

**SUPREME COURT OF NIGERIA**  
4TH APRIL, 1997. SC. 51/1991  
**CORAM:- A. B. WALI, I. L. KUTIGI, M. E. OGUNDARE,**  
**U. MOHAMMED, A. I. IGUH, JJSC.**

COLLINS IWUOHA ..... PLAINTIFF/APPELLANT  
AND  
NIGERIA RAILWAY CORPORATION ..... DEFENDANT/RESPONDENT

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***CARRIAGE OF GOODS*** - Value of the goods - Where not declared as required by law and the conditions of contract - Appellant is bound to fail - Whether he be an old customer or not.

***CONTRACTS*** - Carriage of goods - Way bill Exh. "A" issued by Railway Corporation - Forms part of the contract between the parties.

***CONTRACTS*** - Carriage of goods - Conditions of contract printed on the face of the way bill - Is binding on the plaintiff - Who failed to show that the conditions were concealed.

***CONTRACTS*** - Exemption clauses - Way Bill that forms the basis of contracts - Parties are bound by the exclusions contained therein.

***DOCUMENTS*** - Incorporation by reference principle - Will be applied - Where the document clearly shows - That some other evidence must have been contemplated.

**FACTS**

The plaintiff /appellant delivered 3 packages containing wearing apparels on 9/3/84 to the defendant's /respondent's servant (DW1) for transportation from Aba to Bukuru in Plateau State. DW1 weighed the packages, charged the plaintiff N9.00 and issued him a receipt (a way bill Exhibit "A"). Plaintiff reported at Bukuru the next day as directed to collect the packages but found only the smallest of the 3 packages. Plaintiff claimed that the missing packages contained goods worth N40,500.00 and that he incurred about N1,500.00 expenses in a fruitless attempt to trace the packages.

The plaintiff filed an action before the High Court claiming the sum of N42,000.00 from the defendant. The defendant contested that as the plaintiff failed to abide by the conditions specified on the face of the way bill (Exh."A") - to wit, declaration of the value of the goods and payment of a higher premium, he was only entitled to the sum of N20.00. The trial court

found in favour of the plaintiff. Defendant's appeal to the Court of Appeal was allowed. Plaintiff has now appealed to the Supreme Court raising 7 issues which the apex court narrowed down to 2.

**ISSUES FOR DETERMINATION**

1. Whether Exhibit A (Way Bill) issued to the Appellant by the Respondent was an integral part of the contract and whether the Respondent can avail itself of the Statutory provisions referred to therein in its defence against the Appellant's claims.

2. Whether the fact that the Appellant had on previous occasions sent goods through the Respondent constituted sufficient notice of the exclusion conditions.

**HELD** (Unanimously dismissing the appeal per lead judgment of **KUTIGI JSC**)  
**Whether way bill Exh. "A" forms part of the contract**

1. Messrs Adefope & CO. Cannot therefore be correct when they contended that the contract was concluded before Exhibit A was issued. There could not have been any contract without payment which was immediately followed by the issuance of Exh. A and which to all intents and purposes, was the evidence of the contract itself. Without Exh. A it would not have been possible to sue the Respondent as the Appellant had done. I must say I derive no assistance from the cases they cited in their brief.<sup>1</sup> In the circumstances therefore, it follows that Exhibit A necessarily formed part of the contract between the parties as found by the trial High Court and confirmed by the Court of Appeal. (p. 608 D)

**Conditions of contract - Printed on the face of the way bill**

2. I think the court of Appeal was right. The notice on Exh. A clearly stated that copies of all statutory provisions referred to therein were available for examination free of charge. It is also contained therein that Exh. A is the

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<sup>1</sup> Some of the factors that may lead to citation of inappropriate cases are (a) Citing from the ratio (HELD) outlined by the law reporter without getting inside the text to ensure that the highlighted ratio is apposite. (b) Failure to pick out the ratio based on the issues for determination in that case. (c) Lack of ability to differentiate obiter dictum from ratio (d) Citation of cases that can be distinguished from the other based on their peculiar circumstances. In as much as these factors are taking into consideration in the Kings Law Reports, we still advise that the advocate must make the assurance double sure before citing cases. See *Afro-Continental Ltd. v. Ayantuyi* (1995) 12 KLR (Pt 36) 2127; *Adesokan v. Adetunji* (1994) 10 KLR (Pt 22) 85; *George v. The State* (1993) 7 KLR 113; *NEPA v. Onah* (1997) 1 KLR (Pt 47) 201; *Edebiri v. Edebiri* (1997) 4 KLR (Pt 50)

evidence of contract as well as acknowledgment of any money paid, which was N9.00 in this case. There was no evidence from the Appellant that copies of the laws, bye-laws or tariffs were not available for inspection as stated in Exhibit A. The record also clearly shows that the Respondent had consistently not denied liability in the case but rather had maintained throughout that It was only liable to the tune of N20 per packet in view of the provisions of the said statutory provisions. (p. 611 C)

