

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA  
SITTING IN ITS MARCH TERM, A.D. 2024

BEFORE HER HONOR: SIE- A-NYENE G. YUOH.....CHIEF JUSTICE  
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YUSSIF D. KABA.....ASSOCIATE JUSTICE  
BEFORE HIS HONOR : YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE

Kenya Airways, Ltd. by and thru its, General )  
Manager, Managers, Comptrollers, Supervisors )  
and all those acting under its authority of the )  
City of Monrovia, Republic of Liberia.....Appellant )

Versus ) APPEAL

Counsellor Abraham Wade Simpson of the City )  
of Monrovia, Liberia.....Appellee )

GROWING OUT OF THE CASE: )

Cllr. Abraham Wade Simpson of the City of )  
Monrovia, Liberia.....Plaintiff )

Versus ) ACTION OF DAMAGES  
FOR WRONG

Kenya Airways, Ltd. by and thru its, General )  
Manager, Managers, Comptrollers, Supervisors )  
and all those acting under its Authority of the )  
City of Monrovia, Republic of Liberia )  
.....1<sup>ST</sup> Defendant )

And )

Classic Travel Connections by and thru its )  
General Manager, Managers, Comptrollers, )  
Supervisors and all those acting under its )  
Authority of the City of Monrovia, County )  
Of Montserrado, Liberia.....2nd Defendant )

Heard: June 26, 2024

Delivered: August 27, 2024

MADAM JUSTICE WOLOKOLIE DELIVERED THE OPINION OF THE COURT

The appellee, plaintiff below, Counselor Abraham Wade Simpson, filed a damages lawsuit against Kenya Airways, Ltd., the appellant, and the Classic Travel Connections, as 2<sup>nd</sup> defendant at the court below. The appellee alleged that after purchasing a United States One Thousand Four Hundred Dollars (US\$1,400) ticket from Classic Travel Connections for a round trip from Monrovia to Uganda and back, he faced significant travel inconveniences on

his return trip to Liberia. The appellee narrated that he successfully traveled to Uganda on March 19, 2019, however, on his return leg to Monrovia, on April 10, 2019, he encountered problems at the Nairobi Airport in Kenya; that he was issued a boarding pass in Entebbe, Uganda for Nairobi, Kenya, and was told that he would get his final boarding pass from Nairobi to Monrovia at the airport in Nairobi; that upon his arrival in Nairobi, he was informed at the Kenya Airways counter that his ticket was suspended by his travel agency, Classic Travel Connections, so he could not continue his travel to Monrovia unless the agency lifted the suspension on his ticket, and if the suspension was lifted, he would have to pay an amount to be determined by the sales office of the appellant's Airlines.

The appellee further explained that he frantically called his wife and a workmate, Vivian Akoto, who introduced him to the travel agency, to inform the agency of the predicament he was in at the airport in Nairobi, considering that his flight was slated to leave in three hours, and if his scheduled flight left, the next flight to Monrovia would be twenty-four hours thereafter. His workmate Vivian contacted the travel agency and the agency denied suspending his ticket; both Vivian and the travel agency, then frantically tried to see what the problem was, considering the time his scheduled flight at Nairobi was going to leave. The agency brought to her attention that it was shown from the Kenya Airways log that the appellee during his trip on March 19, 2019, did not show up for his flight from Nairobi going onto Uganda and therefore his ticket was suspended by the appellant who put "No Show" on its travel log. Vivian Akoto called to inform him that Classic Travel Connections had denied suspending his ticket, stating that it was the appellant Airlines which had placed a suspension on his ticket, because of the "No Show," meaning that the appellee did not show up for the flight No. KQ420 to Entebbe on March 19, 2019.

The appellee immediately sent a photo of his boarding pass issued by the appellant for his onward trip from Nairobi to Entebbe on the same flight, and he arrived in Entebbe on the same day March 19, 2019. A "No Show" by the appellant was clearly an error.

