

Abstract

Aviation law covers almost all legal matters relating to airport and aircraft maintenance and operations, aircraft and pilot licensing, aircraft navigation and maintenance, air traffic control safety and it extends to the protection of the rights of air passengers, also stipulates standards and requirements for aircraft operators. The Doctrinal approach was adopted in this article. It was observed that the aviation sector generates wide economic benefits in an emerging economy like Nigeria, it provides medium for both investment and tourism by increasing the country's connections to the global air transport network, investment in aviation can boost its long-term productivity and economic growth. Also, it was found out that Aviation security has caused a lot of disputes in the Nigeria civil aviation industry, disputes ranging from insecurity of air passengers/cargo and aircraft. It was concluded that International Aviation Law plays a vital role in ensuring the safety, security, and efficiency of global air transport. The Federal High Court of Nigeria's application of International Aviation Law is crucial in promoting compliance, resolving disputes, and supporting the growth of Nigeria's aviation industry. On the application within the Federal High Court of Nigeria, it is important to state that the Federal High Court has exclusive jurisdiction over aviation-related matters, including those involving International Aviation Law. The Court enforces regulations issued by the Nigerian Civil Aviation Authority (NCAA), which are aligned with ICAO standards.

Keywords: Federal High Court, International Aviation Law, Government, Jurisdiction, Nigeria

1. Introduction

The dictionary of aviation¹ defined 'aviation' to mean flying of an aircraft. It is imperative to stress that the definition of aviation in a wider sense would not only mean flying of an aircraft, but would also mean any activity that is directly connected to flying of an aircraft. Aviation is divided into military and civil aviation. Military aviation has to do with any military activity which is related and concerned with flying of an aircraft, especially for the defense of a State. Civil aviation is about any activity that is related and concerned with the flying of an aircraft which does not form part of a military activity. Civil aviation law can be seen as the law governing any civil aircraft related activity including the flying of aircrafts. Some of the activities that form civil aviation includes; transportation of goods and persons via air, licensing of pilots, licensing of air carriers/operators, management of airports and aerodromes, and regulation of commercial flights. When there is a breach of these duties especially the laws governing them, disputes tend to surface. Most civil aviation disputes are mostly between the air carriers and the passengers especially disputes pertaining to the liability of air carriers and negligence of air carriers. Although some disputes like; management of airports and aerodromes, aviation security and air worthiness of aircraft are between air passengers and the government of the state or any of its agencies delegated to control and manage the civil aviation industry of the State.

The Hot Air Balloon Ordinance² was the first civil aviation legislation that was enacted one year after the first hot air balloon flight by the Montgolfier Brothers. This legislation was made to regulate the activities of hot air balloons which were the first form of aircraft in the world. After the First World War in 1919, there was a need to harmonize world civil aviation. Countries like Brazil, Britain, France, Peru, Germany, and China came together in Paris to birth the first World International Civil Aviation Convention, which was the Convention on Aerial Navigation³ which marked the beginning of the International Civil Aviation Organization (ICAO)

On the 1st of November 1925, an aircraft belonging to the Royal Air Force of Great Britain landed in Kano State, the aircraft was flown by Lieutenant Cunningham of the Royal British Air Force, this was the first aircraft that landed in Nigeria and this marked the beginning of the aviation story in Nigeria. Aminu Kano International Airport was the first International Airport in Nigeria, and was also a station for the British Royal Air Force. It fully commenced operations in 1936. The foundation for civil aviation law in Nigeria was properly laid in 1953 when the British extended the Warsaw Convention of 1929⁴ to Nigeria via the Colonies, Protectorate, and Trust Territories Order. Since 1953 the Nigerian civil aviation law has continued to develop even until this very day. In 2021 it was estimated that the total number of domestic and global airlines flight in the world was about 22.2 million. Before the year 2020 when it was disclosed by the Nigerian Minister of Aviation that Nigeria loses about 21 billion naira monthly since the outbreak of the covid-19. It was also recorded that the aviation industry contributed 198.62 billion to the Nigerian gross domestic product the previous year⁵. Year in year out much revenue is being generated from the civil aviation industry globally. Civil aviation law is not only a domestic function but also forms great part of international law. The future development of international civil aviation can greatly help to create and preserve friendship and understanding among the Nations and people of the world, yet its abuse can become a threat to the general security⁶. The National Assembly of the Federal Republic of Nigeria is charged with the responsibility of making laws relating to aviation including; airports, safety of aircrafts and carriage of passenger and goods by air⁷.

