

COURT OF APPEAL  
KADUNA DIVISION  
24TH JUNE, 1999. CA/K/126/97  
CORAM :- R. D. MUHAMMAD, V. A. O. OMAGE,  
O. O. OBADINA, JJCA

|                         |       |            |
|-------------------------|-------|------------|
| KABO AIR LIMITED        | ..... | APPELLANT  |
| AND                     |       |            |
| GARBER BENEDICT OLADIPO | ..... | RESPONDENT |

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***AVIATION LAW*** - Carriage by air - The Carriage by Air Order, 1953 - Applicability - Notwithstanding the omission of the order - From the revised edition of Laws of the Federation of Nigeria 1990 - It is still an existing and applicable law in Nigeria.

***AVIATION LAW*** - Carriage by air - Jurisdiction - Federal High Court - The only court having original exclusive jurisdiction on aviation matters - Is the Federal High Court.

***CARRIAGE BY AIR*** - Liability - Non international flight - Liability of the carrier - In the event of any loss of luggage - Is governed by Article 22 (2) of the 1953 Order.

***CARRIAGE BY AIR*** - Liability of the carrier - Loss of Luggage - What the claimant must plead and prove - Before the liability of the carrier could be determined.

***CONSTITUTIONAL LAW*** - Jurisdiction - Unlimited jurisdiction of High Court - Sections 230 and 236 of the 1979 Constitution are not in conflict - And the High Court of a State has an unlimited jurisdiction - Save as conferred on the Federal High Court by section 230 of the Constitution.

***LEGISLATION*** - Enactment - Omitted from the revised edition of the

*Laws of the Federation of Nigeria, 1990 - Validity of - By the combined effect of s. 3 (1) and (2) of Decree No. 21 of 1990 - The fact that an enactment is omitted from the schedule of the Revised Edition - Does not affect the subsistence and validity of such an enactment.*

**STATUTES** - *Conflict - Jurisdiction - Federal High Court - Inconsistency in the provisions of Decree No. 60 of 1991 and Decree 107 of 1993 - There is no conflict in the provisions.*

**STATUTES** - *Interpretation - Rule of construction - Courts will decline to read into any enactment - Words which are not to be found there - And which will alter its operative effect.*

### **FACTS**

The Plaintiff/Respondent claimed at the Kaduna State High Court against the Defendant/Appellant the sum of N600,000 as special damages for the cost of all items contained in a missing luggage and N200,000 as general damages. On 30th December, 1994 the Respondent boarded an afternoon flight a Boeing 727 belonging to the Appellant who are aircraft operators from Kaduna to Lagos. On board the aircraft his luggage was checked in at the luggage check-in area and he was issued a luggage tag by the officials of the Appellant. On disembarking in Lagos, the Respondent discovered that his luggage was not actually checked into the aircraft he boarded. He lodged a complaint at the appellant's Lagos Airport office. He was advised that the luggage would be put on board the next flight to Lagos from Kaduna. Thereafter all efforts made to trace the luggage was to no avail. The Respondent therefore instituted this suit against the Appellant and claimed the aforesaid sum. At the trial the Appellant was not represented. The Respondent led evidence. The trial court entered judgment against the appellant for the sum of N287,000 (two hundred and eighty-seven thousand naira) as special and general damages.

When the Appellant became aware of the judgment, it brought an application before the trial High Court to set the judgment aside. The application was dismissed. Dissatisfied the Appellant has now appealed

against the judgment to the Court of Appeal, Kaduna Division. The appeal was determined based on the two issues raised by the Appellant.

**ISSUES FOR DETERMINATION**

*"(1) Whether the carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order, 1953 which laid down the rules of Warsaw convention regulating (Non-International Carriage by Air is an existing and applicable law in Nigeria which governs the transaction of Non-International Carriage by Air between the appellant and the respondent in this case.*

*(2) Whether the subject matter of the case between the appellant and the respondent is such which by virtue of Decree No. 60 of 1991 and other existing laws falls within the exclusive jurisdiction of the Federal High Court and as such this case was incompetent before the Kaduna State High Court and the judgment delivered thereof a nullity."*

**HELD** (Unanimously allowing the appeal per Lead Judgment of **OBADINA JCA**).

***Legislation - Enactment***

1. When section 3 (1) and section 3 (2) of the Revised edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 are read together, it would appear the fact that an enactment is omitted from the schedule of the Revised Edition (Authorised Omissions) Order, 1990 does not affect the subsistence and validity of the enactment. Section 3 (2) of the Decree clearly says enactments omitted in accordance with section 3 (1) of the Decree shall have the same force and validity as if they had not been omitted in the revised edition. Section 3 (2) of the Decree makes it mandatory that the enactments so omitted shall have the same force and validity as if they had not been omitted.

The golden or literal rule of interpretation of statutes which is often resorted to by courts is to the effect that words used in the statutes are given their ordinary and plain meaning. In the instant case, section 3 (2) of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990, in its ordinary meaning does not deprive the enactments omitted in accordance with section 3 (1) of the Decree of subsistence and

validity, clearly and expressly, section 3 (2) of the decree specifically gives validity to the enactments omitted in accordance with the provision of section 3 (1) of the Decree. To deprive such enactments of validity is to read into section 3 (1) of the Decree what the Decree does not intend.

B Awolowo v. Shagari (1979) 6-9 S.C. 51 at 90-92. (p. 1423 G)

***Aviation Law - Carriage by air***

2. It is therefore my view that notwithstanding the omission of the 1953 Order, that is, "The Carriage by Air (Non-International Carriage) (Colonies, Protectorates, and Trust Territories) Order, 1953" from the revised edition, Laws of the Federation of Nigeria, 1990, the Order is still, by virtue of the combined provisions of section 3 (1) and (2) of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 an existing and applicable law in Nigeria. See: Joseph Ibidapo v. Lufthansa Airlines (1997) 4 SCNJ at 19; (1997) 4 NWLR (Pt. 498) 124 where a similar Order regulating international carriage of goods and passengers, namely - The Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953, was held by the Supreme Court to be existing and applicable in Nigeria. The Order was equally omitted from the Laws of the Federation 1990. (p. 1424 E)