The appellant's agent in Liberia, seeing the photo of the boarding pass that he sent, called the appellant in Nairobi, requiring the suspension be lifted to allow the appellee board the flight back, but by then, the flight had left. The appellee therefore became stranded at the Nairobi Airport for two nights without proper accommodations and under harsh circumstances, sleeping in the chairs at the airport.

The appellee's complaint further stated that the appellant required him to pay an additional United States Two Hundred & Fifty Dollars (US\$250.00) for it to open his ticket to travel to

Monrovia, even though the appellant had said earlier that only the Classic Travel Connections could open same. Considering that he was stranded at the airport, he asked the appellant's agents at the airport for some warm clothes, food and accommodation for the period of his stay in Nairobi but they refused; therefore he had to pay United States Forty Dollars (US\$40.00) to the Simba Lounge on April 10, 2019, to shower, eat and sleep from 9 a.m. to 5 p.m., and another United States Forty Dollars (US\$40.00) on April 11, 2019, to the Pride Lounge to shower, eat and sleep from 9 a.m. to 5 p.m. Thereafter, he had to spend the rest of the day and night in the opened terminal, considering that these lounges closed at 12 midnight.

Upon the appellee's return to Monrovia, he approached both the appellant Airlines and Classic Travel Connections (travel agency) to find out who was responsible for the suspension placed on his ticket. The Classic Travel Connections confirmed its denial suspending the appellee's ticket, informing the appellee that it was the appellant who had logged in a "No Show" on its log, stating that the appellee had not shown up for the trip from Nairobi to Entebbe on March 19, 2019. The appellant's Integrity Office whom the appellee was told to address his concerns to did not respond to the appellee's communication.

Based on the above, the appellee filed an Action for Damages for Wrong before the Sixth Judicial Circuit, Civil law Court, Montserrado County on April 18, 2019, against both the appellant Airlines and Classic Travel Connections. The appellee complained that he suffered severe body pains from sleeping on the hard chairs in the terminal as well as pains in both his sides because of the severe cold he had to endure from 05: 05 EAT (East African Time) April 10, 2019 to 8:10 EAT April 12, 2019; that he was deprived of sleep, could not change clothes because his baggage was checked in from Entebbe to Monrovia, and he was troubled that he could not resume work on April 11, 2019, due to the appellant's wrongful conduct.

The appellee prayed the trial court for special damages of Three Hundred and Sixty-five United States Dollars (US\$365.00) spent for ticket, food and other costs incurred while at the airport; general damages in an amount not less than Two Hundred Thousand United States Dollars (US\$200,000.00), and punitive damages in the amount of One Hundred Thousand United States Dollars (US\$100,000.00).

The appellant, Kenya Airways, filed a 3-count answer to the appellee's complaint. The appellant Airlines contended that an Action of Damages for Wrong would not lie against it because the appellee's allegations were baseless, unfounded, and lack any merit to be

entitled to the relief prayed for, and prayed the court to deny and dismiss the appellee's complaint.

The Classic Travel Connections (2<sup>nd</sup> defendant), failed to file an answer in the time indicated in the summons but filed a motion for enlargement of time along with an answer in which it stated that as a travel agency, it performed its part of the contract with the appellee when it issued the appellee his tickets; that it would be unthinkable for any reasonable person to think that the Classic Travel Connections would suspend the air ticket issued to the appellee in the absence of proof; such as, a letter, text, or email sent to it, stating a need for the ticket to be suspended. The 2<sup>nd</sup> defendant, Classic Travel Connection, therefore prayed the court to deny and dismiss the appellee's complaint against it. The trial court had earlier in its disposition of law issue ruled the Classic Travel Connections to bare denial, and we see no record in the file where the trial court entertained the Classic Travel Connections motion for enlargement of time to file its answer before proceeding to trial with the case.

The appellee filed his reply confirming the allegations made in his complaint, contending that the Action of Damages for Wrong would lie against the party defendants for the unlawful and inhumane treatment meted against him and as stated in his complaint.