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¹ D Crocker, *Dictionary of aviation* (2nd edn, A and C Black publisher 2007) 28

² This was the first Law that prohibited the flying of aircraft (Hot Air Balloons) without license in France, Hot Air Balloon Ordinance 1784

³ Convention on Aerial Navigation, Paris 1919.

⁴ *Lufthansa Airlines v Ibadapo* [2006] 4 [NWLR] (pt. 498) 124.

⁵ Fakoyejo olalekan, 'Aviation GDP up by 0.14%, 2020 will be down', www.nairametrics.com (2019) Accessed 12th July 2024

⁶ Convention on International Civil Aviation, Chicago 1944. (Preamble)

⁷ Section 4(2) Constitution of the Federal Republic of Nigeria, 1999 (as Amended) Third Schedule (Exclusive legislative list)

Civil aviation is pivotal to the growth of any economy as it helps greatly in the smooth running of other industries. In every industry dispute is bound surface, but what makes an industry less problematic are the laws set in place to manage such disputes. Disputes also surface in the Nigerian civil aviation industry every day; these disputes are mostly between air carriers and the passengers. Some of these disputes include issues like; aviation security, liabilities of air carriers, jurisdiction of court in aviation matters, negligence, air worthiness etc. Some air passengers owing to the fact that they are ignorant of the laws set in place to resolve aviation disputes amicably are being cheated and deprived of rights accrued to them under the Nigerian civil aviation laws. There is every need for every country to put laws in place for the management and resolution of aviation disputes as the absence of such laws would be detrimental to the growth of the country both economically and otherwise.

Globally, the International Civil Aviation Organization (ICAO) has recognized the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution⁸. Civil aviation is not only a matter of national concern but also an issue of international concern; that is why departments like the International Civil Aviation Organization (ICAO) are being set up by the United Nations (UN) especially for ensuring a peaceful and less problematic civil aviation system globally. The International Civil Aviation Organization (ICAO) as of now has a total of 193 countries as its members, Nigeria Joined the organization in 1962. The International Civil Aviation Organization may with respect to air matters within its competence directly affecting world security, by vote of the assembly, enter into appropriate arrangements with any general organization set up by the nations of the world to preserve peace⁹. The International Civil Aviation Organization through the Standards for Air Regulation Procedures (SARPs) is been able to set out a test of standard for the world civil aviation regulations including disputes resolutions globally. The International Civil Aviation Organization (ICAO) also through Conventions like the Convention on the International Civil Aviation Organization¹⁰ have been able to make sure that there is serenity within the civil aviation sector globally. The various Conventions of the International Civil Aviation Organization also form great part of the Nigerian civil aviation law, as most of the Conventions are incorporated into the various Nigerian civil aviation laws.

The legal framework in relation to the aviation industry includes the various domestic laws enacted by the National assembly as relating to civil aviation In Nigeria¹¹. Some of such laws include the Civil Aviation Act 2006¹² and the Nigerian Civil Aviation Regulations Act 2015. These laws are the major laws governing the Nigerian civil aviation and its regulations thereof. These domestic legislations have also helped greatly in resolving various aviation disputes as it set in guidelines for the regulations and management of the civil aviation sector generally and its disputes. International laws also form part of the legal framework of the Nigerian civil aviation laws as some of these conventions which Nigeria is part of, form part of our civil aviation laws. Some of these international laws have played key roles in the development of the Nigerian civil aviation laws. Some of these conventions include conventions like; the Convention on Aerial Navigation (Paris 1919), Convention on the Unification of Certain Rules for International Carriage by Air (Warsaw 1929), Convention on International Civil Aviation (Chicago 1944) and the Convention for the Unification of Certain Rules for International Air Carriage (Montreal 1999). These conventions have helped in proffering solutions to aviation disputes arising from air carriage, including that of the liabilities of air carriers, and aerial navigation. Some of these conventions like the Convention on the Unification of Certain Rules for International Air Carriage (Montreal 1999) and the Convention on Offenses and Certain other Acts Committed on Board Aircraft (Tokyo 1963)¹³ also talks about the resolution of aviation disputes such as aviation security and airports management and maintenance.

