath*".

The Plaintiff was then cross-examined by the Defendant's Counsel, P. Oturu, Esq. The Plaintiff testified that the TV Exhibit "P11" was "*delivered to the Defendant in the same form*" of its package when it was purchased and that he was conveyed with Exhibit "P11" from the U.S. to Frankfort by United Airlines. PW1 told the Court that Exhibit "P11" was "*marked as fragile by United Airlines from Doules Airport in Washington*" and it was "*checked in as excess luggage*".

Plaintiff told the Court that "*I did not pay any supplementary sum for special handling of Exhibit "P11"* and that he did not "*take out any insurance policy with the Defendant to cover loss or damage to Exhibit "P11"*. The Plaintiff also testified under cross examination that "*I did not make any declaration to the Defendant regarding the value of Exhibit "P11".*

The Plaintiff by his evidence under cross-examination, says that he arrived in Nigeria on 20/5/12 and that "*I made the complaint to the Defendant immediately I opened Exhibit "P11"*. When I heard this testimony, I was going to ask the Plaintiff at what point did he notice that the Package used to carry the TV was "*pierced*" by what may be a sharp object. Was it at the Airport or when he got home? Or, was it on the day, i.e. 23/5/12 when he wrote to the Defendant which the Defendant acknowledged by Exhibit "P4"? In Plaintiff's further testimony on this issue, he testified that "*I opened Exhibit "P11" about 2 or three days after I arrived, and I immediately notified the Defendant by an e-mail sent to them*". That e-mail was not produced by the Plaintiff as part of his *documentary exhibits*, but Exhibit "P4" from the Defendant duly acknowledged the receipt of the Plaintiff's e-mail of 23/5/12.

After the Plaintiff was cross-examined by the Defendant's Counsel, he was re-examined by his Counsel, S. Isah, Esq.

The Plaintiff in answer put to him on the involvement of United Airlines as one of the carriers that handled the second leg of his journey from Frankfort in Germany, to Washington D.C in the U.S.A, Plaintiff testified that his ticket was issued by the Defendant and that he did not have "*any direct transaction with United Airlines*". He told the Court, that "*the only transaction I had with United Airlines was the U.S.$200 I paid as excess luggage and I was made to understand that it was being collected on behalf of Lufthansa Airline*".

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In relation to the question put to him on "*supplementary charges*", PW1 replied that "*I was not asked by United Airlines to pay any "Supplementary Charge" for special handling of Exhibit "P11"*. He also told the Court, that he was not asked to "*take out any insurance policy with the Defendant to cover any loss or damage to Exhibit "P11"*. He also denied being asked to "*make any declaration as to the value of Exhibit "P11"*.

By this evidence, the Plaintiff's Counsel closed the Plaintiff's case.

The hearing of the Defendant's case suffered so much delay and it was only on 24/5/16, that the Defendant's sole witness, Mr. Ugochukwu Nwachukwu who says that he was the Defendant's "*Ticketing and Reservation Officer*" was heard in his evidence. He identified a "witness statement on oath" which he had deposed to on 27/11/12 and was adopted as his evidence.

The Defendant's witness testified as to "*the conditions of carriage*" which he says, is "*an embodiment of Rules and general conditions of contract between the Defendant and the Passengers*". The Defendant's witness when shown the said "*conditions of carriage*", recognized it as the one which he had personally produced and certified.

He testified that "*The General Conditions of Carriage*" is electronic and available through a "*link on Lufthansa's website*". He testified that "*it was down loaded from Lufthansa system – an official computer*". He gave evidence generally as to the working condition of the Computer system in line with Section 84 of the **Evidence Act, 2011** and he tendered the copy

which he had downloaded from the Defendant's website and same was admitted as Exhibit "D1".

As soon as this was done, the Defendant's Counsel says that he has finished with the DW1's evidence-in-chief. The Defendant's witness was then cross-examined by the Plaintiff's Counsel.

The Defendant's witness testified under cross-examination that he knows the Plaintiff as the Defendant's customer "*who was issued a Lufthansa ticket*" and that the ticket was "*issued by an Agent*" and that "*it was issued via an invoice ... from the U.S. Embassy*". He testified that it "*is not that it was paid for*". DW1 further testified that "*the Agent is not Lufthansa's Agent*" and that "*any Agent can issue Lufthansa's ticket*". He told the Court that the ticket issued in this case "*concerns two (2) airlines*" and that "*one is United Airlines*".