After the exchange of pleadings, the case was ruled to trial on the issue of mixed law and facts. The trial began with the appellee who took the witness stand to testify. After the appellee had rested with his testimony, Classic Travel Connections filed a motion for judgment during trial. The travel agency stated in its motion that the appellee in his testimony had stated that the Classic Travel Connections sold him a round trip air ticket, and that it was valid as he had traveled on the ticket to Uganda, and accused the appellant Airlines of suspending his ticket on his return trip, which caused the appellee embarrassment and suffering; that it was only when the appellant Airlines had done its in-house investigation and found out that a mistake had been made regarding the "No Show", it had the suspension lifted and the appellee was able to travel back to Liberia.

The appellee who claims damages, the movant Classic Travel Connections said, had told the court and jury in his testimony that the Classic Travel Connections committed no damage as it was the appellant airlines that suspended his ticket and caused him pain and embarrassment for which he sought damages. Therefore, the Classic Travel Connections was entitled to judgment as a matter of law.

The trial court granted the motion, stating that the appellee himself had testified that it was the appellant that suspended his ticket and lifted it after it had been brought to their attention

that they had made a mistake of “no show” from Nairobi to Entebbe. This therefore shifted the burden of proof on the appellant Airlines.

The jury brought a liable verdict against the appellant Airlines after the parties rested with evidence, and held the appellant liable to pay the appellee United States Fifty Thousand Dollars (US\$50,000.00) as general damages, and United States Three Hundred and Thirty Dollars (US\$330.00) as special damages.

The appellant excepted to the verdict and filed a motion for new trial which the judge of the trial court denied and ruled, upholding the jury verdict for payment by the appellant of United States Fifty Thousand Dollars (US\$50,000.00) to the appellee. The judge in his ruling made no mention of the Three Hundred and Thirty Dollars (US\$330.00) that the jury had awarded the appellee as special damages, and we see that the appellee did not appeal from the judge’s ruling. What is not made a subject of appeal this court will not entertain. *Catholic Relief Services v. Natt*, 39 LLR 417 (1999).

The appellant excepted to the judge’s ruling and announced an appeal to this Court for review of errors which they alleged in a twenty-one (21) count bill of exceptions.

Firstly, the appellant urges this Court to find that the judge acted with prejudice when it discharged the 2<sup>nd</sup> Defendant Classic Travel Connections from the case, given that both the appellant and Classic Travel Connections were accusing one another of suspending the Appellee’s ticket, and same was subject to proof by the production of evidence to establish who suspended the ticket.

Our Civil Procedure Law 1: 26.2. *MOTION FOR JUDGEMENT DURING TRIAL*, states:

After the close of the evidence presented by an opposing party with respect to a claim or issue, or at any time on the basis of admissions, any party may move for judgement with respect to such claim or issue upon the ground that the moving party is entitled to judgment as a matter of law. The motion does not waive the right to trial by jury or to present further evidence even where it is made by all parties. If the court grants such a motion in an action tried by jury, it shall direct the jury what verdict to render, and if the jury disregards the direction, the court may in its discretion grant a new trial. If the court grants such a motion in an action tried by the court without a jury, the court as trier of the facts may then determine them and render judgment or may decline or render any judgment until the close of all the evidence. In such a case if the court renders judgment on the merits, the court shall make findings as provided in section 23.3(2).

We note that during the trial, the appellee took the stand to testify, and we hereby quote below relevant portions of the records of the appellee's testimony while being crossed-examined by the appellant's counsel:

Q. *So, you really did not know who suspended your ticket?*

A. *I know who suspended my ticket, and the person who suspended my ticket was Kenya Airways because they told me that because I did not travel from Nairobi to Entebbe, they put a "no show" and that was the meaning – that was the cause for which my ticket was suspended. That was what they said to me.*

Q. *Mr. Witness, other than the claim and counter claim between Kenya Airways and Classic Travel as to who was responsible for the cancellation or suspension of your ticket, do you have any other alternatives to confirm your conclusion that Kenya Airways suspended your ticket?*

A. *Well, yes, I have, because it is Kenya Airways that first told me that only Classic Travel Connections could have placed the suspension and Classic did not make the suspension because the Kenya Airways office in Monrovia after my contact went there said they would lift the suspension which they did; nobody else lifted it besides Kenya Airways.*

This Court has held a) That any party may move for judgment with respect to a claim or issue at the close of evidence by an opposing party; b) That any party may also move for a judgment at any time on the basis of admissions; c) That the moving party is entitled to such a judgment as a matter of law. (*Dopoe v. City Supermarket*, 34 LLR 343, 350 [1987]).