There is also every need to understand the various civil aviation agencies, including their organs, functions, jurisdiction, and the laws establishing such agencies. The need to understand the medium for the resolution of aviation disputes i.e the role and jurisdiction of court in the settlement of aviation disputes cannot also be downplayed. Some of the various civil aviation agencies that would be discussed includes agencies like the; Nigerian Civil Aviation Authority (NCAA), Federal Airport Authority of Nigeria (FAAN) and the National Airspace Management Agency (NAMA). In the course of discussing these agencies, the various laws establishing these agencies would also be brought to fore for proper comprehension of the research.

Generally, aviation law covers almost all legal matters relating to airport and aircraft maintenance and operations, aircraft and pilot licensing, aircraft navigation and maintenance, air traffic control safety¹⁴. Aviation law also covers and protects the rights of air passengers, it also stipulates standards and requirements for aircraft operators thereof. But in the course of this research which tends to talk of the resolution of aviation disputes in Nigeria, only Issues relating the liabilities of air carriers In Nigeria, aviation security, airworthiness of aircrafts, negligence of air carriers, airport management and maintenance and jurisdiction of court in aviation disputes resolution in Nigeria would be discussed mainly.

⁸ Convention on the Unification of Certain Rules for International Air Carriage, Warsaw 1929. Preamble.

⁹ Convention on International Civil Aviation, Chicago 1944.

¹⁰ *ibid.* n6

¹¹ The National Assembly of The Federal Republic of Nigeria is charged with the Responsibility of making laws relating to aviation matters. *Ibid* n7

¹² Civil Aviation Act (Re-enactment), 2006. CAP 51 LFN 2004

¹³ Convention on Offenses and Certain other Acts Committed on board, Tokyo 1963

¹⁴ *ibid* n7.

2. Aviation Disputes in Nigeria

The Nigerian civil aviation has become more chaotic over the years due to disputes. Some of these disputes include disputes between air passengers and aircraft carrier, and disputes between air passengers and the agencies established by the Government to manage civil aviation in Nigeria. First and foremost, air carrier liability has been an Issue in the Nigerian civil aviation industry over the years. Air carriers' liability covers the liability of an air carrier in the course of loss of cargo /goods, it also covers liability of an air carrier in terms of Injury and death of an air passenger, It also covers the compensation scheme in place in case of air accident resulting to injury or death of an air passenger. Air carrier liability has been a major problem between air carriers and air passengers in Nigeria.

Second, in understanding the resolution of aviation disputes in Nigeria, there is every need to also get a proper grasp of the legal framework for the resolution of aviation disputes In Nigeria i.e understanding both the domestic legal framework and the workings of domestic laws like; the Civil Aviation Act 2006¹⁵ and the Nigerian Civil Aviation Regulation 2015. The international legal framework for the resolution of aviation disputes in Nigeria would also be discussed. Some of the laws in view, laws like; the Convention on Aerial Navigation (Paris 1919), the Convention on the Unification of Certain Rules for International Carriage by Air (Warsaw 1929)¹⁶ Convention on International Civil Aviation (Chicago 1944), and the Convention on the Unification of Certain Rules for International Air Carriage (Montreal 1999).

Third, it is also very necessary to understand the tune of the Nigerian civil aviation law to the surfacing realities of today, it also seems that most air passengers in Nigeria regularly mistake or do not understand the roles and functions of some key civil aviation agencies like: the Nigerian Civil Aviation Authority (NCAA), the Federal Airport Authority of Nigeria (FAAN), and the Nigerian Airspace Management Agency (NAMA). Air passengers must understand the roles and functions of some key civil aviation agencies including the laws establishing these agencies, so as to help in curbing future disputes. Understanding the jurisdiction of courts in the resolution of aviation disputes in Nigeria is very crucial, sometimes the problem.

The aviation sector generates wide economic benefits in an emerging economy like Nigeria, it provides medium for both investment and tourism. By increasing the country's connections to the global air transport network, investment in aviation can boost its long-term productivity and economic growth¹⁷. The aviation industry in Nigeria also provides channels through which tourists come in to visit the various tourist sites. Tourism is an allied business to aviation and is capable of generating huge revenue if properly harnessed. Nigeria joined the aviation sector in 1920 and has progressed to owning airlines, airports and regulating its operations. However, in recent times, the industry has witnessed failures in all ramifications leading to loss of income and lives. It is this recent development that has necessitated for a reform in the industry. Some of these failures come mostly in form of disputes especially with the air carriers and air passengers.