On the evidence concerning the "*Code Share Agreement*", DW1 explained that it "*is between Defendant; United Airlines or any other Airlines which we call the "Star Alliance*". He testified that the Plaintiff is "*not a member of "Star Alliance" because, an individual cannot be a member of the "Star Alliance"*.

When DW1 was asked about the issue of declaration of the Plaintiff's luggage, DW1 testified that "*it is not for us to ask Passenger to disclose the nature of their luggage*", and that "*it is the duty of the Passenger to do so if the luggage is to be tagged as fragile and may even be required to obtain an insurance policy for such luggage if need be*". DW1 told the Court that the Defendant "*don't tender document to ask passenger to*

disclose the contents of their luggage" and that the "*disclosure of the contents of luggage is for the security people*".

Buttressing Exhibit "P3" series, the Defendant's witness testified that "*the LED LG TV came in its own package*" and further told the Court that "*when a Passenger is checking-in an oversize baggage, it will go in through a different process entirely especially when it has to do with fragile goods that are enclosed in a package from its manufacturer*".

DW1 on the U.S.$200 paid by the Plaintiff, states that, it was paid "*for the carriage of his LED LG TV after he was warned on the nature of the items he was checking in because, the Defendant will not be held liable for any damage*". Where on earth, did DW1 found this piece of evidence because, he has not told the Court, that he was at Washington D.C. where and when Exhibit "P11" was checked-in by the Plaintiff who had testified, that he paid the said U.S.$200 as a Charge for "*excess luggage*". See Exhibit "P1B" tendered by the Plaintiff.

The Defendant's witness testified that "*such fragile items are better cargoed*" and that the Defendant "*do not issue any document to show that the Passenger was warned before checking a fragile luggage*". DW1 testified that he also work in the Defendant's office in the Airport apart from its Office in Transcorp, Abuja.

When he was further cross-examined on his evidence as to what transpired in Washington D.C, he admitted that he "*did not take part in the handling of the Plaintiff's LED LG TV in Washington D.C. or in Abuja*". He also admitted that he has not "*seen the Plaintiff's LG TV physically*" and that he

only saw the "*pictures from my head office when it was forwarded to us*". The Defendant's witness also testified that "*the fragile tags on the Plaintiff's LED LG TV was placed on it by the security where the Plaintiff took it for checking before it was passed over to the Defendant*". He testified that the "*first carrier that handled the Plaintiff's luggage was United Airlines who transferred it to the Defendant in Frankfort, Germany*". DW1 testified that he was aware that "*the Defendant wrote to the Plaintiff to apologize that he received the LED LG TV as damaged*", but "*that does not mean that the Defendant admits liability for the damage*".

The Defendant's witness was re-examined and he testified that "*the U.S.$200 which the Plaintiff was asked to pay, was on account of the fact that he has exceeded the baggage allowance he was entitled to*". He told the Court, that "*it is not a fee for the said LED TV which the Plaintiff wanted to transport from Washington D.C. to Abuja*" and concluded that "*when the Plaintiff's luggage arrived in Abuja, it was handled by the ground staff employed by the Airport Authority*".

By this evidence, the Defendant also closed its case, and both parties were directed to file their "Final Written Addresses" within a specified period.

The Defendant through its Counsel, Christabel Ndeokwelu on 17/6/16, filed the "Defendant's Final Written Address" dated 17/6/16.

In page 5 of the address, the Defendant's Counsel having done what by her assessment is the case of the Plaintiff and that of the Defendant, in paragraph 21 sets down four (4) issues for determination. These are: (a) "*What were the terms of the conditions of carriage between the Plaintiff*

and the Defendant?" (b) "*Whether in the circumstances of this case the Defendant is liable for the damage of the Plaintiff's LG Cinema Screen 47 LMT600 Television?*" (c) "*Whether in the circumstances of the case the Defendant is liable for negligence?*" and (d) "*Whether the Defendant is liable for all or any of the Plaintiff's claims?*"