The appellee, who in this case brought the matter to court, designating the travel agency, *Classic Travel Connections*, as the 2<sup>nd</sup> defendant, but during trial admitted that it was not it that suspended his ticket, but the appellant Kenya Airways, and in this case, *Classic Travel Connections* then was entitled to judgment as a matter of law. The Judge therefore did not commit an error when he had *Classic Travel Connections* dropped. It was incumbent on the appellant to deny and prove during trial that it was not the one that suspended the appellee's ticket and thereby caused him distress and embarrassment as he narrated. The appellant however, we see, did not deny that it placed the suspension when it came to court and testified, but kept insisting that the appellee should have gone to the travel agency.

The appellant also assigned as error the trial judge's ruling concluding that the 2<sup>nd</sup> defendant travel agency was an agent of the appellant without any evidence of proof of the existence of an agency relations between the 2<sup>nd</sup> defendants.

Was the 2<sup>nd</sup> defendant *Classic Travel Connections Airways*, an agent of the appellant Kenya Airways when it sold a ticket to the appellee and booked a round-trip ticket from Monrovia to Uganda and back on the appellee's airlines?

Generally, airlines offer commission to travel agencies for selling their tickets but when one buys ticket from a travel agency, he/she is not buying the ticket directly from the airline, as the travel agency acts as an intermediary. So, if an issue arises about the ticket purchased, the agency should first be contacted. The appellant's second witness, Madam Passion Johnson Dayocollins, Station Manager of Arik, testified as to the practice of a travel agency's ticketing and its relationship with airlines. She testified to questions on the direct examination as follows:

Q. Madam witness, who is your employer and in what capacity do you serve?

A. I work with Arik Airline as Station manager.

Q. Madam Witness, as Station Manager, what are some of your duties, functions and responsibilities?

A. I manage the station in term of ticketing, in term of operation and salary payroll.

Q. Madam Witness, by that answer from your experience as station manager handling Airline Ticketing. What is the practice in term of ticket and the relationship with people within the airline?

A. In relation as to how we dealt with issue, we have cross border sale and this cross-border sale is a platform that allow people, some travel agency to have access to purchase tickets, booking online, we have something IATA house. They normally setup that platform that people can go and issue ticket. Another way, we have a contract that we signed with some travel agency that give them the right directly to issue our ticket. That is when the contract is signed by both parties the travel agency and the Airline the travel agency will now have to write the total cost to issue our ticket base on a commission. In the event there, there is a delay, the travel agency will be the one to directly contact the airline. For ticket issue online or thru other means without a contract signed directly, a passenger must return to issuance agent or maybe the platform in which they used. Also Ticket issued before departure should be reconfirmed within 72 hours before departure because sometimes there may be delays or misinformation.

As per the witness' answer above, unless the ticket agent is contracted by an airline to directly issue the airline's ticket, the travel agency is not an agent of that airline but only works on a commission basis for tickets sold for that airline. In this case, the appellee gave no evidence that the *Classic Travel Connections* was an agent of the appellant Airlines; hence, we do not agree that it was an agent of the appellant. But we must look at the evidence to determine which one of the entities suspended the appellant's ticket and got him bumped from his flight.

Further in her testimony, the appellant's witness, Madam Dayocollins, was asked by the court the following:

Q. Madam Witness, beside the issuance agency authority, does the airline for whom the ticket was bought also have authority to suspend ticket?

A. Yes.

The appellant's second witness Mr. Hubert Bark-Sarakwa, in his testimony imputed that the suspension could have been because the appellee did not reconfirm his return trip, considering that the airlines policy requires that one who has traveled on a round-trip ticket for more than fifteen (15) days must reconfirm his ticket before returning. In answer to the questions posed to him, he testified as follows:

Q. Mr. Witness, for the benefit of the trial jury, please say whether a person who has a flight for 6 segments, can have his ticket suspended at any of those segments?