Air Carrier Liability

One of the everyday problems rocking the Nigerian civil aviation sector is the Issue of air carriers' liability, problem arising from questions like; when do aircraft carriers become liable and areas where they are exempted, are they laws stating the liabilities of aircraft carriers? Etc. Part 19 of the Nigeria Civil Aviation Regulations 2015¹⁸ defines an 'air carrier' to include; '....an enterprise that engages in provision of transportation services by aircraft for remuneration or hire.' Therefore, air carrier liabilities revolve round the legal duties and obligation of an air carrier. Chapter three of the Warsaw Convention¹⁹ talks about the liabilities of air carriers including liabilities as to; death and Injury of passengers, damage to baggage, damage to cargo, delay, exoneration, compensation in case of death or Injury of passengers in international air carriage. In the Case of *Cameroon Airlines v Miss Jumai Abdul Kareem*²⁰, Article 18 and 19 of the Warsaw Convention which deals with air carriage was clearly explained, especially the part which talks about the prohibition of Air carriers to avail themselves when damage is caused by any agent of the carrier acting within the scope of his employment. In Article 17 of the Warsaw Convention, a carrier is liable for the damages sustained in the event of the death or wounding of a passenger if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

To establish liability, the claimant must prove that:

- (a) the injury must have arisen from the accident
- (b) the accident must have occurred on board the aircraft or during the course of embarking or disembarking.²¹ Section 48 of the Civil Aviation Act 2006²² also makes for situation where an air carrier can be liable including;
 1. injury Sustained in the course of a negligent act of the Airline
 2. Death resulting from the course of a journey or(a) the passenger must have been wounded or suffered bodily injury
 3. Damage or loss of goods
 4. Delayed or denied boarding or
 5. Interactions in the course of preparing for or the actual conduct of flight operations.

¹⁵ Ibid. n. 14

¹⁶ Ibid. n. 10

¹⁷ Jenifer Chu, How Air transport connects the World, www.weforum.org (2015.) Accessed 12th July 2024

¹⁸ Nigerian Civil Aviation Regulation (NIGCAR), 2015. Government notice (128), Order 19.

¹⁹ Convention on the Unification of Certain Rules on International Air Carriage, Warsaw 1929. (Chapter Three)

²⁰ [200] 98 LN-e-LR 34

²¹ Ibid. n14

²² ibid n11

The Court does not produce evidence for a claimant. Issues as to delay in delivery of luggage, the weight of checked-in baggage, cabin luggage, the value of lost items and non-production of receipts are vital to a Claimant's case. In the case of *Oshevire v British Caledonian Airways*²³ it was clearly demonstrated that although air carriers have liabilities, but time in some situation may serve as a limitation for instituting an Action.

Air Worthiness

Part 5 of the Nigeria Civil Aviation Regulations 2015²⁴ describes 'airworthiness' to include the presentation of original certification of aircraft and aeronautical products by air carriers, issuance of a certificate of airworthiness by the Nigerian Civil Aviation Authority (NCAA), continued airworthiness of aircraft and aeronautical components, aircraft maintenance and inspection requirements, and maintenance records and entries. In other words, air worthiness means an aircraft meeting being qualified and fit to be used for aviation purpose. Airworthiness is a major problem in the Nigerian civil aviation industry as many air passengers have lost both their lives and goods due to the lack of airworthiness of the aircrafts. In 2012 a Dana airline which was a Boeing MD-83 aircraft which was not airworthy took flight From Abuja only to crash in Lagos causing the death of 153 air passengers²⁵, likewise Nigeria Airways Flight 2120 (Douglas Dc-8) which was a chartered passenger The aircraft was a flight from Jeddah(Saudi Arabia) to Sokoto (Nigeria) on 11 July 1991, caught fire shortly after takeoff from King Abdulaziz International Airport and crashed while attempting to return for an emergency landing, killing all 247 passengers and 14 crew members on board. The Crash was also caused by the lack of airworthiness of the aircraft. Airworthiness is a major problem in the Nigerian civil aviation industry at thus it should be taken seriously. Part 5 of the Nigerian Civil Aviation Regulation 2015²⁶ talks of the standards of airworthiness in Nigeria and also put in place necessary measures to check Airworthiness.