The Defendant's Counsel in paragraphs 22 – 47 advanced *legal submissions* on issue (a) as set down in the Defendant's "Final Written Address". By the submissions *canvassed*, the details of the terms of the *contract of carriage* between the Plaintiff and the Defendant on the strength of Exhibit "P" are to be found in the "*General Conditions of Carriage of Lufthansa German Airlines*" which DW1 tendered and was admitted as Exhibit "D1". The said "*terms and conditions*" are also, by his submissions, contained in the "***Convention for the Unification of Certain Rules for International Carriage by Air, 1999***" which he says, is otherwise known as the "**Montreal Convention**". The Defendant's Counsel argued that the said "**Montreal Convention**" has "*now been codified into Nigeria law*" and this is as contained in the "**Civil Aviation (Repeal and Enactment) Act, 2006**" and the said "***Montreal Convention** is incorporated in the 2nd Schedule*" to the said Act.

The Defendant's Counsel also advanced arguments to the effect, that by Exhibit "P", the Plaintiff had a *contract of carriage* with two (2) carriers, i.e. the Defendant and the United Airlines. When I read the submissions on this issue, I was not impressed by the *tenor* of arguments advanced because, the Plaintiff who was issued the Defendant's e-ticket, Exhibit "P", never paid any money to nor had any contact or contract with United Airlines as a

passenger. The Defendant, even by the "**Montreal Convention**" remains the Plaintiff's carrier even for the *2nd legs* of his trip from Frankfort to Washington D.C. and back to Frankfort because, it was the Defendant's arrangement with the said Airline who is a member of the "*Star Alliance*" – being a "*Code Share Agreement Amongst 27 Airlines*". The Defendant remains the *principal and only party* with whom the Plaintiff had the *contract of carriage* to be airlifted from Abuja to Washington D.C and to be returned back. Whatever arrangement which brought United Airlines into the *transaction*, is an *internal arrangement* between the Defendant and the United Airlines. So, the question of *splitting the contract* into two (2) does not and cannot arise even by the application of Articles 39 and 41(1) of the **Montreal Convention** in the **2nd Schedule to the Civil Aviation Act, 2006**.

In paragraphs 48 – 67 of the Defendant's "Final Written Address", *legal submissions* were *canvassed* as to "*whether in the circumstances of this case the Defendant is liable for the damage of the Plaintiff's LG Cinema Screen 47 LM 7600 Television*". The Court's attention was invited to Article 8.3.4 of Exhibit "D1" and Article 17 of the "**Montreal Convention**". It was argued that having regard to the *fragile nature* of Exhibit "P11", the Plaintiff ought not to have checked it in as a luggage and that where he has done so, the Defendant "*will not bear liability*". It was argued that the Plaintiff has not *led evidence* to *prove* that the damage occurred whilst it was on board the Defendant's aircraft. Submissions were also *canvassed* as to what may have probably happened to Exhibit "P11" in terms of its

handling between the airport when the Plaintiff collected it as his checked in luggage and taking it to his residence in Life Camp, in Abuja.

It is in this area where I seem to be having issues with the Plaintiff's case because, the question which tasked my thought by what I saw on Exhibit "P11", was as to when did the Plaintiff see or notice that the package was pierced by what looks like a sharp object. If he had seen this whilst still at the baggage collection section of the Airport, what he ought to do, was to have taken the package as was delivered by the Defendant to any of its Agents within the Airport, so that the damage done to the package could be "*incidented*" and a report issued by the Defendant's Agent where the complaint was made. In this case, by the Plaintiff's evidence, it was on 23/5/12 that he noticed the damage and he immediately sent a mail to the Defendant which the Defendant acknowledged by Exhibit "P4". It is that gap that the Defendant now seeks to *exploit* because, the luggage had clearly left its custody and had spent a whole of 72 hours with the Plaintiff before it was unpacked and the damage noticed.

In paragraphs 68 – 81 of the address filed, the Defendant's Counsel made *legal submissions* on "*whether the Plaintiff has proved a case of negligence against the Defendant*". It was submitted that the Defendant "*cannot be liable for the damage based on the provisions of Articles 8.3.1-3 and 8.3.4 of Exhibit "D1"* and Article 17 of the **Montreal Convention**. It was also submitted, that by Article 20 of the **Montreal Convention**, the Defendant will not be liable where it is shown that the damage to the Plaintiff's Exhibit "P11" arose "*as a result of the negligence of the passenger*". It was contended that the Plaintiff has not proved that the damage to Exhibit

"P11" occurred as a result of *breach of a duty of care* which the Defendant owed to the Plaintiff as its passenger on the trip evidenced by Exhibit "P".