F ***Carriage by Air - Non International flight***

3. In the event of any loss of luggage in a Non-International Flight, the liability of the carrier, that is the airline, is governed by Article 22 (2) of the 1953 Order. (p. 1425 F)

G ***Statutes - Interpretation***

4. It is a cardinal rule of construction of statutes that statutes should be construed according to the intention expressed in the statutes themselves. If the works of the statutes are themselves precise and unambiguous, then, no more is necessary than to expound the words in their natural and ordinary sense. The words of the statutes alone, in such a case, best declare the intention of the lawmaker. Courts will decline to read into any enactment or statute words which are not to be found there and which

will alter its operative effect. See: Prince Francis Gbadebo Adewole v. Festus Ibidapo Adesanoye & Oths. (1998) 3 NWLR (Pt. 541) 175 at 198. (p. 1426 E)

***Carriage by Air - Liability of the carrier***

B

5. Now, on the face of Article 22 (2) of the Order, it is quite plain from the language of the Order that the order has limited the liability of the carrier in respect of destruction, loss or damage of a luggage to the sum of 250 Francs per kilogram. Therefore, before the liability of the appellant could be determined, the trial court must first of all determine the weight of the lost luggage. From the context of Article 22 (2) of the Order, the liability of an airline, and in this case, the appellant is predicated on the declared total weight of the luggage lost by the respondent. Therefore the claimant who is the respondent in this appeal must plead and prove the weight of his lost luggage. Otherwise, there would be no basis of assessment and award of damages. (p. 1426 H)

C

D

***Constitutional Law - Jurisdiction***

E

6. In that regard it is my view that sections 230 and 236 of the Constitution are not in conflict contrary to the submission of the learned counsel to the respondent. The High Court of a State has an unlimited jurisdiction, save as conferred on the Federal High Court by section 230 of the Constitution. (p. 1431 C)

F

***Carriage by air - Jurisdiction***

7. In the circumstances the combined provisions of sections 7 (1) (1) of Decree No. 60 of 1991; 236 of the Constitution of the Federal Republic of Nigeria 1979 and 230 (1) (k) of the Constitution of the Federal Republic of Nigeria (as amended by Decree No. 107) of 1993, are so clear and unambiguous, and they leave no one in doubt that the only court having original exclusive jurisdiction on aviation matters, including carriage of passengers and goods, is the Federal High Court. - See: Sudan Airways Co. Ltd. v. Surajo Mohammed Abdullahi (1998) 1 NWLR (Pt. 532) 156 at 164. (p. 1433 G)

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H

***Statutes - Conflict - Jurisdiction***

8. I cannot see any conflict or inconsistency in the provisions of Decree No. 60 of 1991 and Decree 107 of 1993. Section 236 of the 1979 Constitution is clearly subject to the provisions of section 230 of the same Constitution as amended by Decree No.107 of 1993. Section 236 1979 Constitution clearly says so itself. I refuse to buy the argument proffered by the learned counsel for respondent. In my view the basic principle of interpretation of statutes such as the one involved in this appeal is that the golden or literal rule of interpretation whereby words used in the statutes are given their ordinary and plain meaning, is resorted to by courts. - Sudan Airways Co. Ltd. v. Abdullahi (Supra) at 146; Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597 at 617.

In conclusion it is my view that the combined provisions of Decrees No. 60 of 1991 and No.107 of 1993 have given an enhanced and exclusive jurisdiction to the Federal High Court in causes and matters connected with or pertaining to aviation, safety of aircraft and carriage of passengers and goods by air and meteorology. The Kaduna State High Court has no jurisdiction to hear and determine the suit in this appeal. (p. 1434 C)

**NOTABLE POINT OF INTEREST**

**OMAGE JCA**

*1. The incoherent state of our laws.*

Such unfortunately is the incoherent state of our laws, that even a legal practitioner as shown in the Respondent brief was sure of the state of the law that he recorded. It looked right on the face of it, yet with all the knowledge and efforts of the learned counsel and through no fault of his, he is wrong. How can anyone believe that you revoke one law one minute, and the next minute you say the revoked law is still valid and effective. The two provisions one which omitted the imperial statute from our laws and the order which makes the same law effective and valid in Nigeria were made on the same day and they both have the same commencement date 20th July, 1990.

By the ordinary rules of interpretation of statutes since the time

when the law was made is not stated, the construction favourable to the existence of the law will avail. It avails it cannot be said that the legislation (Carriage by Air, Non International Carriage (Colonies, Protectorates and Trust Territories Orders) 1953 though an imperial statute is no longer part of our laws in Nigeria. Because an order by Decree No. 21 1990 B made by our head of state enabled the said law to be applicable on our shores. It is therefore a law made by order in Nigeria. I am of the view as expressed above and I so rule that the enactment Carriage by Air, Non International Carriage Colonies Protectorates and Trust Territories Order C 1953 is applicable in Nigeria. (p. 1438 H)

### **REPRESENTATION**

O . T. Nnadi - for the Appellant

G. N. Okonkwo - for the Respondent

D

### **CASES REFERRED TO**

Awolowo v. Shagari (1979) 6-9 S.C. 51 at 90-92

Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622 at E 64-642

Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597 at 617

Ibidapo v. Lufthansa Airlines (1997) 4 SCNJ at 19; (1997) 4 NWLR (Pt. 498) 124

F

Adewole v. Adesanoye (1998) 3 NWLR (Pt. 541) 175 at 198

Ahmed v. Kassim (1958) SCNLR 28

Adesina v. Lemonu (1965) 1 ANLR 233

Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513

G

Madukolu v. Nkemdilim (1962) 2 SCNLR 341

Alli v. CBN (1997) 4 NWLR (Pt. 498) 192

Egypt Air v. Abdullahi (1997) 1 NWLR (Pt. 528) 179

### **STATUTES REFERRED TO**

H

Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 s. 3

Carriage by Air (Non-International Carriage) Colonies, Protectorates and

Trust Territories) Order 1953) r . 3, Art. 22

Federal High Court Act, Cap 134, Laws of the Federation of Nigeria, 1990, ss. 7 and 8 (i)

Federal High Court (Amendment) Decree No. 60 of 1991; ss. 2 and 7

B Admiralty Jurisdiction Decree No. 59 of 1991; ss. 1 (i) (c) and 4

Constitution of the Federal Republic of Nigeria, 1979; ss. 230 and 236

Constitution (Suspension and Modification) Decree No. 107 of 1993; ss. 1 (3); 16 (1) and 230 (i) (k).