Negligence

'Negligence' in law properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owed²⁷. Negligence under the aviation law would mean an aviation duty own and the breach of such duty thereof. For a plaintiff to successfully establish the claim of negligence, he must successfully prove that there was a duty owed and the breach of such duty which is accompanied with damage. Section 48 of the civil Aviation Act 2006 clearly pointed that an Air carrier could be liable for any negligent act which results to an injury of the air passengers this including loss of air passengers' cargo and baggage²⁸. For a claim of negligence to be successfully established against an air carrier, the plaintiff must show that there was a duty of care owed which was breached and such amounted to damage. For instance, an air carrier owes a duty of making sure that air passengers baggage are safe and in place, the breach of the duty which could be that the baggage was misplaced can amount in negligence, and the damage suffered by the negligent act would be put into consideration thereof and the plaintiff would be duly compensated. In *Biles v United States*²⁹ the descendant of the plaintiff was killed when the aircraft dashed to a ridge line on Lookout Mountain, Georgia, after flying about 2,000 feet mean sea level (which was absurd). The airplane crashed some moments after. The plaintiff alleged that the air traffic controller was negligent because she breached a duty to caution the pilot of the plane's proximity to the mountainous terrain. The trial court held that under the situation: there was no duty arising from paragraph 33 of the Air Traffic Control manual. In other words, for any claim of negligence to be successfully established, there must be proof that a duty of care was owed and there was a breach of the duty thereof.

Aviation Security

Aviation security revolves round the mode and techniques and combination of human and. material resources use to guard civil aviation from unlawful interference. In its simplest form, aviation security is about the protection of air navigation and airport facilities, aircraft, passengers, crew, members of the public, cabin and hold baggage, cargo, mail, and catering supplies from criminal acts of sabotage, hijacking, or terrorism. 'Unlawful interference' is defined by Part 17³⁰ of the Nigerian Civil Aviation Regulations Act 2015 as;

.... Acts such as to jeopardize the safety of civil aviation including but not limited to:

- i. unlawful seizure of an aircraft;
- ii. destruction of an aircraft in service;
- iii. hostage-taking on board an aircraft or on aerodromes;
- (iv) forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility;
- (v) introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes;
- (vi) Use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment; or
- (vii) communication of false information such as to jeopardize the safety of aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.

One of the major disputes in today's Civil Aviation Sector is Aviation security. Some the Nigerian Civil Aviation laws have made room (through the Department of Aviation Security (AVSEC) under the Nigeria Civil Aviation Authority) for the proper

²³[19907] 2 [NWLR] pt (163) 253

²⁴ Nigerian Civil Aviation Regulations (part 5) Government notice 128, 2015.

²⁵ Ayodele Oluwgbemi, Engine failure or Human Error Caused Dana Air Crash, *Punch Newspapers*, (13th March 2017)10 .

²⁶ Nigerian Civil Aviation Regulations, 2015. Government Notice 128, Pt 5.

²⁷ *Lochgelly Iron and Coal v MacMillan* [1933] J0710- 4 UKHL

²⁸ *Emirate Airline v. Tochukwu Aforka* [2014] 42623 JELR

²⁹ *Biles v United States* [1994] 11 -CM -612 2024

³⁰ Nigerian Civil Aviation Regulations, 2015. Government Notice 128, Order 91.

management of disputes resulting from Aviation security Issues. The Nigerian Civil Aviation Authority (NCAA) through the Department of Aviation security (AVSEC) is charged with the responsibility of aviation security, the Nigeria Civil Aviation Authority (NCAA) states the functions of the AVSEC to include ³¹;