A. Yes. If a person travel in the three segments, from Monrovia to Accra is one segment, from Accra to Nairobi is another segment. On their return most often, it is required that the owner of the tickets must reconfirm their flight so that someone will take their time to look thru their ticket to make sure that the return is complete. Failure to do this, a ticket which you originally have a date for can be suspended.

COURT'S QUESTION:

Q. Mr. Witness, you said issuing agent has the authority to cancel or revoke ticket, am I correct?

A. Yes

Q. Mr. Witness, by that answer does the airline also have that authority to revoke or cancel ticket that has been issue by the airline agency?

A. Yes.

We must now take recourse to the testimony of the appellee's witness, Ms. Atoko, during the direct examination to reach a conclusion as to whether it was the appellant who suspended the appellee's ticket. Ms. Atoko's testimony is found below:

Q. Mdm. Witness, you have come to testify in these proceedings that has to do with damage for wrong for and on behalf of the plaintiff. Please briefly state what you know about this case and what actually happened to your certain knowledge.

A. It was on April 10, 2019, I received a call from Cllr. Abraham Wade Simpson at about 2:45/3:00 in the morning thereabout. He said that he had a problem with his ticket, the one that he purchased from Classic Travel Agency. Just to go back a little bit, I was the one who recommended him to the Classic Travel Agency because I had done business with them previously. I had bought ticket from them before so when he called me that

morning, he had a situation at Kenya Airways desk, the officers at the desk were telling him that he could not come back home with this ticket. I know he went with this ticket because I drove him at the Airport, but he said he could not come back with this ticket so I was troubled at 3:00 in the morning and you get a call that somebody is stranded at the Airport. I woke up and contacted the ticket agent at Classic Travel Agency and he said it was so early he could not do anything about it but he will get back to me.

After a while he called me back (travel agent) and said he had gone through his system and the system was showing that there was "no show". He said that the system is saying that Cllr. Wade Simpson did not show up for his flight from Nairobi to Entebbe, I think; I am not too sure. So, he said that is what the system was saying and he was not the one who suspended the ticket; it was Kenya Airways who suspended his ticket. So, I am like, but the officers are saying that he cannot come, what can we do because he is stranded? He said I cannot do anything about it right now till morning and then I will reach out to Kenya Airways. To convince me further, he took a picture of this system and took a picture via WhatsApp and it showed "No Show" on the system, so we kept going back and forth till like 8:00 that morning. I left and went to the Travel Agency at the time Cllr. Simpson had sent me his boarding pass that they were claiming that he did not board the plane with. So, I took it at the Travel Agency and showed it to the guy and he started calling Kenya Airways. I thought I could not just sit there without doing anything knowing that the plane was about to pick up from Kenya to Monrovia, so I went to Kenya Airways on Randall Street and there was this person I came across but I cannot remember his name right now because it has been over 2 years. I met the ticket agent because the agent at Classic Travel Agency had sent me there, so I showed him everything I had and explained the situation to him, showed him the boarding pass that he [appellee] had used to travel with and which Kenya Airways was saying that he did not show up. I showed it to him [airlines agent] and then he realized that it was a mistake somewhere because he decided to call the office in Kenya. I was there when he called the office three different times and the office did not pick up so, he said to me, "you see that I'm calling them and they are not picking up, so go back and I will keep reaching out to them until they pick up so we can be able to rectify it." I said OK. I left their office around 12:00 pm or so, that was on the same April 10, 2019. After two hours, the guy at Kenya Airways called me and said they lifted the "no show" so I can tell Cllr. Simpson to be able to proceed to the desk, so I called him, and told him that (Kenya Airways) said they lifted the "no show" so he can proceed to the desk. And so far from my end that was what I did, and that is what I know."

The question that comes into mind is whether the appellee had his flight reconfirmed when he boarded from Entebbe to Nairobi. If not, why was this an issue considering that the return leg of his trip ended in Liberia and he was allowed to board in Entebbe?