In paragraphs 82 – 89 of the address, the Defendant's Counsel made *legal submissions* to the effect that the Defendant is not liable for any of the Plaintiff's claims and treated Exhibit "P2" as the evidence of the cost of purchase of Exhibit "P11". By this Exhibit "P2", Exhibit "P11" was purchased by the Plaintiff at U.S.$1,299.90 together with its shipment charges. It was argued that the Plaintiff has not been able to *prove* that Exhibit "P11" got damaged "*while it was under the care of the Defendant*" and it was submitted that the "*Plaintiff's claim for the sum of $1,299.90 is unsubstantiated by any credible evidence*".

On the $200 paid by the Plaintiff, it was submitted that it was paid by the Plaintiff "*as excess luggage fee during the checking in of the Plaintiff's 47 inch LED LG TV set*".

On the Plaintiff's claim for "*general damages*", it was contended that the said damages – being N3m claimed by the Plaintiff was too *remote* and was never in the *contemplation* of both parties when the contract evidenced by Exhibit "P" was made between the Plaintiff and the Defendant as a *natural consequence* of a *breach of the agreement* formalized by Exhibit "P" and defined in details by Exhibit "D1".

On the claim for "*cost of the suit*", the Defendant's Counsel submitted that costs *ordinarily* follow event, but that what the Plaintiff seeks in this case is "*to pass on the burden of settling their solicitor's fees over to the Defendant*". It was submitted, with the aid of *judicial authorities*, that what

the Plaintiff seeks to do, "*offend public policy*". The Court was urged to dismiss the Plaintiff's suit.

The Plaintiff's Counsel, Shuaibu Isah, Esq. filed a "Plaintiff's Final Written Address" on 13/7/16. It's dated 12/7/16. The Plaintiff's Counsel having also done a narration of what he described as "brief statement of facts" in paragraph 3.1 of the address filed, sets down two (2) issues for determination. These are: (i) "*Whether based on the state of pleadings and the evidence adduced before this Honourable Court, the Plaintiff has established and proved his claim;*" *(ii) "Whether the Plaintiff is entitled to the relief claimed."*

The Plaintiff's Counsel in paragraphs 4.1.1.1 – 4.1.46 of the address, *canvassed legal arguments* to support issue one as set down. It was argued that the Plaintiff's action "*is clearly an action for damages based on tort of negligence arising from a contract of carriage by air entered into between the Plaintiff and the Defendant*". The Plaintiff's Counsel laid down and expatiated on the *legal considerations* by which an action in *negligence* can be founded and argued each of the *legal considerations* beginning with the concept of a "*Duty of Care*". This was argued in paragraph 4.1.4 – 4.1.23 of the address. The Plaintiff's Counsel argued that Exhibit "P" shows that the *contract of carriage* was between the Plaintiff and the Defendant and drew the Court's attention to the *ticket number* at the bottom of Exhibit "P". The Court's attention was also drawn to Article 2.3 of Exhibit "D1" and Article 1(3) of the **Montreal Convention**. These are highlighted in order to *debunk* the Defendant's arguments of a two (2) carrier contract with the Plaintiff.

I had already expressed my view on this issue and it is to the effect that the Defendant remains the *primary and only party* with whom the Plaintiff had the *contract evidenced* by Exhibit "P" notwithstanding that United Airlines was commissioned by the Defendant to undertake the Plaintiff's *2nd leg* of his journey from Frankfort in Germany to Washington D.C. and back to Frankfort.

The Plaintiff's Counsel also relied on Article 17 of Exhibit "D1" and Article 14.3.1 to press the point, that the Defendant remains liable to the Plaintiff for whatever damage that was caused to Exhibit "P11".