### **Documents - Incorporation by reference principle**

3. The principle or doctrine of incorporation by reference is one that is frequently applied in the construction of documents where from the documents or document produced by the parties, it is clear that some other evidence must have been in the contemplation of the parties. In such a case the document put forward compels the court to look beyond and ascertain precisely the other evidence which by necessary implication the parties must have had in their minds at the time of the contract, Exh. A in this case and the evidence given thereon points unequivocally to the laws referred to therein (Exh. A) as forming part of the contract. (p. 611 E)

### **Value of the goods - Where not declared**

4. The Appellant clearly failed to declare the value of the goods but merely weighed them and paid for the weight, and not the value. That was against the laws of the Nigerian Railways. He was bound to fail as he did. I believe the conclusion herein would have been the same whether or not the Appellant was an Old customer of the Respondent transporting goods through it, because then each transaction would have been a separate and distinct contract. (p. 612 H)

### **Exclusion clauses - Whether binding on the parties**

5. On the whole, I think in the circumstances, the lower courts were right when they held that Exh. A was the contract between the parties in this case. The Court of Appeal was also right when it held that the parties were bound by the conditions and or exclusion contained therein and that the Appellant had notice or was presumed to have notice of such conditions and or exclusions. (p.613 D)

### **REPRESENTATION**

Appellant absent, not represented  
Chief Chuks Muoma for the Respondent

**CASES REFERRED TO**

Thornton v. Show Lane \parking (1960) 5 SC. 280

Yorkshire Insurance Co. Ltd. v. Haway (1969) NSCC Vol. 6 p. 323

Northern Assurance Co. Ltd. v. Wuraola (1969) NSCC Vol. 6 p. 22

Niger Insurance Co. Ltd. v. Abed Bros Ltd. (1976) 7 SC. 35

B Ifezue v. Mbadugha (1984) 5 SC. 79 at 140 & 177

McCutcheon v. David Macbrayne Ltd. (1964) 1 WLR 125

Vivian Younger and Bond Ltd. v. Osman El Tayeb & Bros (1960) 5 F.S.C 280

**STATUTES & RULES REFERRED TO**

C Nigeria Railway Corporation Act 1955 ss. 74, 63(1)80.

Nigeria Railway Corporation Tariff No 9 of 1981

Supreme Court Rules 1985 0.6 r. 8(6)

**LEAD.JUDGMENT BY KUTIGI JSC**

D The Plaintiff claims against the Defendant as follows -

“(1) N40,500.00 being value of two large packages of wearing apparels.

(2) N1,500.00 as out of pocket expenses incurred searching for the packages from one place to another.

E (3) Damages.” (See paras. 15 & 16 of the statement of Claim).

After the filing and exchange of pleadings, the case proceeded to trial during which the plaintiff testified for himself and called three other witnesses. Two witnesses testified on behalf of the Defendant.

The facts of the case were that the plaintiff on 9/3/84 at Aba Railway Station Imo State, delivered three packages containing wearing apparels to the Defendant’s servant (D.W.1) for transportation to Bukuru in Plateau State. D.W.1 said he weighed the three packages and charged the Plaintiff N9.00 (nine Naira) only. The Plaintiff paid and the D.W.1 issued him a receipt - a “Way Bill” (Exhibit A in the proceedings) D.W.1 collected the packages and G told the plaintiff to report at Bukuru Railway Station the next day to collect the packages. The Plaintiff reported at Bukuru Railway Station as directed on 10/3/84. When he got there he could only find the smallest of the three packages. The two big packages were missing and were nowhere to be found. On inquiry, he was told that two big packages had been stolen by robbers while in H transit between Aba and Bukuru. He was advised to search for the missing packages at various Railway Stations. This he did but without success. The Plaintiff claimed that the two missing packages contained goods worth N40,500.00 and in a fruitless attempt to trace the packages he incurred out-of-pocket expenses totalling about N1,500.00.