C

**LEAD JUDGMENT BY OBADINA JCA**

This is an appeal against the judgment of Kaduna State High Court sitting at Kaduna. The appellant is an Airline company, while the respondent was a passenger.

D In his statement of claim, the plaintiff, now the respondent claimed against the defendant, who is now the appellant that he, the respondent, boarded the Aircraft of the appellant on the 30th December, 1994 as a fare paying passenger from Kaduna to Lagos. On boarding the said Aircraft, E his luggage was checked in at the luggage check - in areas and he was issued a luggage tag by the officials of the appellant. On disembarking in Lagos, the respondent discovered that his luggage was not actually checked into the Aircraft he boarded. He lodged a complaint at the appellant's F Lagos Airport office. He was advised that the luggage would be put on board the next flight to Lagos from Kaduna. After so much search of the appellant's office in Lagos the respondent's luggage could not be traced.

The respondent claimed that his mission to Lagos was to attend a family wedding ceremony as well as his family new year celebration. He G could not attend the wedding and had to cut short his end of the year vacation and returned to Kaduna. He therefore instituted this suit against the appellant. He claimed (N600,000) six hundred thousand naira as special damages and (N200,000) two hundred thousand naira as general dam- H ages.

At the trial appellant was not represented. The respondent led evidence and judgment was entered against the appellant in favour of the respondent for (N287.000) two hundred and eight-seven thousand naira

for special and general damages.

When the appellant became aware of the judgment, it brought application before the lower court to set the judgment aside. The application was refused and dismissed.

The appellant being dissatisfied with the judgment of the court B below has appealed to this court. The appellant filed two (2) grounds of appeal upon which he formulated two issues for determination.

The issues are as follows:-

"(1) *Whether the carriage by Air (Non-International Carriage) C (Colonies, Protectorates and Trust Territories) Order, 1953) which laid down the rules of Warsaw convention regulating (Non-International Carriage by Air is an existing and applicable law in Nigeria which governs the transaction of Non-International Carriage by Air between the appellant and the respondent in this case.* D

(2) *Whether the subject matter of the case between the appellant and the respondent is such which by virtue of Decree No. 60 of 1991 and other existing laws falls within the exclusive jurisdiction of the Federal High Court and as such this case was incompetent before the Kaduna E State High Court and the judgment delivered thereof a nullity."*

The respondent also formulated three (3) issues for determination, namely:-

"(1) *Whether the Carriage by Air (Non-International Carriage) F (Colonies, Protectorates, and Trust Territories) Order, 1953 is applicable in the circumstances of this case?*

(2) *Whether Decree No. 60 of 1991 operates to deprive the High Court of Kaduna State the unlimited jurisdiction retained by Decree No. 107 of 1993?*

"(3) *Whether the High Court of Kaduna State had jurisdiction to G entertain the claim?"*

At the hearing of the appeal, the learned counsel on both sides adopted their respective briefs of argument.

A reading together of issue No. 1 formulated by the appellant H and issue No. 1 formulated by the respondent seems to show that they are all raising the same issue, namely:- Whether the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territo-

ries) Order of 1953 is an existing law and applicable in this case.

Similarly, a look at the issue No. 2, formulated by the appellant and issues Nos. 2 and 3 formulated by the respondent also clearly shows that they are identical in substance and they all deal with the same issue as to whether the State High Court, Kaduna, has jurisdiction to hear and determine the case filed before it by the respondent.

I am therefore of the view that the issues as formulated by the appellant in this case are sufficiently adequate to enable the court dispose of all the issues for the determination of the appeal in this case. I will therefore consider the issues one by one.

In his argument, the learned counsel for the appellant referred to issue No. 1 raised in his brief, namely, "whether the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order 1953) (here in after called the 1953 Order) is an existing and applicable law in Nigeria which governs the transactions of Non-International Carriage by Air between the appellant and the respondent" and submitted that notwithstanding the omission of the 1953 Order from the revised edition, Laws of the Federation, 1990, the 1953 Order is still an existing and applicable law. He referred to section 3(1) and (2) of Decree No. 21 of 1990.

He referred to the statement of claim of the respondent and submitted that the carriage embarked upon by the respondent was not an international flight and it was governed by the 1953 Order.

In answer to the submission of learned counsel to the appellant, the learned counsel for the respondent also referred to section 3(1) of Decree No. 21 of 1990 and submitted that the 1953 Order was omitted from the Laws of the Federation 1990 and is therefore not an existing law. He said the Order had been removed from the statute book. He referred to section 3(1) of Decree No. 21 of 1990 and submitted that to accept the appellant's contention would lead to absurdity.

It is common ground between the parties that the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order 1953, i.e. the 1953 Order, was in existence and applicable before the promulgation of the Revised Edition (Laws of the Federation

of Nigeria) Decree No. 21 of 1990.

The appellant is however contending that the said 1953 Order is still an existing and applicable law; while the respondent says since the 1953 Order was omitted from the schedule to the Revised Edition (Authorised Omission) Order, 1990, the 1953 Order has been removed from the statute book. He relied on section 3(1) of Decree No. 21 of 1990. The question therefore is whether the 1953 Order is still an existing and applicable law.

Under section 3(1) of the Decree No. 21 of 1990. The Attorney-General of the Federation may by order specify a schedule of enactments which the Law Revision Committee may not include in the revised edition of the laws of the Federation of Nigeria, 1990 on the ground that such enactments are:-

- (a) Obsolescent or
- (b) of a temporary nature or
- (c) under revision with a view to replacement or
- (d) of restricted or personal application.

However, section 3 (2) of Decree No. 21 of 1990, seems to have contemplated that some enactments may be omitted without necessarily being obsolescent, or of a temporary nature or under revision with a view to replacement or of restricted or personal application. Section 3 (2) of the Decree provides as follows:-

*"Enactment omitted in accordance with subsection (1) of this section shall have same force and validity as if they had not been omitted in the revised edition."*

Although the 1953 Order is omitted from Revised Edition (Authorised omission) Order, 1990, section 3 (1) of Decree No. 21, 1990 seems to have saved it from being irrelevant or obsolete.