In paragraphs 4.1.24 – 4.1.41 of the address filed, the Plaintiff's Counsel made *legal submissions* on "*Breach of Duty of Care*". He drew the Court's attention to paragraph 18 and its sub-paragraphs (a) – (e) of the "Statement of Claim" and of the *particulars* of the Defendant's *negligence* which were pleaded. Based on the Plaintiff's testimony wherein he adopted his "witness statement on oath", the Plaintiff's Counsel argued that this is a proper case where the *maxim* of "*res ipsa loquitor*" applies. When I read the Plaintiff's Counsel's submissions in paragraphs 4.1.29 – 4.1.30 of the address, it does not seem that the Plaintiff's Counsel gave any consideration to the *gap* which I had earlier remarked upon as to when did the Plaintiff notice the damage done to the package with which Exhibit "P11" was conveyed from Washington D.C. en route to Abuja from Frankfort, Germany. It seems that it was on the third day, i.e. 23/5/12 after Exhibit "P11" had been collected from the Defendant, that the said damage was noticed. The Defendant's Counsel seem to have taken advantage of this *gap* even though, the Plaintiff has seven (7) days within

which he could have reported the damage. My take is that he would have been in a stronger position, if on the very day he took delivery of Exhibit "P11", he had caused the issue to be "*incidented*" and *documented* by a Defendant's Agent within the *precinct* of the Airport. The argument that the removal of luggages from the Defendant's aircraft by staff of Airport Authority could have been of *no moment* because, the so called "Airport Security" staff who handles luggages from the aircraft to the baggage collection section in the Airport, are in the eyes of the law, deemed to be "*constructive agents*" of the airline as custody of the passengers' luggages remain in the hands and possession of the airline until they are delivered to the Baggage collection point and taken by the passengers. Whatever damage that may have occurred between the holds of the aircraft and the baggage collection point, remains the liability of the carrier. But once the luggages are removed and taken outside the airport, different considerations would apply as the *duty of care* over such luggages would legally cease from the carrier.

In paragraphs 4.1.42 – 4.1.46 of the Plaintiff's "Final Written Address", the Plaintiff's Counsel advanced *legal submissions* "On *Damages Suffered as a Result of the Breach of Duty of Care*" which he argued, was the "*third ingredient*" in order to find and establish a *cause of action* in *negligence*. It was submitted, that the damage caused to Exhibit "P11" was "*as a result of the Defendant's brief (sic) of the duty of care it owed the Plaintiff under the contract of carriage*".

In paragraphs 4.2.1 – 4.2.19 of the Plaintiff's "Final Written Address", the issue as to "*whether the Plaintiff is entitled to the relief claimed*" was

argued. *Legal submissions* were *canvassed* on the items of Plaintiff's claims which include the cost of purchase of Exhibit "P11" i.e. $1,299.90; the $200 paid as charges for "*excess luggage*" as the said Exhibit "P11" was taken as a separate luggage for the Plaintiff who by Exhibits "P1" and "PA1" flew the economy class cabin as well as the Plaintiff's solicitor's fee of N800,00.00 and the N3 million "*general damages*".

The Court was urged to grant the Plaintiff's claims.

When the Defendant's Counsel was served with the Plaintiff's "Final Written Address", he filed a "Defendant's Reply on Points of Law" dated 7/12/16.

The said address was largely directed to re-arguing some of the issues which the Defendant's Counsel had earlier taken up in his "Final Written Address". He endeavoured to argue the issue that United Airlines "*was a party to the Contract of Carriage with the Plaintiff*". The Defendant have not showed any evidence of a direct dealing between the Plaintiff and United Airlines as Exhibit "P" was purchased and issued in Abuja by the Defendant's Agent. It was also argued that "*the Defendant was not an Agent of United Airlines*".

The Defendant's Counsel also argued that Exhibit "P4A" – being the Defendant's reply to the Plaintiff's e-mail of 23/5/12 on the issue of damage done to Exhibit "P11" was never an "*admission*".

The addresses filed by both parties were *needlessly prolix* and it's like most Counsel, these days, take delight in filing of long winding addresses. It is a delight for the Court, to read *succinct* and *comprehensive legal submissions*

which address in a summary and concise manner, the core issue(s) in dispute based on *pleadings* and *evidence* arising in a matter. In civil cases such as this, it is sufficient to set down as issue, "*whether the Plaintiff on the balance of probability and by preponderance of evidence has proved his case as to be entitled to the reliefs sought*". Any other issue beside this, is in my view, *ancillary* it may amount to *needless* "*hair spilling*" to frame such issues as substantive issues for determination.