Once a ticket is sold by a travel agency and confirmed by an airline, the airline has several responsibilities to the passenger: 1) to ensure that the flight departs and arrives on time; 2) to provide customer service related to the flight, such as, check-in, boarding, in-flight services, and handling any issues that arise during the journey; and 3) if there are any changes to the

flight schedule or cancellations, the airline is responsible for notifying the customer and providing alternatives, such as rebooking on another flight or offering a refund.

Why was Kenya Airways the one to lift the suspension when it had said earlier that only *Classic Travel Connections* who had placed the suspension on the ticket could lift it? It is still unclear to this Court why the traveling agency who having issued the appellee a round-trip ticket to travel by the appellant's Airlines and which the airlines had confirmed, would suspend the appellant's ticket in the middle of his return trip? Who in this case would record a "no show" in Nairobi since a "no show" happens at the airport where the traveler is supposed to report for boarding.

We must emphasize a significant aspect of the appellee witness's testimony as follows: "I left their office (Kenya Airways) around 12:00 pm or so, that was on the same April 10, 2019. After two hours, the guy at Kenya Airways called me and said they had lifted the 'no show.'" Did the airlines deny that it placed a "no show" on its travel log? This testimony by Ms. Atoko as well as that of the appellee that the suspension was lifted by appellant once it became clear that the appellee boarded all his flights to Entebbe and hence, the "no show" placed on the appellant's log was an error, was not denied or rebutted by the appellant.

The appellant having seen that the "no show" placed on its log was an error for which it wrongly suspended the appellee's ticket, it has raised the claim of the appellee's failure to reconfirm his ticket. This however cannot be an issue since the airline had the appellee board the flight in Entebbe and brought to Nairobi, being fully aware that the appellee's destination was Monrovia. He was placed on the flight and told to go on to the desk in Nairobi where he would obtain his boarding pass, and when he got to Nairobi and went for his boarding pass at the appellant's desk, it was when he was told that his ticket had been suspended. Our question is at what point was the reconfirmation needed?

Overbooking flights, now a common practice in the airline industry, is built on the assumption that there will be a certain percentage of no-show passengers on any given flight. While overbooking may benefit airlines financially, it can have significant negative consequences for passengers who are involuntarily bumped from a flight, where in most cases, they become stressed and frustrated, leading to an overall negative travel experience. A passenger who is being bumped normally incur expenses for alternative transportation, accommodation, or meals while waiting for the next available flight; besides the financial implication, he/she may miss out on an important meeting or event. As in this case, pursuing reimbursement from the airline can be a time-consuming and a frustrating process.

When faced with an overbooked flight, it is expected that an airline finds alternative solutions for the excess passengers. This can involve compensating bumped passengers, finding alternative flights, and managing passenger's dissatisfaction. An airline failure to do so exhibits a reckless disregard for the passenger's wellbeing.

Like the appellant's witnesses testified, airlines do suspend passengers' tickets, and in this case, the jury found from the facts and circumstances narrated that the suspension of the appellee's ticket was by the appellant Airlines. When the "No Show" which was wrongly placed against the appellee's name in Nairobi was lifted, the appellee's flight had left. Although the "No Show" was proved to be an error of the appellant Airline, the Airline insisted on placing a further financial burden on the appellee by having him pay United States Two Hundred and Fifty Dollars (US\$250.00) for him to board a subsequent flight two days thereafter. When he got to Monrovia, all attempts by the appellee to have the appellant's address the issue of the embarrassment caused him was arrogantly ignored by the airline.

Certainly, the facts show that except for the one-time sale and purchase interaction that the appellee had with the ticket agent, the appellee having begun his travel, it was the duty of the appellant to manage and control the rest of the interaction with the appellee regarding his ticket. The ticket that is the subject of this case was never invalidated by the appellant or the travel agency. In fact, it was this very same ticket that was used by the appellee the whole of his first leg of travels to Entebbe and back to Nairobi where it was said to be suspended. Therefore, it meant that immediately as the appellee embarked on his trip aboard the appellant's flight, the appellant assumed a duty of care and prudence and did owe him such duty of care to ensure that he completed his journey without undue hindrance; the breach of which, the law imposes damages for injuries caused.