The Defendant did not deny receiving the three packages from the plaintiff nor did it deny losing the two big packages. It therefore accepted liability but denied the claim on the ground that the plaintiff did not declare the contents and value of the packages at the time he handed them over to D.W.1 on 9/3/84 at Aba Railway Station. That if he had done so he would have been supplied with a "Form TC.30" for completion, and in which case he would have paid a higher premium than the mere N9.00 he was charged. In fact, the Defendant had by letter dated 13th October, 1984, addressed to the plaintiff (Exhibit G) admitted liability for the loss of the packages and relying on the provisions of the Nigeria Railway Corporation Act of 1955 and Tariff No. 9 of 1981, offered the plaintiff forty Naira (N40.00) only for the loss of the two packages. The offer was rejected by the plaintiff and consequently he instituted this action

The learned trial judge reviewed the evidence led before him and found for the plaintiff and he concluded his judgment on page 54 of the record thus -

*"In the final analysis, the plaintiff is entitled to judgment for the sum of N40,500.00 being the value of the two packages of wearing apparels admittedly lost by the Defendant/ Corporation plus N1,500.00 the Plaintiff spent as out of pocket expenses in searching for the packages."*

The claim for general damages was refused on the ground that it would have amounted to double compensation in the circumstances of this case.

Aggrieved by the decision of the High Court the Defendant Corporation appealed to the Court of Appeal, Jos Judicial Division. IN a reserved judgment the Court of Appeal unanimously allowed the Appeal. Mukhtar J.C.A. who delivered the lead judgement said on page 125 of record -

*"In the end, the appeal succeeds and I hereby substitute the sum of N40, on place of the damages awarded by the learned trial judge. I find the appellant liable only to the extent of the provisions of S.74 of the Nigerian Railway Corporation Act of N20 per package. The judgement of Emefo, J. is hereby set aside, the appeal is allowed. I will make no order as to costs."*

Dissatisfied with the judgment of the Court of Appeal the Plaintiff has now appealed to this Court. Seven ground of Appeal were filed. The parties in compliance with the Rules of Court filed and exchanged briefs of argument. When the appeal came up for hearing on 13/1/97, neither the Appellant nor his counsel appeared but the Respondent was represented by its counsel. The appeal was therefore treated as having been argued vide Order 6 Rule 8(6) of the Supreme Court Rules, 1985 (as amended). Chief Muoma, Learned Counsel for the Respondent adopted his brief and made a few oral

submissions in addition thereof.

Messrs Adefope & Co. Learned Counsel for the Appellant had on page 5 of the brief submitted seven issues for consideration in this appeal. However, when these issues are closely read, they in my view, easily boiled down to two as follows -

B        1. Whether Exhibit A (Way Bill) issued to the Appellant by the Respondent was an integral part of the contract and whether the Respondent can avail itself of the Statutory provisions referred to therein in its defence against the Appellant's claims.

C        2. Whether the fact that the Appellant had on previous occasions sent goods through the Respondent constituted sufficient notice of the exclusion conditions.

The above issues will be treated and answered together. Appellant's counsel contended that the contract between the parties herein was concluded immediately the Appellant paid N9.00 freight charges and before Exhibit A (the receipt) was issued to the Appellant. It was also contended that even though it is stated in small print at the bottom of Exhibit A that goods were carried -

E        "*Subject to the Nigerian Railway Corporation Act, 1955 and bye-laws, Tariff and Regulations copies of all of which are available for examination free of charge at every station. This document is evidence of contract as well as acknowledgment for any money paid*",

F        the terms of the offer are not contained in Exhibit A but elsewhere. He said the only way in which the terms could be incorporated into the contract is by bringing them to the attention of the Appellant before the contract was concluded. They referred to the evidence of D.Ws 1 & 2 and said that neither of them brought the documents to the attention of Appellant. They also referred to Sections 63(1) & 74(2) of the Nigerian Railway Corporation Act and submitted that from the wording of the Act, it is the duty of the Respondent to inform the consignor of the necessity to declare the contents of the packages for the purpose of carriage by the railway. He said the Respondents failed to inform the Appellant to do so. It was therefore submitted that since the Respondent did nothing to bring to the attention of the Appellant, the requirements of law on which the contract was based before its conclusion, it cannot rely on a non-contractual term to govern the transaction in order to avoid liability to the Appellant for loss of goods. The Court of Appeal was therefore in error to have incorporated the limitation conditions in the laws into the contracts of carriage between the parties and that such error had occasioned a miscarriage of justice. They said we should hold that the Respondent has failed to prove knowledge of the exclusion terms and that the Appellant being unaware of

such terms is not bound by those terms.

It was further submitted that the mere fact that the Appellant had been transporting goods through the Respondent, did not mean that he was bound by the exception clauses so long as there was no evidence to show that he knew of such conditions. They said previous dealings are relevant only if they prove knowledge of the terms, actual and not constructive and assent to them. That without knowledge there is nothing. A number of cases were cited in support which include -

THORNTON v. SHOW LANE PARKING (1971) QB. 163 VYBLTD v. OSMAN EL TAYEB & BROS (1960) 5 SC. 280 YORKSHIRE INSURANCE CO LTD v. HAWAY (1969) NSCC Vol. 6, p. 323 NORTHERN ASSURANCE LTD v. WURAOLA (1969) NSCC Vol. 6 p. 22 NIGER INSURANCE CO. LTD v. ABED BROS LTD & ANOR (1976) 7 SC. 35 WILKIE v. LONDON PASSENGER TRANSPORT BOARD (1974) 1 AER 258. The Court was urged to allow the appeal and reverse the finding of the Court of Appeal and uphold the judgment of the learned trial judge.