At the proceedings 2/2/17, the Defendant's Counsel was heard in his adoption of the "Defendant's Final Written Address" and the "Reply on Points of Law" which I have just highlighted. He adumbrated on the said address and urged the Court to dismiss the Plaintiff's suit.

The Plaintiff's Counsel was also heard in his adoption of the Plaintiff's "Final Written Address", and he too, adumbrated and emphasized issues which he considered *crucial* to establish the Plaintiff's entitlement to the four (4) *reliefs sought* by the "Writ of Summons" filed.

After both Counsel were heard, I reserved the Judgment till 30/3/17. But on 28th March, 2017, I was directed by the Chief Judge, to participate in an interactive workshop in "*Support for Anti-Corruption in Nigeria*" organized by the E.U. in collaboration with UNODC and National Judicial Institute. It held from 28/3/17 and ended on 30/3/17. I advised the Registrar to re-schedule the Judgment till today for its delivery.

In the course of reviewing the addresses filed, I had made certain findings and expressed certain *remarks* which I believe will impact on the result of this contested suit. Even though this Court has the jurisdiction to *expunge*

from its record, *documentary exhibits* it may have wrongfully admitted during the trial, the observation and remarks I made on certain *documentary exhibits* which I believe were electronically generated from computer system and which require to meet the *statutory conditions* prescribed by Section 84(4) of the **Evidence Act**, supra, I did not use the non-compliance to determine the Plaintiff's suit for the reasons which the conclusion of this Judgment will reveal.

Let it be clearly stated, that the Plaintiff's *cause of action* is founded in the *tort of negligence* which arose from a *Contract of Carriage* evidenced by Exhibit "P". Having regard to the said contract, the Plaintiff's *cause of action* is also *regulated* by the Defendant's "*General Conditions of Carriage*" evidenced by Exhibit "D1" tendered by the Defendant's sole witness. By the provision of Section 251(1)(a) – (s) of the **Constitution, 1999 As Amended**, which deals with the jurisdiction of the Federal High Court, the Federal High Court ordinarily does not have jurisdiction over *common law causes of action such* as found in "*negligence*". But, because of the provision of the **Constitution** i.e. Section 251(1)(k) of the **CFRN, 1999 As Amended**, the Federal High Court has *exclusive jurisdiction* in relation to *causes of action* arising from aviation matters and its jurisdiction is further *confirmed* by the **Civil Aviation Act, 2006**. It is in this regard, that although, the Plaintiff's *cause of action* is rooted in *negligence* which occurred from a *Contract of Carriage*, the Federal High Court is vested with the jurisdiction to entertain such *causes of action.*

Again, having regard to the *Contract of Carriage* which Exhibit "P" evidenced, the Defendant owes the Plaintiff as its passenger, a *duty of*

care, which entails the safe carriage of the Plaintiff and his luggages from Abuja to Washington D.C and back. The Plaintiff, as far as the said Contract is concerned, had no *privity of contract* with the United Airlines as the "*Code Share Agreement*" by which the Defendant transferred its *obligations* to safely convey the Plaintiff from Frankfort, Germany to Washington D.C and back to Frankfort, is an arrangement which the Defendant as a member of "*Star Alliance*" with the United Airlines made for its own convenience. The United Airlines for all *intents* and *purposes*, acted as an "Agent" to the Defendant in relation to the Plaintiff's *trip evidence* by Exhibit "P" from Frankfort in Germany to Washington D.C and back to Frankfort on 20/5/12.

In relation to the issue of *duty of care*, I hold that the Defendant owes the Plaintiff such *duty* not only to be safely *air freighted* from Abuja to Washington D.C and back, but also to his checked-in luggage. The question is: Was that *duty of care* breached? My answer is in the *affirmative* because of the damage caused to the Plaintiff's Exhibit "P11". The only question which I was unable to answer *clearly* and *affirmatively*, is whether the damage to Exhibit "P11" was caused by the Defendant whilst the said TV set was in its custody or was caused by the Plaintiff after he took delivery of it and exited from the Airport. It is this *gap* which has made it almost impossible for me to find the Defendant liable as the person that *caused* the *breach* of the *duty of care* by the *resultant damage* to Exhibit "P11" was found on 23/5/12 to have a cracked screem. As I had earlier remarked, at what point did the Plaintiff found out that Exhibit "P11" was damaged? If he had noticed it whilst he was within the precinct of the

Airport at the Baggage Collection Area, the appropriate thing to do, was to have lodged a complaint at the Defendant's desk and to have the damage properly *incidented* and *documented*. Once this was done, the *gap* which the Plaintiff had *inadvertently* created by reporting the damage three (3) days after he had taken delivery of Exhibit "P11" to his residence would not have been available for the Defendant to *exploit*.