In this case, the jury having found that the appellant airline was responsible for the appellee's failure to board and proceed to his destination, damages would attach for the wrong committed. From the evidence adduced, we are convinced that the appellant, Kenya Airways, was the one that erroneously placed the "No Show" against the appellee on the Airlines log, and used that to suspend his return trip from Nairobi to his destination and therefore they are liable to the appellee in damages.

This Court has held that when the allegations of a plaintiff are substantially proved, and a verdict entered in his favor, the judgment rendered on such a verdict will ordinarily be affirmed. *Morris v. Roberts*, 2 LLR 469 (1924); *Benson v. Clarke and Caranda*, 12 LLR 426, 433 (1957);

*American Life Insurance Inc. v. Holder*, 29 LLR 143, 165 (1981); *Royal Stationery Store v. The Intestate Estate of late McKeever*, Supreme Court Opinion, October Term, A.D. 2014.

What we must now consider is whether the trial court's judgment award conforms to the evidence adduced at trial?

The evidence reveal that on the morning of April 10, 2019, while the appellee was on his return to Liberia and fully anticipating a smooth travel back home to meet up with key work deadlines as well as to reunite with family, the appellee was informed at his next leg in Nairobi that his ticket was suspended due to "No Show" and after several attempts to have it resolved, he ended up being stranded for two (2) days in the airport with inadequate clothing; lack of basic supplies needed to sustain him and the compulsion to spend additional money for food and a ticket which he had not budgeted for. An attempt to have the appellant's service desk investigate and dispose of this matter proved grossly futile even after the appellee wrote an email to the designated officer of the appellant in charge of revenue.

The transcribed records in this case are replete with non-refuted testimonies by the appellee himself and Ms. Atoko, all pointing to the appellant as being the one who suspended his ticket for "No Show." Equally, nothing in the records show a denial and or rebuttal and this Court will rely on several of its authorities espoused in a long list of Opinions that witnesses' testimonies alleging a fact if not denied or rebutted is deemed admitted. *Munnah et al v. R.L.*, 35 LLR 40, 41, 48 (1988); *Min. of Lands, Mines and Energy v. Liberty Gold and Diamond Company et al.*, Supreme Court Opinion, October Term, A.D. 2014.

Recently, this Court confirmed this principle held in the Davis case, that, "where a party offers not a scintilla of evidence at a trial in denial of testimony against him, it shall be considered a concession by him of the truth of the testimony offered, though his answer contains denials: *Morris Armah et al. vs. The Management of Paynesville City Corporation; Davis v. Davis*, 19 LLR 150, 155 (1969).

We must say that we are appalled by the brazen lack of care that the appellant meted out to the appellee. The situation was further exacerbated by the fact that when the appellant had the "no show" lifted and the appellee now allowed to get a pass, the airline required him to pay US\$250,00 before obtaining the pass. Upon his arrival, the appellee wrote acquainting the appellant of the incident and requesting for a redress, but up until the filing of the action on August 9, 2019, the appellant failed to respond to the appellee's email.

Degrees of negligence exist and are recognized in our Jurisdiction, particularly in regards to the distinction between ordinary and gross negligence. In cases where the facts show gross negligence, it constitutes a failure to exercise the degree of care that even a careless individual would employ under the circumstances, and it can be linked to wanton, willful or reckless conduct under the facts and circumstances of the case. *Air Maroc, Inc., v. Cllr. Finley Y. Karngar*, Supreme Court Opinion, March Term, A.D. 2022.

We wonder why appellant would urge us to discount all these unrefuted facts of its gross misconduct and breach of care just because it was not it who issued the ticket to the appellee. The *Classic Travel Connections*, the travel agency, was merely acting as an intermediary between the appellee and the appellant in selling its tickets. This significant aspect of the Airlines relationship with the travel agency, evidencing mutually financial beneficial relationship between the two parties was testified to by appellant's own witness in person of Mr. Hubert Barko-Sarakwa.