Chief Muoma in his brief submitted that sections 74 & 80 of the Nigerian Railway Corporation Act, 1955 and Tariff No. 9 of 1981 were integral parts of the contract between the Appellant and the Respondent. That the statutory provisions were expressly incorporated into the contract under the doctrine of incorporation by reference and that the Appellant must be deemed to have had actual notice of them at time the contract was entered into by the parties. He said the conditions of the contracts were conspicuously written on the face of Exh' A and from the evidence of the Appellant himself under cross-examination, it was clear that he was familiar with Exh. A as he had admittedly on previous occasions sent goods through the Respondent. He said it was not open to the Appellant to feign ignorance of the statutory provisions contained in Exh. A.. He referred to

VYBLTD v. OSMAN EL TAYEB & BROS (supra) NORTHERN ASSURANCE CO. LTD v. WURAOLA (1969) NCLR 4 at 12 & 14 IFEZUE v. MBADUGHA & ANOR (1984) 5 SC. 79 at 140 & 177.

It was further submitted that the statutory provisions are binding on the parties and are available to the Respondent in its defence against the Appellant's claims. He referred to paragraph 13 of the statement of Defence and submitted that although the Respondent was not denying liability, it pleaded that non-compliance with the statutory provisions by the Appellant limited the liability of the Respondent to only N20.00 per package. That there was no compliance with the statutory provisions when the Appellant failed to declare the contents as well as the value of the goods in writing. The Appellant consequently had failed to pay any premium on the value of the apparels

as prescribed by law and that this afforded the Respondent a good defence to the claims. He said ignorance of the law is no excuse because Exhibit A clearly states that all traffic including packages carried by the Respondent are subject to the provisions of the Nigerian Railway corporations Act, Bye-laws, tariffs and Regulations made thereunder. He said copies of statutory provisions are available for inspection at the Railway stations free of charge. If anyone wishes to own a personal copy, copies are also available for sale. He referred to the evidence of D.Ws 1 & 2. He said the Appellant being an old customer of the Respondent knew the conditions of carriage of goods especially Tariff NO. 9 very well. That a statute is a matter of judicial or public notice as the case may be and that Exh. A is clear and unambiguous. We were urged to dismiss the appeal.

Now, on the facts it is not difficult for one to conclude that the contract between the parties was concluded when the Appellant paid N9.00 as freight charge, handed over the 3 packages and was issued with Exhibit A on which it was clearly stated amongst others, that -

*"This document is evidence of contract as well as acknowledgment of any money paid."*

**Messrs Adefope & CO. Cannot therefore be correct when they contended that contracts was concluded before Exhibit A was issued, there could not have been any contract without payment which was immediately followed by the issuance of Exh. A and which to all intents and purposes, was the evidence of the contract itself, without Exh. A it would not have been possible to sue the Respondent as the Appellant had done. I must say I derive no assistance from the cases they cited in their brief, in the circumstances therefore, it follows that Exhibit A necessarily formed part of the contract between the parties as found by the trial High court and confirmed by the Court of Appeal.**

The learned trial judge had expressly made a finding that Exh. A was an integral part of the contract between the parties when on page 45 of the G record he stated thus -

*"I do not agree with the submission of the learned counsel for the plaintiff, that "Ext.A" was not an integral part of the contract between the parties and that "Ext. A" was issued after the contract was concluded, the contract was concluded only with the issuance and acceptance of "Ext.A" and there could never have been a contract between the parties, without Ext.A", it is the hob on which the agreement between the plaintiff and the defendant revolved and I hold that it is an integral part of the contract between the parties".*

I endorse the views expressed above, for the avoidance of doubt

Exh. A which was regarded by the Respondents as a vital piece of contractual document has printed at its bottom thereof as follows -

*"ALL tariff whether passenger, luggage, parcel goods, country produce, livestock etc., are carried subject to the Nigeria Railway Corporation Act 1955 and Bye-Laws, Tariff and Regulations made thereunder, copies of all of Which are available for examination, free of charge at every station. This document is evidence of contract as well as acknowledgment for any money paid"*

Exhibit A is therefore no doubt material being the only evidence of the contract between the parties herein. There is also no doubt that the Nigerian Railway Corporation Act, 1955 section 74 contains luggage liability limitations. So also does sections 6A (i) & (ii) of the Nigeria Railway Corporation Tariff NO.9 of 1981. They read thus -