**When section 3 (1) and section 3 (2) of the Revised edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 are read together, it would appear the fact that an enactment is omitted from the schedule of the Revised Edition (Authorised Omissions) Order, 1990 does not affect the subsistence and validity of the enactment. Section 3 (2) of the Decree clearly says enactments omitted in ac-**

cordance with section 3 (1) of the Decree shall have the same force and validity as if they had not been omitted in the revised edition. Section 3 (2) of the Decree makes it mandatory that the enactments so omitted shall have the same force and validity as if they had not been omitted.

The golden or literal rule of interpretation of statutes which is often resorted to by courts is to the effect that words used in the statutes are given their ordinary and plain meaning. In the instant case, section 3 (2) of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990, in its ordinary meaning does not deprive the enactments omitted in accordance with section 3 (1) of subsistence and validity, clearly and expressly, section 3 (2) of the Decree of specifically gives validity to the enactments omitted in accordance with the provision of section 3 (1) of the Decree. To deprive such enactments of validity is to read into section 3 (1) of Decree what the Decree does not intend. Awolowo. v. Shagari (1979) 6-9 S.C. 51 at 90-92; Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt. 91) 622 at 641-642; Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597 at 617.

It is therefore my view that notwithstanding the omission of the 1953 Order, that is. "The Carriage by Air (Non-International Carriage) (Colonies, Protectorates, and Trust Territories) Order, 1953" from the revised edition, Laws of the Federation of Nigeria, 1990, the Order is still, by virtue of the combined provisions of section 3(1) and (2) of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 an existing and applicable law in Nigeria. See: Joseph Ibidapo v. Lufthansa Airlines (1997) 4 SCNJ at 19; (1997) 4 NWLR (Pt. 498) 124 where a similar Order regulating international carriage of goods and passengers, namely- The Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953, was held by the Supreme Court to be existing and applicable in Nigeria. The Order was equally omitted from the Laws of the Federation 1990.

The learned counsel for the appellant referred to the statement

of claim of the respondent and submitted that the carriage alleged to have been embarked by the respondent, not being an International Flight was governed by the said 1953 Order. He urged the court to determine the liability and rights of the parties under the order.

In paragraphs 3,4,5,18 and 19 of the statement of claim (pages 4-6) of the record, the respondent boarded an afternoon flight from Kaduna to Lagos on an Air craft of the appellant company. He luggage was checked in at the luggage check-in area and he was issued a luggage tag attached to the ticket. On disembarking in Lagos, the respondent discovered that his luggage was not put on board the flight he came down with. He therefore claimed against the appellant company the sum of (N600,000) six hundred thousand naira as special damages being the cost of all the items alleged to have been missing and a sum of (N200,000) two hundred thousand naira as general damages.

The carriage alleged to have been embarked upon by the respondent, being from Kaduna to Lagos, was no doubt not an International flight and was therefore governed by the 1953 Order.

Rules 3 of the Order provides as follows:-

*"(3) Subject to the provisions of Articles 5 of this Order, the provisions of the First Schedule to the Act, adapted and modified as set out in the second schedule to this Order, shall apply to all carriage by air, not being International Carriage by Air as defined in the First Schedule to the Act."*

**In the event of any loss of luggage in a Non-International Flight, the liability of the carrier, that is the airline, is governed by Article 22(2) of the 1953 Order.** It provides as follows:-

*"Article 22(2) Subject to the provisions of paragraph (4) of this article in the carriage of luggage of which the carrier takes charge and of cargo the liability of the carrier in respect of destruction, loss or damage is limited to a sum of 250 francs per kilogram."*

Article 22(4) referred to in article 22(2) above, provides that the carrier and the passenger may by special contract in writing agree to a limit of liability higher than that specified in article 22(2) of the Order.

In his argument, the learned counsel for the appellant referred to

article 22 of the Order and submitted that before the liability of the appellant could be determined in this case, the trial court must first determine the weight of the lost luggage. He submitted that in the context of Article 22(2) of the Order, the liability of an airline company in the event of loss of luggage is predicated on the declared total weight of the lost luggage. He said the claimant, that is, the respondent in this case, must plead and prove the weight of the lost luggage. He submitted that since the respondent did not plead the weight of his alleged lost luggage, the trial court was in error in awarding the sum of (287,000) two hundred and eighty seven thousand naira as damages to the respondent.

Article 22(2) of the Order is very clear and unambiguous. It says "In the carriage of luggage of which the carrier takes charge and of cargo, the liability of the Carrier in respect of destruction, loss or damages is limited to a sum 250 francs per kilogram." Article 22(4) of the Order makes very clear the circumstances when the liability of the carrier can be higher or lower than a sum of 250 Francs per Kilogram of the lost luggage; and that is, when the carrier and the passenger or the carrier and the consignor, as the case may be, by special agreement in writing agreed to a limit of liability higher than that specified in article 22 of the Order.

**It is a cardinal rule of construction of statutes that statutes should be construed accordingly to the intention expressed in the statutes themselves. If the works of the statutes are themselves precise and unambiguous, then, no more is necessary than to expound the words in their natural and ordinary sense. The words of the statutes alone, in such a case, best declare the intention of the lawmaker. Courts will decline to read into any enactment or statute words which are not to be found there and which will alter its operative effect. See: Prince Francis Gbadebo Adewole v. Festus Ibidapo adesanoye & Oths. (1998) 3 NWLR (Pt. 541) 175 at 198; Ahmed v. Kassim (1958) SCNLR 28; Adesina v. Lemonu (1965) 1 ANLR 233; Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513.**

Now, on the face of Article 22(2) of the Order, it is quite plain from the language of the Order that the order has limited the liability of the carrier in respect of destruction, loss or damage of a

**luggage to the sum of 250 Francs per kilogram. Therefore, before the liability of the appellant could be determined, the trial court must first of all determine the weight of the lost luggage. From the context of Article 22(2) of the Order, the liability of an airline, and in this case, the appellant is predicated on the declared total weight of the luggage lost by the respondent. Therefore the claimant who is the respondent in this appeal must plead and prove the weight of his lost luggage. Otherwise, there would be no basis of assessment and award of damages.**

The respondent's statement of claim before the trial court is at pages 4-6 of the record of appeal. None of the nineteen (19) paragraphs of the statement of claim says anything about the weight of the lost luggage.