We quote the relevant portion of his testimonies on the cross-examination:

*Q. Mr. Witness, before going through a ticketing agents to obtain ticket for Kenya Airways in order to travel onboard your flight, who benefits from the money that is collected from the passenger?*

*A. The money comes to the airline.*

*Q. Which airline?*

*A. In that case, Kenya Airways.*

A follow up question asked appellant witness whether by receipt of the ticket sale money, it automatically assumed the duty to fly the traveler? He answered affirmatively – “Yes, we are obliged to transport passengers who our tickets have been issued.”

All of these, when taken in consideration together, undoubtedly paint a picture that everything after the sale and purchase of the ticket became the responsibility of the appellant, this includes knowing if a traveler embarked on its flight, did so by following all its flight rules and regulations such as verifying the validity of ticket, reconfirmation, etc. Thus, being responsible for all of this and wrongly suspending the appellee's ticket for “No Show,” constitutes gross negligence.

This Court has however held that it is not sufficient merely to allege an injury and claim damages therefor, but that the plaintiff seeking an award of damages must not only prove the

injury complained of but that he has been damaged to a sum commensurate with the amount claimed as damages.: *Lone Star Cell Corporation v. Jimmy Wright*, Supreme Court Opinion March Term A.D. 2014; *Meridian BIAO Bank v. Mano Industries*, Supreme Court Opinion, October Term, A. D. 2012; *Itoka v. Noelke*, 6 LLR 329, 332 (1933).

The law abhors windfall as a means to enrich an injured party who has sustained injury due to the negligence of another. *22 Am Jur 2d, Section 28*. The sole object of compensatory damages is to make the injured party whole for losses actually suffered, the plaintiff cannot be made more than whole, make a profit, or receive damages that this Court considers excessive. This Court has held that general damages awarded must commensurate with the anguish and humiliation purportedly suffered. *Lonestar Corporation v. Jimmy Wright*, supra, and has also held that punitive damages will be awarded to serve as a punishment and a deterrent to others for gross negligence meted to a plaintiff. *City Builders v. Purported City Builders*, Supreme Court Opinion, March Term, 2013.

We must state here that appellant's negligence was grossly reprehensible and unprofessional, which leaves an appalling impression on this court; and that public interest is best served if a stern stance is taken against such utter lack of care to airline passengers, and to deter the reoccurrence of similar situation in the future.

This Court sees ample justification for the award of damages to the appellee for the pain and suffering he experienced during the two days he was stranded in Nairobi due to the appellant's negligence. However, in exercising our authority to modify a judgment of general damages, we find that the jury award of United States Dollars Fifty-Thousand (US\$50,000) is excessive and exorbitant and is therefore subject to modification. *American Life Insurance Company, Inc. v. Holder*, 29 LLR 143, 169 (1981).

We therefore hold that the appellant pays to the appellee general damages in the amount of US\$20,000.00 (United States Dollars Twenty thousand) for the embarrassment and mental distress suffered, and punitive damages in the amount of Twenty Thousand United States Dollars US\$20,000.00 (United States Dollars Twenty-thousand) to serve as a deterrence against any future reoccurrence of such reprehensible conduct, unprofessionalism, and utter lack of interest in service to its passenger.

IN VIEW OF THE FOREGOING FACTS AND CIRCUMSTANCES we hereby affirm the judgment of the lower court but with modification as stated above. The Clerk of this Court is ordered to send a Mandate to the trial court to resume jurisdiction and given effect to the

judgment emanating from this Opinion. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.

**WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLOR ABRAHIM B. SILLAH OF THE HERITAGE PARTNERS & ASSOCIATE, LLC. APPEARED FOR THE APPELLANT. COUNSELLORS ABRAHAM WADE SIMPSON PRO SE AND COUNSELLOR M. WILKINS WRIGHT OF THE WRIGHT AND ASSOCIATES LAW FIRM APPEARED FOR THE APPELLEE.**