*"74 (i) for the purpose of this section the expression "excepted articles" means articles which are declared as such by the corporation in any tariff or amendment thereto published by the corporation under the provisions of part XIV.*

*(2) When any excepted articles are contained in any parcel or package accepted for carriage by the corporation and the value of such articles exceeds ten pounds the liability of the corporation for the loss, damage, deviation, misdelivery, delay or detention of or to the articles in the parcel or package shall not exceed that sum, unless the value and contents of the parcel or package have been declared in writing by or on behalf of the consignor at the time of consignment.*

*(3) Where such value has been declared to exceed ten pounds, the corporation may impose an additional charge in respect of the increased liability or, if the value has been declared to exceed one thousand pounds, may either impose such additional charge or, notwithstanding the provisions of subsection (2), decline to accept liability in excess of ten pounds.*

*(4) The corporation may make it a condition of carrying a parcel or package declared to contain any excepted article that a railway servant authorized in that behalf shall have been satisfied, by examination or otherwise, that the parcel or package actually contains the article declared to be therein: provided that this subsection shall not apply to any parcel or package carried by the corporation for the posts and Telegraphs Department".*

*"6A. When any excepted articles specified in the schedule in section 7 are contained in any parcel or package corporation and the value of such articles exceeds twenty Naira the liability of the corporation for the damage, deviation, misdelivery, delay or detention of or to the articles in the*

parcel or package shall not exceed that sum unless;-

( i) The value and contents of the parcel or package have declared in writing by or on behalf of the consignor at the time of consignment, and

( ii) The consignor or his Agents on his behalf has paid or engaged to pay over and above the charge for carriage at Railway Risk, an additional charge as provided for in subsection D of this section in respect of increased responsibility.”

The learned trial judge on page 42 of the record, rightly in my view, found that the Appellant’s wearing apparels delivered to D. W. I at Aba Railway station on 9\3\84 came under “Excepted Articles” and that as such, the Appellant was supposed to have completed a prescribed form declaring the contents and value of his packages as well as paying any premium charged thereof. He then posed the vital question which is - whether or not the Appellant was bound by the above limitation or exclusion clauses pleaded and relied upon by the Respondent. And on pages 50 after examining some decided authorities, he came to the conclusion, wrongly though, that because the “Limitations laws” were not specifically drawn to the attention of the Appellant by D. W. I when the packages were weighed and that because courts are reluctant to hold a person bound by any “exemption” or “condition” unless that person is aware of it or his attention has been specifically drawn to it, the Appellant was not bound by the “condition” clauses.

On appeal the court of Appeal carefully scrutinized the evidence and the relevant laws pleaded and relied upon by the Respondents and came to the conclusion that the Appellant was bound by the provisions of those laws which formed part of the contract between the parties as stated in Exhibit A issued to the Appellant by the Respondent.

After holding that the statutory provisions referred to in Exhibit A were rightly incorporated into the contract, the court of Appeal. (Per Mukhtar J. C. A. ) then proceeded to Observe on page 118 of the record as follows -

“It is clear from the face of Exhibit ‘A’ that the Value of the package has not been declared as stipulated by the provision above. The contents and weight of the packages are written on the waybill all right but their value are not inserted. As the value of the contents exceed N20 and the plaintiff failed to declare the actual value and subsequently pay an additional charge in respect of increased responsibility, the above provision has been Violated and a claim exceeding N20 as was contained in the statement of claim did not arise. On the point of whether the Appellant gave reasonable notice to the other party of the part so incorporated by reference, I will refer to chitty on contract, 25th Edition, Paragraph 742 on page 407, where reasonable sufficiency of notice was discussed. It reads-

*"The question whether the party tendering the document has done all that was reasonably sufficient to give the other notice of the conditions is a question of fact in each case, in answering which the tribunal must look at all the circumstances and the situation of the parties. But it is for the court as a matter of law, to decide whether there is evidence for holding that the notice is reasonably sufficient. Cases in which the notice has been held to be insufficient have been those where the conditions were printed on the back of the document without any reference or any adequate reference, on its face such as "for conditions, see back" , or where the conditions were obliterated by a printed stamp. In many situations, however, the tender of printed conditions will in itself be sufficient".*

As I have already observed, the conditions in this case were right on the face of Exhibit A."