The respondent as plaintiff at the court trial, gave evidence as PW 1 at pages 9-11 of the record of appeal. He did not give any evidence of the weight of the lost luggage.

In the absence of any evidence before the trial court establishing the weight of the lost luggage in accordance with Article 22(2) of the 1953 Order, I think there was no evidence and basis before the learned trial judge upon which the award made by him was predicated. It is only upon determining the weight of the lost luggage that the trial court can award damages at the rate of 250 Francs or its Naira equivalent per kilogram of the lost luggage.

In the circumstances, I am of the view that since the learned trial judge did not comply with the provisions of Article 22(2) of the Carriage by Air (Non-International Carriage) (Colonies, Protectorates, and Trust Territories) Order, 1953, herein before referred to as 1953 Order, in this judgment, by basing his award on the weight of the lost luggage, the trial judge was in error and the award cannot stand.

The second issue raised for determination is whether in view of the subject matter of the suit, the Kaduna State High Court has jurisdiction to hear and determine the suit.

In his argument, the learned counsel for the appellant referred to the Federal High Court (Amendment) Decree No. 60 of 1991; Section 1 (1) (c) and section 4 of the Admiralty Jurisdiction Decree No. 59 of 1991

and section 230 (1) (k) of the Constitution (Suspension and Modification) Decree No. 107 of 1993 and submitted that the trial court lacked the jurisdiction to entertain the subject matter of this case, the same being and pertaining to aviation, carriage of passengers and goods by air.

B The learned counsel for the respondent in his argument also referred to Decree No. 60 of 1991; the Constitution (Suspension and Modification) Decree No. 107 of 1993 and section 230 (1) of the Constitution of the Federal Republic, 1979 and submitted that section 16 (1) of Decree No. 107 modified Decree No. 60 of 1991 to bring into conformity  
C with the 1979 Constitution as modified by Decree No. 107 of 1993, section 1 (3). He said Decree No. 107 of 1993 does not modify section 230 (1) of the Constitution to invest jurisdiction in the Federal High Court in respect of damage or loss resulting from negligence by an Airline as in  
D this case. He submitted that the State High Court has an unlimited jurisdiction, since section 236 of the Constitution has not been modified or amended by Decree No. 107 of 1993. He said Decree No. 107 of 1993 are in conflict so that effect should not be given to both Decrees. He  
E submitted that the State High Court had jurisdiction to hear and determine the suit the subject matter of this appeal. He urged the court to dismiss the appeal.

The importance of jurisdiction of court in the adjudication of cases  
F cannot be over emphasised. Jurisdiction is the spinal cord of a court of law. Any decision taken by a court without jurisdiction is no decision at all and is subject to being nullified on appeal - Madukolu v. Nkemdilim (1962) 2 SCNLR 341.

G The issue for determination is whether the subject matter of the suit between the appellant and the respondent namely - "damages for loss of missing luggage in an aircraft of the appellant boarded by the respondent falls within the exclusive jurisdiction of the Federal High Court or whether the Kaduna State High Court which heard and determined the  
H suit was competent to do so.

The Federal High Court was established by the Federal High court Act, 1973, now, Cap. 134 of the Laws of the Federation of Nigeria, 1990. Section 7 of the Act, specifies the jurisdiction vested in the court,

inter-alia as follows:-

*"7 (1) The Court shall have and exercise jurisdiction in civil causes and matters -*

*(a) relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;*

*(b) connected with or pertaining to -*

*(i) the taxation of companies and of other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation,*

*(ii) customs and excise duties,*

*(iii) banking, foreign exchange, currency or other fiscal measures;*

*(c) arising from -*

*(i) the operation of the Companies and Allied Matters Act or any other enactment regulating the operation of companies incorporated under the Companies and Allied Matters Act;*

*(ii) any enactment relating to copyright, patents, designs, trade marks and merchandise marks:*

*(d) of Admiralty jurisdiction.*

(2) .....

(3) .....

(4) .....

Section 8 of the Act, provides: -

*"8(1) In so far as jurisdiction is conferred upon the Court in respect of the causes or matters mentioned in the foregoing provisions of this part of this Act, the High Court or any other court of a State or of the Federal capital Territory, Abuja shall, to the extent that jurisdiction is so conferred upon the Court, case to have jurisdiction in relation to such causes or matters."*

A cursory look at section 7 of the act, clearly shows that the jurisdiction of the Federal High Court at its inception did not include causes and matter connected with or pertaining to "aviation, safety of aircraft and carriage of passengers and goods by an aircraft."

The jurisdiction conferred by section 7 of the Federal High court Act, 1973 were however firmed by section 230 of the Constitution of the Federal Republic of Nigeria, 1979 as amended. It provides as follows:-

B *"230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or Decree, the Federal High court shall have and exercise jurisdiction.*

C *(a) in such matters connected with or pertaining to the revenue of the government of the federation as may be prescribed by the National Assembly; and*

*(b) in such other matters as may be prescribed as respects which the National Assembly has powers to make laws."*

The 1979 constitution goes on to say in section 236:-

D *"236(1) subject to the provision of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal*  
E *right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or order liability in respect of an offence committed by any person."*

F Section 7 of the Federal court act, 1973, conferred jurisdiction in certain causes and matters on the federal High Court. Section 8(1) of the said Act, goes on to say that the High Court of a State or of the Federal Capital Territory, Abuja, shall cease to have jurisdiction in relation to such causes and matters in resect of which jurisdiction has been conferred on the Federal High Court. Section 230 of the 1979 Constitution confirmed the jurisdiction so conferred on the Federal High Court Act, 1973.  
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Section 236 of the 1979 Constitution specifically says that

H *"Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High court of a State shall have unlimited jurisdiction....."*