1. Ensuring that aerodromes and airspace in Nigeria are secure in accordance with the Convention on International Civil Aviation Organization and the Nigerian Civil Aviation Regulations (Nig.CARs).
2. Developing and maintaining the National Civil Aviation Security Programme of Nigeria;
3. Defining and coordinating the tasks for the implementation of the various aspects of the National Civil Aviation Security Programme between agencies, airport operators, aircraft operators and other allied services (In flight Catering Operators, Ground Handling and Cargo operators, Fuel Farms, AVSEC service providers, e.t.c.
4. Making available to airport operators, aircraft operators and others concerned, in its territory, a written version of the appropriate parts of the National Civil Aviation Security Programme;
5. Reviewing and maintaining the effectiveness of the National Civil Aviation Security Programme, including re-evaluating security measures and procedures, as required by changing circumstances, or following an Act of Unlawful Interference, and taking action necessary to remedy weaknesses so as to prevent recurrence;
6. Reviewing and approving airport and aircraft operator security programmes, Security Service providers and other stakeholders to ensure programme adequacy and monitoring their implementation to ensure continuing effectiveness;
7. Ensuring that airport security services at international and domestic airports are provided with the necessary supporting facilities including office space, telecommunications equipment, and appropriate security equipment and training facilities;
8. Developing and issuing comprehensive national regulations and directives relating to civil aviation security;
9. Developing, implementing and maintaining a National Civil Aviation Security Training Programme, through the establishment of training standards, and by approving aviation security training programmes of individual agencies and organizations;
10. Set standards, coordinate the assessment and ensure Certification of Aviation Security Screeners in Nigeria in accordance with ICAO and Nig.CAR.
11. Promoting aviation security through the development and implementation of a National Civil Aviation Security Quality Control Programme, which would encompass security surveys, inspections, testing, exercises and audit monitoring of standards and operating procedures of aerodrome operators, aircraft operators and other service providers;
13. Evaluate Aviation Security incident/breaches and review and recommend appropriate Aviation Security technology and or sanction in conjunction with NCAA legal department
14. Coordinate the security aspect of Facilitation and manage Aviation Security Database in Nigeria
15. Disseminate and monitor compliance to International/National security directives and information relating to Airports, Aircraft operators, Cargo and dangerous goods handlers as well as coordinate inspections of cargo security and dangerous goods for Airports, Airlines and Cargo handling companies.
16. Monitor changes to ICAO Standards and Recommended Practices in the Annexes to the Chicago Convention and the requirements of other States with which Nigeria has direct aviation links, recommending and/or making adjustments to the national programme to ensure that countermeasures contained therein at all times, reflect the international requirements;
17. Establish and promulgate 'standards' for security of civil aviation, to cause these standards to be applied by aircraft and aerodrome operators, air traffic services provider, providers of aviation security services, air cargo agents and other stake holders of the aviation industry as the circumstances may from time to time require;
18. Control the activities of aviation security services providers (FAAN Security, Private Security Companies) etc;
19. Consider proposed aircraft operator, aerodrome operator and other stake holders security programmes required under the Regulations for approval, amendment, or extension;
20. Monitor implementation of approved programmes and standards, and to advise the Authority on its aviation security audit and monitoring programme;
21. Investigate and review civil aviation security related accidents and incidents;
22. Maintain and review programme of contingency plans for dealing with security related emergencies;
23. Provide aviation security information and advice to the Authority, and other relevant stakeholders;
24. Carry out vulnerability assessment of international and domestic airport security systems to confirm that the aviation security activities of aerodrome operator, aircraft operator, security services providers and Government agencies involved are coordinated and mutually supportive; and
25. Conduct an assessment of all airports where Nigeria registered airlines operate scheduled flights in order to:
 - i. ensure standardization and compliance with ICAO SARPs;
 - ii. verify the effective implementation of security measures; and
 - iii. safe operations of Nigerian registered aircraft.

Aviation security has caused a lot of disputes in the Nigeria civil aviation industry, disputes ranging from insecurity of air passengers/cargo and aircraft.³² Aviation security is part of the duties of the air operators in collaboration with the various airport management agencies in Nigeria. The Nigerian Civil Aviation Authority (NCAA) also makes sure that the various security protocol pointed out by the Nigerian Civil Aviation Regulations (Nig.car) 2015 are being observed. Aviation security

³¹ The Roles and Functions of the Department of Aviation Security, www.ncaa.com. Accessed 12th July 2024

³² Akel Alkubeh, 'Aviation Security in Nigeria: Protect your Aircraft, Pax and more'(2022). Accessed 12th July 2024

largely determines the growth of the civil aviation industry of any country.³³ The International Civil Aviation Organization (ICAO) has not relented on aviation security as a global issue in the world civil Aviation industry as Conventions like the Tokyo Convention³⁴ was majorly on world aviation security. The International Civil Aviation Organization (ICAO) has also brought on board plans like the Global Aviation Security plan which is aimed proffering a better world aviation security plan.