**I think the court of Appeal was right. The notice on Exh. A clearly stated that copies of all statutory provisions referred to therein were available for examination free of charge. It is also contained therein that Exh. A is the evidence of contract as well as acknowledgment of any money paid, which was N9.00 in this case. There was no evidence from the Appellant that copies of the laws, bye-laws or tariffs were not available for inspection as stated in Exhibit A. The record also clearly shows that the Respondent had consistently not denied liability in the case but rather had maintained throughout that It was only liable to the tune of N20 per packet in view of the provisions of the said statutory provisions.**

**The principle or doctrine of incorporation by reference is one that is frequently applied in the construction of documents where from the documents or document produced by the parties, it is clear that some other evidence must have been in the contemplation of the parties. In such a case the document put forward compels the court to look beyond and ascertain precisely the other evidence which by necessary implication the parties must have had in their minds at the time of the contract. Exh. A in this case and the evidence give thereon points unequivocally to the laws referred to therein (Exh. A) as forming part of the contract. (See for a example NORTHERN ASSURANCE CO. LTD V. WURAOLA (supra).**

Paragraphs 3 & 5 of the statement of Defence read -

*"3. The defendant admits the fact contained in paragraphs 1 and 3 of the statement of claim and further avers that the Nigerian Railway corporation Act 1955 Cap. 139 laws of Nigeria Volume 5 together with the Nigerian Railway Tariff NO. 9 in force as from 1st January, 1981 regulate the contractual Obligations of the defendant with other outside parties including the plaintiff. The defendant hereby pleads the Nigerian Railway Corpo-*

ration Tariff No.9.

5. The defendant, in addition to the averment contained in paragraph 4 above, contends that the plaintiff's consignment come under Excepted Articles in the Tariff already pleaded, the value of which he failed to disclose to the defendant on 9th March When he allegedly handed over his B goods at Aba".

Before the case was filed in court as stated earlier in this Judgment, the Respondent had by letter dated 23\10\84 (Exhibit G) addressed to the Appellant, offered to pay him the sum of N40.00 (forty Naira) being the maximum liability of the Corporation\ Respondent in respect of the undeclared C missing packages in accordance with the tariff regulations. The offer was rejected by the Appellant .

Certainly, the Appellant could not have paid the prescribed premium unless he was so charged and told what the premium was. At the same time, the Respondent also could not have charged and told the Appellant what the D premium was unless he (the appellant) had told them on a prescribed form the nature and Value of the goods he was carrying, D. W. I (Francis Ekwenye ) testifying in court said;

"I Weighed the three packages together and they weighed 130 kg ..... I charged him N9.00 for the weight of the three packages E ..... If the plaintiff had wanted me to examine the goods/packages, he would have to fill a form called TC. 30 . He will declare the Value of the contents of the packages on the Form TC. 30."

Under cross-examination he continued-

"If the plaintiff had told us the value of the contents of the pack- F ages, I Would have assessed the packages on the Value and he would pay the premium on the value. If the plaintiff had told us that the packages were valued N40,500.00 we would have assesses the contents at N3,324.00 .....".

D. W. 2 (Benjamin Onyeforo Ejimofe) also stated in evidence thus- G " In cases of "declared goods", the owner declares the contents by filling a form called Form TC.30 in which he declares all the contents of the bag or parcel and he pays premium' ..... The plaintiff's goods or bags were not "declared goods" ..... The premium is paid by the owner of the goods at 80 kobo for every N100.00 declared and for every H distance of 200 km, ....."

**The Appellant clearly failed to declare the value of the goods but merely weighed them and paid for the weight, and not the value. That was against the laws of the Nigerian Railways. He was bound to fail as he did. I believe the conclusion herein would have been the same whether or not the**

**Appellant was an Old customer of the Respondent transporting goods through it, because then each transaction would have been a separate and distinct contract.** And there being no evidence here that previous receipts if any, issued to him were exactly the same as Exhibit A herein, coupled with the fact that there was also no evidence that the Appellant had ever in the past, lost his goods and had claimed against the Respondent as in this case, past dealings between the parties cannot be relied upon to fix the Appellant with the notice of the exclusion clauses herein.

This is what the plaintiff himself had to say on the issue under cross-examination on page 24 of the record-

*"I had been using the Railway to transport my goods before this 9th day of March 1984. I received "Exhibit A" When I paid the N9.00 at Aba Railway station ..... I did not declare the Value of the contents in writing to the Railway Official at Aba Railway station. The Railway Official did not examine the packages. ...."*

**On the whole, I think in the circumstances, the lower courts were right when they held that Exh. A was the contract between the parties in this case. The Court of Appeal was also right when it held that the parties were bound by the conditions and or exclusions contained therein and that the Appellant had notice or was presumed to have notice of such conditions and or exclusions.**

In conclusion, I find no merit in the appeal. It is accordingly dismissed with costs of N1,000.00 in favour of the Respondent. The Judgment of the court of Appeal is hereby confirmed.