When section 7 and 8 of the Federal High Court Act, sections

230 and 236 of the 1979 Constitution as amended are read together, it seems to me that the unlimited jurisdiction conferred upon a State High Court by section 236 of the Constitution is clearly and certainly subject to the jurisdictions conferred by section 7 of the Federal High Court Act, 1973 as ratified and confirmed by section 230 of the same 1979 Constitution. The phrase "Subject to the provision of this Constitution" used in section 236(1) of the 1979 Constitution, means that the foregoing or the other provisions of the Constitution shall prevail over the provisions in section 236, should there be any conflict between the provisions of section 236 and any other provisions of the Constitution. - See: Tretel on Interpretation of Statutes, 3rd Ed. Page 112, parag. 63. B C

**In that regard it is my view that sections 230 and 236 of the constitution are not in conflict contrary to the submission of the learned counsel to the respondent. The High Court of a State has an unlimited jurisdiction, save as conferred on the Federal High Court by section 230 of the Constitution.** D

However, in 1991, the Federal High Court (Amendment) Decree No. 60 of 1991 amended the Federal High Court Act, 1973. E

Section 2 of the Federal High Court (Amendment) Decree No. 60 of 1991 (hereinafter) called "Decree No. 60 of 1991" provides as follows:-

*"(2) For section 7 of the principle Act, there shall be substituted the following new section, that is - Original Jurisdiction -* F

*7(1) The Court shall to the exclusion of any other court have original jurisdiction to try civil causes and matters connected with or pertaining to:-*

*(a).....*

*(b).....* G

*(c).....*

*(1) aviation, safety of aircraft and carriage of passengers and goods by air and meteorology."*

By virtue of section 7(1) (1) of the Federal High Court Act, as amended by H Decree No. 60 of 1991. The Federal High Court has Exclusive jurisdiction in causes and matters connected with or pertaining to safety of aircraft, carriage of passengers and goods by air and meteorology. The

original jurisdiction of the Federal High Court in relation to carriage of passengers and goods by Air is clearly to the exclusion of the State High Court, in view of section 7(1)(1) of the Federal High Court as amended by decree No. 60 of 1991.

B Section 7(5) of the Federal High Court 1973 as amended by Decree No. 60 of 1991 provides as follows:-

"7(5) *Notwithstanding anything to the contrary contained in any other enactment or rule of law including the Constitution of the Federal Republic of Nigeria, any power conferred on a State High Court or any other court of similar jurisdiction to hear and determine any civil matter or proceedings shall not extend to any matter in respect of which jurisdiction is conferred on the Court under the provisions of this section.*"

Section 7(6) of the Act (as amended) says:-

D "*Any decision made after the commencement of this section by any court of law in any purported exercise of any power under the Constitution of the Federal Republic of Nigeria or of any Federal or State law, shall, as from the date of making the decision be null and void if it-*

E (a) *has declared the decision invalid or the Court in competent to exercise exclusive jurisdiction in respect of any of the matters specified under subsection (1) or (2) of section 7 of this Act before it was substituted by this section; or*

F (b) *has conferred or purported to confer on any other court, apart from the Court, concurrent jurisdiction in respect of matters specified under section 7 of this act before it was substituted by this section.*"

"The Court" mentioned in section 7 above is the Federal High Court.

G A critical analysis of section 7(5) of the Act, (as amended) clearly shows that the makers of the Amendment Decree No. 60 of 1991 knew there could be certain other enactments or rule of law and in particular the Constitution of the Federal Republic of Nigeria, conferring power on a State High Court or some other courts of similar jurisdiction to hear and H determine some of the causes and matters in respect of which exclusive jurisdiction is by the said Decree No. 60 of 1991 conferred on the Federal High Court. The makers of the decree make it clear that such power shall not extend to causes and matters in respect which exclusive juris-

diction is conferred on the Federal High Court. Section 7 (1) (1) and 7 (5) are very clear and unambiguous.

As if the issue of exclusive jurisdiction of the Federal High Court as provided by Decree No. 60 of 1991 in respect aviation matters is not clear enough, the Constitution (Suspension and Modification) Decree No. 107 of 1993, amended section 230 of the Constitution of the Federal Republic of Nigeria 1979 and makes the exclusiveness of the jurisdiction of the Federal High Court in such matters very clear. It provides:-

*"Jurisdiction: 230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters arising from:-*

(a).....

.....

(k) aviation and safety of aircraft."

Section 230 of the Constitution opens with the phrase "notwithstanding anything to the contrary in this Constitution," while section 236 of the constitution opens with the phrase "subject to the provisions of this Constitution."

The meaning of the two phrases within the context in which they are used is that should there be any conflict in the provisions of the two sections, the provisions in section 230 shall prevail - See Cross Interpretation of Statutes, 3rd Ed. Page 205: Para. 85.

In that regard, the unlimited jurisdiction conferred by section 236 shall be subject to the exclusive jurisdiction conferred by section 230(1)(1) of the Constitution (as amended) by Decree No. 107 of 1993, with respect to matters connected with or pertaining to aviation, safety of aircraft and carriage of passengers and goods by aircraft.

**In the circumstances the combined provisions of sections 7(1)(1) of Decree No. 60 of 1991; 236 of the Constitution of the Federal Republic of Nigeria 1979 and 230 (1) (k) of the Constitution of the Federal Republic of Nigeria (as amended by Decree No. 107) of 1993, are so clear and unambiguous, and they leave no one in doubt**

that the only court having original exclusive jurisdiction on aviation matters, including carriage of passengers and goods, is the Federal High Court. - See: Sudan Airways Co. Ltd. v. Surajo Mohammed Abdullahi (1998) 1 NWLR (Pt. 532) 156 at 164; Alli v. CBN (1997) 4 NWLR (Pt. 498) 192; Egypt Air v. Abdullahi (1997) 1 NWLR (Pt. 528) 179. Therefore, I think, the arguments and submissions of the learned counsel for the respondent that decree No.107 did not modify or amend section 236 of the 1979 Constitution; that Decree No.107 did not modify section 230 (1) of the 1979 Constitution to cloth the Federal High Court with jurisdiction relating to damage or loss as a result of negligence by an airline, and that Decrees No. 60 of 1991 and No.107 of 1993 are repugnant to each other so that effect should not be given to either of the two Decrees; lack substance and do not require examination. I cannot see any conflict or inconsistency in the provisions of Decree No. 60 of 1991 and Decree 107 of 1993. Section 236 of the 1979 Constitution is clearly subject to the provisions of section 230 of the same Constitution as amended by Decree No.107 of 1993. Section 236 1979 Constitution clearly says so itself. I refuse to buy the argument proffered by the learned counsel for respondent. In my view the basic principle of interpretation of statutes such as the one involved in this appeal is that the golden or literal rule of interpretation whereby words used in the statutes are given their ordinary and plain meaning, is resorted to by courts. - Sudan Airways Co. Ltd. v. Abdullahi (Supra) at 146; Fasakin v. Fasakin (1994) 4 NWLR (Pt. 340) 597 at 617.