When I read Exhibits "P4" and "P4A" – being the Defendant's reply to the Plaintiff's e-mail letter by which he notified the Defendant of the damage to Exhibit "P11", I am unable to subscribe to the view canvassed by the Plaintiff's Counsel, that it amounted to an admission. The offer of 10,000 miles to the Plaintiff in the context of Exhibit "P4A" cannot be an admission of liability.

I had at the inception of this Judgment, reproduced the *reliefs being sought* by the Plaintiff. The Plaintiff not being able to conclusively *prove* that the damage to Exhibit "P11" occurred whilst it was in the custody of the Defendant can hardly be entitled to a refund of the costs of purchase of Exhibit "P11" which Exhibit "P2" *prima facie* established as $1,299.90.

The claim for a refund of $200.00 which the Plaintiff himself testified that he paid for "*excess luggage*" can hardly be *sustainable* as the Defendant conveyed Exhibit "P11" from Washington D.C to Abuja – notwithstanding that it was found to have been damaged. By this fact, the consideration in law, to deliver Exhibit "P11" in Abuja as an "excess luggage" has been fulfilled. The question is: At what point was this damage to it discovered? The Defendant has discharged its *obligation* to convey Exhibit "P11" as an

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"*excess luggage*" which belongs to the Plaintiff as it was received in Abuja on 20/5/12 when the Plaintiff arrived from Washington D.C *en route* Frankfort, Germany.

The sum of N800,000 being a refund of Plaintiff's Solicitor's fee is in my view, a *specie* of a "*special damages*" which the Plaintiff has not strictly *proved*. When I read Exhibit "P9" – being the Plaintiff's Solicitors' letter to the Defendant, the issue of legal fees of Solicitors was not even mentioned, and no invoice or receipt raised or issued to the Plaintiff by the said law firm for its fees was tendered in evidence. Apart from this, the *principle of law* is that when a *cause of action* is founded on *breach of contract*, the *damages* which the Plaintiff will be entitled to claim, must be such that when the principle in old English decision **HADLEY v. BAXENDALE (1854) 9 Exch. 341** is applied, within the *reasonable contemplation* of both parties as it may be fairly and reasonably considered to arise naturally by the *breach of the agreement*. Exhibit "D1" and the "**Montreal Convention**" which has been *domesticated* in the **2nd Schedule to the Civil Aviation Act, 2006** do not *contemplate* such *reimbursement*.

In view of the fact that the Plaintiff's suit fails, the claim for "*general damages*" cannot be *sustained* and it too *fails*.

Although, the Plaintiff's suit did not succeed for the narrow issue which I have highlighted, but it is my sincere hope that the Defendant will endeavour as a matter of *goodwill*, find *ways* and *means* outside *legal claims*, by which it can *assuaged* the Plaintiff's loss. Exhibit "P11" may be

released to the Plaintiff if he wishes to collect it back regardless of his right to challenge the decision of this Court on appeal. But the Defendant's Counsel can impress it on his client, to do whatever it can to *assuage* the loss and pains which the Plaintiff has suffered since 2012 when this case was instituted, and which has today come to a Judgment that the Plaintiff's case was not *proved* as to entitle him to any of the reliefs he seeks.

This shall be the Judgment of this Court. The Plaintiff's suit fails and it's dismissed. There shall be no order as to costs.

HON. JUSTICE G.O. KOLAWOLE
JUDGE
31/3/2017

COUNSEL'S REPRESENTATION:

1. **S. ISAH, ESQ. with him is E.M. DODO, ESQ. for the PLAINTIFF.**
2. **DAVIDSON OTURU, ESQ. with him is IKECHUKWU OBIOMA, ESQ. for the DEFENDANT.**

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FEDERAL HIGH COURT
ABUJA

5/4/17