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#### WALI JSC

I have read before now the lead judgment of my learned brother Kutigi, J. S. C. and I agree with him, and for the same reasons contained therein I also hereby dismiss the appeal. N1,000.00 costs is awarded to the respondent against the appellant.

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#### OGUNDARE JSC

I have had the privilege of reading in draft the judgment of my learned brother Kutigi JSC just delivered. I agree with the conclusion reached by him that this appeal be dismissed. I only wish to add a few words.

The learned trial Judge made the following findings of fact with which the court of Appeal is in agreement, that is:

(a) that the plaintiff delivered three packages containing wearing apparels to the defendants at Aba on 9th of March 1984;

(b) that the plaintiff at the time did not declare the content and value

of the packages to the defendant;

(c) that plaintiff did not pay extra premium for the risk.

The area of disagreement between the trial High Court and the Court of Appeal is as to Whether the defendant could take advantage of the exemption clauses in section 74 of the Nigerian Railway Corporation Act. The trial High Court relying on some English authorities held that the defendant could not. The court of Appeal held to the contrary. I have considered the English authorities relied on by the learned trial Judge, with profound respect to him the fact in these cases were not on all fours with the facts in the present case. For instance, in McCutcheon V. David Machrayne Ltd. (1964) 1 WLR 125, a motor car was delivered to a shipping company at its pier for carriage from the Hebrides to the mainland, the owner's agent receiving a receipt for freight paid. The ship sank through the negligence of the ship's servant and the car was a total loss. In an action by the owner to recover a replacement value, the company contended that they were absolved from liability for negligence in accordance with the terms of the conditions of carriage displayed at their office. Their normal practice in accepting goods for shipment was to give the consignor a receipt for the freight paid and a "risk note". The receipt stated; "passengers, passenger's luggage and livestock are carried subject to the condition specified in the company's sailing bill. Notices and Announcements". The "Risk Note" consisted of a print of the conditions of carriage with a docquet signed by the consignor agreeing to ship the goods "on the conditions stated above". In previous similar transactions with the company, the car owner or his agent had sometimes signed a "Risk Note", but on the present occasion no "Risk Note" was issued or signed. Although both the car owner and his agent knew that certain conditions of carriage were normally imposed neither knew specifically what they were. It was held by the House of Lords (England) that this was an oral contract and the conditions relied on were not imported into it so as to exempt the company from liability for negligence. In the absence of any contractual document, the consignor of goods cannot, by a course of previous dealing, be bound by conditions of which he is generally aware but the specific terms of which he has no knowledge. In the present case the plaintiff was issued with Exhibit 'A' on which was written;

*"All Traffic, Whether passenger, Luggage, Parcels, Goods, Country Produce, Livestock etc. Carried are subject to Nigeria Railways Corporation Act 1955 and Bye-laws, Tariff and Regulations made thereunder, Copies of all of which are available for examination free of charge at every station. This document is evidence of a contract as well as acknowledgment for any money paid.*

*All charges are subject to revision by Chief Accountant, Ebute Metta”.*

This is what the learned trial Judge said about Exhibit 'A':

*“In the case before me, the contract was concluded as soon as the plaintiff accepted ‘Exh. A’ from DWI and to the extent, ‘Ext A’ was an integral part of the contract between the parties.*

*I do not agree with the submission of the learned counsel for the plaintiff, that Exh. A was not an integral part of the contract between the parties and that ‘Exh A’ was issued after the contract was concluded, the contract was concluded only with the issuance and acceptance of Exh. A’ and there could never have been a contract between the parties, without ‘Exh. A it is the ‘Hob’ on which the agreement between the plaintiff and the defendant revolved and I hold that it is an integral part of the contract between the parties.*

*The answer to the second question is not difficult, it has never been an issue between the parties that the plaintiff did not sign ‘Exh A’ (i.e. the Receipt for the N9.00 paid). Only the Agent of the defendant corporation (i.e. DWI) signed for the defendant, in any case, there is no column in the ‘Receipt’ (as is usually provided in other Receipt-books) Where the plaintiff could have signed his name, if he had wanted to do so, but as I have said above, the plaintiff accepted the Receipt (Waybill) and pocketed it and it is an integral part of the contract between the parties, irrespective of whether the plaintiff signed it or not”.*

I think the above passage is conclusive in so far as the defendant’s liability is concerned. The learned trial judge was wrong in applying English authorities that are not relevant to the facts of the present case. Since the Act, the Bye-Laws, Tariff and Regulations were pasted at the Railway station, the plaintiff was presumed, at least to have Notice of them. He ought to have declared the value of his goods to the defendant’s servant when sending those goods to Bukuru. Having failed to do that he has himself to blame and I think the court below was right in holding that the defendant could take advantage of the exemption clauses in the Act and Tariff and Regulations made thereunder.