In conclusion it is my view that the combined provisions of Decrees No. 60 of 1991 and No.107 of 1993 have given an enhanced and exclusive jurisdiction to the Federal High Court in causes and matters connected with or pertaining to aviation, safety of aircraft and carriage of passengers and goods by air and meteorology. The Kaduna State High Court has no jurisdiction to hear and determine the suit in this appeal.

Accordingly, the appeal succeeds. I therefore, declare the judgment delivered by the Kaduna State High Court dated 4th of March, 1996

and the ruling given thereunder dated 18th of June, 1996 and all the proceedings relating to the suit a nullity and are hereby set aside. I strike out the claims of the respondent before the High Court, Kaduna State. The appeal is accordingly allowed. (N2,000) two thousand naira costs to the appellant.

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### **MUHAMMAD JCA**

I have read before now the judgment of my Lord Obadina, J.C.A, just delivered. He had thoroughly and exhaustively dealt with all the issues raised in this appeal. I agree with his reasonings and conclusion. The combined effect of Section 2 of the Federal High Court (Amendment) Decree No. 60 of 1991 and the Constitution (Suspension and Modification) Decree No.107 of 1993 is to confer on the Federal High Court exclusive jurisdiction to try matters connected with or pertaining to aviation safety of aircraft and carriage of passengers and goods by air. Since the issue relates to carriage of a passenger and goods by the air, only the Federal High Court can try the matter. The Kaduna State High Court has no jurisdiction to try the matter. I too will allow the appeal with N2,000.00 costs to the appellant.

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### **OMAGE JCA**

The plaintiff now Respondent claimed at the lower court against the defendant appellant the sum of N600,000 as special damages for the cost of all the items contained in a missing luggage and N200,000 as special damages when on 30th December, 1994, the Respondent boarded an afternoon flight a Boeing 727, belonging to the appellant who are aircraft operators, between Kaduna and Lagos. On boarding the aircraft Respondent averred that his said luggage was checked in at the luggage check in area, in Kaduna and was issued a luggage tag. On disembarking in Lagos, the appellant said, he discovered that his luggage was not actually checked into the aircraft he boarded. When he lodged a complaint at the office of the appellant at the Lagos airport, he was enjoined to await the next flight

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but that his luggage was traced to everywhere to no avail despite all the searches. The Respondent claimed the said sum. The claim went to trial in the absence of the appellant who did not deny that he was served the process of the court. The appellant however denied knowledge of the court proceedings saying he came to know of the judgment of the court through a newspaper article in the Democrat on Friday 29/3/96. The information the appellant said caused the appellant to ask its lawyer to seek in court an order to set aside the judgment of the court against the appellant. A fuller recital of the facts of this appeal is contained in the lead judgment of my learned brother O . O. Obadina, J.C.A. I merely state here a resume of the facts sufficient to facilitate the issues on which I make this contribution.

The court below, the High Court Kaduna State in considering the case of the appellant after evidence of Respondent was tendered at the trial awarded in favour of the Respondent the sum of two hundred and eighty seven thousand naira (287,000) as special and general damages.

The appellant was aggrieved by the judgment, and he filed two grounds of appeal from which two issues below are formulated. The two issues for determination before this court formulated by the appellant are (1)

*"Whether the Carriage Protectorates and Trust Territories Order 1953 (which laid down the rules of Warsaw convention regulating non international carriage by air is an existing and applicable law in Nigeria which governs the transaction of non international carriage by air between the appellant and the Respondent in this case. Whether the subject matter of this case between the appellant and the Respondent is such which by virtue of Decree No. 60 of 1991 and other existing laws, fall within the exclusive jurisdiction of the Federal High Court and as such this case was incompetent before the Kaduna State High Court and the judgment delivered thereof a nullity."*

Adverting to issue one, the appellant has argued in this brief filed on 23/3/98 that the cited Imperial Act which was abrogated by the general provisions as contained in the Order on revised edition Order 1990 in schedule 1 part 2, has been made still valid by the provisions of sec. 3 (1) and (2) of Decree No. 21 contained in volume 1 page xxi Laws of the

Federation of Nigeria at page xxiii. The appellant argued that as the law is still valid the non international carriage by air is applicable in the case of the claim of the Respondent. In the lower court the maximum entitlement of the Respondent if he proved the loss of his luggage cannot exceed 250 francs per kilometer or its equivalent in local currency and to be so converted in round figures. In that circumstances, Appellant argued, it is necessary indeed imperative to plead the weight of the alleged lost luggage. As the trial court in his case did not require a plea of the weight of the lost luggage the court erred in law in awarding the sum of N267,000 to the Respondent. It is the submission of the appellant that the Kaduna High Court lacked jurisdiction to have proceeded with hearing of the plaintiff/Respondent case other than as provided for under the provisions of article 25(2) Carriage by Air, (Non International Carriage Colonies Protectorate and Trust Territories) Order 1953.

