

HH 28-03  
HC 2925/98  
CHRIS ROBERTS  
versus  
AIR ZIMBABWE CORPORATION

HIGH COURT OF ZIMBABWE  
HUNGWE J,  
HARARE, 15 November, 2002 and 26 February, 2003

STATED CASE

*F Mutamangira* for the plaintiff  
*F Girach* for the respondent

**HUNGWE J:** The plaintiff was a passenger aboard Flight UM 14176 from Harare to London on 9 September, 1997. He had luggage. The defendant airline was to convey the luggage together with the plaintiff to London.

When the plaintiff got to London, he failed to get his luggage. It was lost. Plaintiff accepted payment of \$4 694,28 from the defendant. He sued for UK£3068,00 and Z\$368 550,00 for the lost luggage and loss of earnings.

At the pre-trial conference stage it was agreed that the following question be placed before the Court as a stated case.

1. Is the contract between the parties governed by the Carriage by Air Act [Chapter 13:04]?

In his heads of argument Mr *Mutangamira* argued that in terms of section 7(2) of the Carriage by Air Act [Chapter 13:04], the Court, has a discretion when adjudicating in claims brought to enforce liability which is limited by Article 22 of the Geneva Convention. The limitation imposed by Article 22 of the Convention is a guide but not a strict limitation as such a limitation is qualified by the use of the words "just and equitable" in subsection (2). So he argued.

There is no substance in this argument. It is clearly misplaced and misdirected.

To begin with the use of the words "just and equitable" in section 7(2) are restricted to the procedural options open to a Court where there is a possibility of a carrier facing a multiplicity of suits, either in Zimbabwe or elsewhere.

Secondly, the Act itself is clear and unambiguous in its limitation of liability. Section 7(1) states:

"It is hereby declared that the limitations on liability in Article 22 of the Convention apply whatever the nature of the proceedings by which liability maybe enforced and that in particular -

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- (a) those limitations apply where proceedings are brought by a wrongdoer to obtain a contribution from another wrongdoer; and
- (b) the limitation for each passenger in paragraph (1) of that Article applies to the aggregate liability of the carrier in all proceedings which may be brought against him in Zimbabwe together with any proceedings brought against him outside Zimbabwe".

For the defendant, Mr *Girach* argued that the golden rule of interpretation, which is that a court is bound to give effect to the express provisions of a statute, must be applied unless that leads to his ambiguity. It would lead to an absurdity if that same provision were to be read as implying that where justice and equity required it, a Court could make an award greater than the limitation allowed.

I agree. A perusal of the Act is revealing.

The preamble of the Act reads,

"An Act to enable effect to be given to the Warsaw Convention of 1929, as amended by the Hague Protocol of 1955 concerning international carriage by air...".

By section 3 of the Act the Convention was adopted as domestic law of Zimbabwe. The purpose of the Convention, among other things, is to limit the liability of air carriers. Article 22 expressly limits the liability of a carrier by air. It is unequivocal. The plaintiff did not argue otherwise. In terms of Article 22 the only circumstance where a carrier by air is liable to a higher limit is where by special contract, that carrier has agreed to be so bound. The plaintiff has not alleged the existence of any such special contract. There would be little purpose served by this Act if it were possible to claim an amount higher than the prescribed limit. This is an international convention. Zimbabwe is a signatory to it. Zimbabwe is obliged to apply the letter and spirit of the convention.

In the circumstances the answer to the State case is that the contract between the parties is governed by the 1929 Warsaw Convention as amended by the Hague Protocol of 1944 as adopted into domestic law by the Carriage by Air Act [Chapter 13:04].

It is ordered that -

**Plaintiff is to pay the costs of this application.**

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***Mudambanuki and Associates* , applicant's legal practitioners  
*Rainor Robinson* , defendant's legal practitioners**