For the reasons given above and the fuller reasons given in the judgment of my learned brother Kutigi JSC I too dismiss this appeal with costs as assessed by him

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**MOHAMMED JSC**

I agree that this appeal has no merit and ought to be dismissed. My learned brother, Kutigi, J. S. C., has considered all the issues canvassed in this appeal and reached a conclusion with sound reasoning which I adopt as mine.

I have nothing more to add. The appeal is accordingly dismissed with costs as assessed in the lead judgment.

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### IGUHJSC

I have had the privilege of reading in draft the leading Judgment just delivered B by my learned brother, Kutigi, J. S. C. and I agree that this appeal is devoid of substance and should be dismissed.

It cannot be seriously argued that sections 74 and 98 of the Nigeria Railway Corporation Act Cap. 139, 1955 (now Cap. 323, Laws of the Federation of Nigeria, 1990) and section 6A (i) and (ii) B and C of the Nigeria Railway Corporation Tariff No. 9 of 1981 published pursuant to section 80 of the Nigeria Railway Corporation Act were not integral part of the contract between the parties. As Learned counsel for the respondent, Chief Muoma, rightly submitted, the said statutory provisions were expressly incorporated into the contract between the parties under the doctrine of incorporation by reference D and the appellant would be deemed to have had actual notice of their existence at the time the contract of carriage was entered into. Besides, there is the clear admission by the appellant that he had been using the respondent corporation in the past to convey his goods before the 9th March, 1984 on which date the contract in issue was entered into.

E Additionally there is also the waybill, Exhibit A which both the learned trial Judge and the court below rightly held to be an integral part of the relevant contract between the parties. The conditions of the contract were conspicuously written right on the face of the said Exhibit A as follows -

F *"All traffic whether passenger, luggage, parcels, goods, country-produce, livestock etc. carried are subject to the Nigeria Railways Corporation Act 1955 and Bye-laws, Tariff and Regulations made there - under, copies of all of which are available for examination free of charge at every station"*

The appellant accepted the said conditions of the contract on the G face of his waybill, Exhibit A. It is clear to me that he cannot now be heard to feign ignorance of its contents. See Vivian Younger and Bond Ltd. v. Osman El Tayeb and Bros (1960) 5 F.S.C. 280; (1960) S. C. N. L. R. 621. The appellant, without doubt, is firmly bound by the statutory provisions governing his contract with the respondent which constituted integral part of the condition H of the contract between them.

The Nigeria Railway Corporation Act referred to in Exhibit A contains luggage liability limitation as stipulated in section 74 of the said 1955 Act. Cap. 139 as well section 6A, B and C of the Nigeria Railway Corporation Tariff NO. 9 of 1981. These provide as follows -

*“S.74 (2) When any excepted articles are contained in any parcel or package accepted for carriage by the corporation and the value of such articles exceeds twenty Naira, the liability of the Corporation for the loss, damage, deviation, misdelivery, delay or detention of or to the articles in the parcel or packing shall not exceed that sum, Unless the Value and contents of the parcel or package have been declared in writing by or on behalf of the consignor at the time of consignment”.* B

74 (3) When such value has been declared to exceed twenty Naira the Corporation may impose an additional charge in respect of increased responsibility”. (Underlined Supplied for emphasis)

Section 6 of Tariff 9 of 1981 then states-

*“A. When any excepted Articles specified in the schedule in section 7 are contained in any parcel or package and the value of such articles exceeds twenty Naira the liability of the corporation for the damage, deviation, misdelivery, delay or detention of or to the Articles in the parcel or package shall not exceed that sum unless;-* C

*(i ) The value and contents of the parcel or package have been declared in writing by or on behalf of the consignor at the time of consignment, and* D

*( ii ) The consignor or his Agent on his behalf has paid or engaged to pay over and above the charge for carriage at Railway Risk, an additional charge as provided for in subsection D of this section in respect of increased responsibility”.* (Underlined supplied for emphasis) E

Dealing with whether the above statutory provisions were complied with by the appellant, the court of Appeal commented -

*“It is clear from the face of Exhibit A that the value of the package has not been declared as stipulated by the provision above. The Contents and weight of the packages are written on the waybill all right, but their are not inserted. As the value of the contents exceed N20 and the plaintiff failed to declare the actual value and subsequently pay an additional charge in respect of increased responsibility, the above provision has been violated and a claim exceeding N20 as was contained in the statement of claim did not arise “.* F G

I agree entirely with the above observations of the court below and fully endorse them. In my view the appellant’s claim stands defeated for non-compliance by him with the said statutory provisions. H

It is for the above and the more elaborate reasons contained in the leading Judgment of my learned brother that I, too, dismiss this appeal. I abide by the order for cost contained in the leading Judgment.