The Respondent who adopted the issues formulated by the appellant argued on issue 1, above that by provision of section 3(1) of the revised edition Laws of the Federation of Nigeria, Authorised Omission Order 1990 and the schedule thereto the law, Carriage by Air Non International Carriage (Colonies Protectorates and Trust Territories) Order 1953 was omitted from the Laws of the Federation as of 31st January 1990. The Appellant has submitted in his brief filed on 17/11/98 that the imperial order of 1953 has been expressly removed from the statute. The Carriage by Air Non International Carriage, (Colonies Protectorates and Trust Territories) Order 1953 was indeed excluded from the laws of the federation of Nigeria when by an order under the signature of the then President of Nigeria General I . G. Babangida, Order 21 1990 under the title, Revised Edition) Laws of the Federation of Nigeria commencing from 20th July 1990, it was issued as follows. "It shall not be necessary for the Law Revision Committee to include in the Revised Edition of the Laws of the Federation of Nigeria the following (a) all imperial enactments or statutes, or subsidiary matters appertaining to them which are no longer relevant to Nigeria as contained in parts (ii) and 3 of schedule, 1 to this Order. Carriage by Air, Non International Carriage (Colonies Protectorates and Trust Territories Order 1953 is contained in schedule 1

part 11 item 9 of the Laws of the Federation of Nigeria 1990 where the above is contained. It is also contained in volume 1 Laws of the Federation of Nigeria page XXVII. However by Decree No. 21 with a commencement date of 19th July, 1990 section 3 section 1 a, b, c, the explanation is contained in section 3, sub section 2 in section 3(1) it is provided as follows:-

*"The Attorney-General of the Federation may, by order, specify Schedule of enactments which it shall not be necessary for the Committee to include in the revised edition upon the grounds that such enactments are (a) obsolescent; (b) of a temporary nature; (c) under revision with a view to replacement; (d) of restricted or personal application."*

Sub section "2. Enactment omitted in accordance with sub-section (1) of this section shall have the same force and validity as if they had not been omitted in the revised edition." The law "Carriage by Air Non International Carriage Colonies Protectorates and Trust Territories Order 1953 is item 9 in schedule 1 part 2 of Decree No. 21."

The underlining was supplied by me for comments to the effect that the underlined words in the Decree show that the order made on the same 20th July 1990 purporting to have omitted the said law our laws, Order 21 made on the same day 20th July, 1990 affirmed that the same laws which are directed to be omitted from the laws of the Federation of Nigeria shall by the order of the Attorney General of the Federation of Nigeria shall not be omitted after all and "shall have the same force, and validity as if they had not been omitted in the revised edition." In the case of sub section 3 of Decree No. 21 the order of the Attorney General of the Federation need not even be waited because it said "Enactment omitted in accordance with sub-section 1 of this section. "Shall have force etc. Enactment No. 9 is the law under reference, and it is contained in schedule 1 in the law referred to it is right to conclude that the order of the Attorney General of the Federation provided in section 3(1) need not be awaited. Such unfortunately is the incoherent state of our laws, that even a legal practitioner as shown in the Respondent brief was sure of the state of the law that he recorded. It looked right on the face of it, yet with all the knowledge and efforts of the learned counsel and through no fault of his,

he is wrong. How can anyone believe that you revoke one law one minute, and the next minute you say the revoked law is still valid and effective. The two provisions one which omitted the imperial statute from our laws and the order which makes the same law effective and valid in Nigeria were made on the same day and they both have the same commencement date 20th July, 1990. B

By the ordinary rules of interpretation of statutes since the time when the law was made is not stated, the construction favourable to the existence of the law will avail. It avails it cannot be said that the legislation (Carriage by Air, Non International Carriage (Colonies, Protectorates and Trust Territories Orders) 1953 though an imperial statute is no longer part of our laws in Nigeria. Because an order by Decree No. 21 1990 made by our head of state enabled the said law to be applicable on our shores. It is therefore a law made by order in Nigeria. I am of the view as expressed above and I so rule that the enactment Carriage by Air, Non International Carriage Colonies Protectorates and Trust Territories Order 1953 is applicable in Nigeria. The learned trial judge in Kaduna State High Court was in error when he failed to consider the provisions of article 22(5) of the said order which requires the weight of a lost luggage to be compensated at the rate of 250 francs per kilogram. When therefore the trial court pronounced judgment in favour of the Respondent on the provisions of ordinary contract or on common law in the case before him, a matter exclusive to the jurisdiction of the Federal High Court he exceeded his jurisdiction and erred in law. In my view the ground of appeal on issue one should succeed. It succeeds. D E F

Issue 2 in the appellants brief is "whether the subject matter of the case between the appellant and the Respondent is such which by virtue of Decree No. 60 of 1991 and other existing laws fall within the exclusive jurisdiction of the Federal High Court and as such this case was incompetent before the Kaduna High Court, and the judgment delivered thereof a nullity." The Respondent brief as in issue one adopted issue 2, as his own but argued that the unlimited jurisdiction of the State High Court is retained by the Decree No.107 of 1993 and that in any case Decree No.107 did not modify section 230 (1) k, to cloth the Federal High Court with the G

jurisdiction relating to the damage; or loss as a result of negligence by airline as in the instant case. To resolve the essence of the arguments created by the amendment of the 1979 Constitution section 230 by the Decree 107 of 1993. Which effects the issue of the jurisdiction of the State High Court, and to determine in this case, not whether the jurisdiction of the State High Court is limited or not, that issue is one of the constitution and as the 1979 Constitution has been revised with amendments renamed 1999 Constitution it will be futile to proceed with the elucidation of the 1979 Constitution. What the court should determine has been meticulously analysed in the lead judgment of my learned brother Obadina, J.C.A., it is determine whether the master or claim in the instant case in the court below comes within the jurisdiction of the Kaduna State High Court. To do this an appraisal of Decree No. 60 of 1991 is necessary. Decree 60 of 1991 is an amendment Decree to the Federal High Court Decree, section 7(1) thereof provides as follows 7(1) "The court shall to the exclusion of any other court have original jurisdiction to try all causes and matters connected with and pertaining to (1) Aviation, safety of aircraft and carriage of passengers and goods and meteorology."

In my view nothing can be clearer, when the law above say carriage of passengers and goods shall be the exclusive jurisdiction of the Federal High Court. All other courts including a court of unlimited jurisdiction are excluded from hearing any claim arising from carriage by air passenger and goods. The result is that the State High courts in the instant case, Kaduna State High Court had no jurisdiction to adjudicate on the plaintiff's claim. In the event, I am in agreement with the findings and conclusions in the lead judgment that the appeal should succeed on the two grounds of appeal. It succeeds. The judgment of the lower court in favour of the Respondent is hereby set aside. I abide by the consequential orders made by my learned brother O. O. Obadina, in this appeal.

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