Airport Management and Maintenance

In Nigeria airports are built and managed by the Federal Government, private individuals cannot own airports unlike some other countries. Day- in -day out, airport management and maintenance has been a major dispute in the Nigerian civil aviation industry.³⁵ Poor airport management and maintenance has led to issues like delay of flight, poor aerodrome for aircrafts, poor air navigation services, denied boarding e.t.c The federal government is charged with the power to make laws as regarding to airports including the establishment and the management thereof³⁶. When talking about airports, the major federal parastatals to check is the Federal Airport Authority of Nigeria (FAAN) which is in charge of airport management in Nigeria. The Federal Airport Authority of Nigeria (FAAN) was originally established as the Nigerian Airport Authority (NAA) in 1976, it was later changed to the Federal Airport Authority of Nigeria (FAAN) in 1995. They play a major role in airport management and maintenance in Nigeria. Day in day out, air passengers tend to misunderstanding the role of the Federal Airport Authority of Nigeria (FAAN) in the Nigerian civil Aviation industry, Section 3 of the Federal Airport Authority of Nigeria (FAAN)³⁷ Act which states the Functions of the FAAN to include;

- (a) to develop, provide and maintain at airports and within the Nigerian air space all necessary services and facilities for the safe, orderly, expeditions and economic operation of air transport
- (b) to provide adequate conditions under which passengers and goods may be carried by air and under which aircraft may be used for other gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (c) to prohibit the installation of any structure which by virtue of its high position is considered to endanger the safety of air navigation;
- (f) to charge for services provided by the Authority at airports;
- (e) to provide accommodation and other facilities for the effective handling of passengers and freight;
- (f) to develop and provide facilities for surface transport within airports,
- (g) to carry out at airports (either by itself or by an agent or in partnership with any other person) such economic activities as are relevant to air transport;
- (h) to carry out at airports (either by itself, its agents or in partnership with any other person) such other commercial activities which are not relevant to air transport but which in the opinion of the Authority may be conveniently carried out without prejudice to the functions specified in this subsection;
- (i) o provide adequate facilities and personnel for effective security at all air-ports; and
- (J) generally, to create conditions for the development in the most economic and efficient manner of air transport and the services connected with it.

The Federal Airport Authority of Nigeria (FAAN) plays a great role in the management of airports in Nigeria. The Federal Airport Authority of Nigeria (FAAN) Act 2004 is the latest reenactment which repealed that of 1999.

3. Application of International Aviation Law within the Federal High Court of Nigeria

In Nigeria, the Federal High Court holds jurisdiction over offences under the relevant aviation laws, regardless of where the offence was started or completed, if certain conditions are met. These conditions include the offence being committed within Nigerian territory, against or aboard a Nigerian-registered aircraft, by a Nigerian national, or involving an aircraft landing in Nigeria with the offender aboard. Additionally, jurisdiction extends to offences involving aircraft leased without crew to a lessee with connections to Nigeria, victims who are Nigerian citizens or residents, and alleged offenders present in Nigeria. The court has the authority to impose penalties for these offenses and can order the forfeiture of property believed to have been used in the offence or derived from unlawful activities. However, penalties may be reduced if the convicted individual assists in identifying other accused persons or facilitates their arrest. This legal principle was established in the landmark case of *Cameroon Airlines v. Otutuizu*³⁸ where the Supreme Court unequivocally affirmed the Federal High Court's exclusive jurisdiction over aviation matters under Section 251(1)(k) of the 1999 Constitution. Additionally, the Supreme Court endorsed the applicability of the Warsaw Convention as amended by the Hague Protocol of 1955, clarifying that the protocol constitutes an amendment to existing Nigerian law concerning the rights and liabilities of carriers by air, as stipulated in Section 315(1) of the Constitution. International Aviation Law is a critical component of global air transport, governing the rights and obligations of states, aircraft operators, and individuals. In Nigeria, the Federal High Court plays a vital role in applying International Aviation Law, ensuring compliance with global standards, and resolving aviation-related disputes.

Sources of International Aviation Laws includes:

Chicago Convention (1944): Establishes the International Civil Aviation Organization (ICAO) and sets standards for aviation safety, security, and navigation. The Chicago Convention (1944) is a landmark agreement in the history of aviation, signed by

³³ David Gillen, 'Aviation Security: Costing, pricing, finance and performance', *Journal of Air Transport Management* (2015) 48 (3) 1-12, www.sciencedirect.com. Accessed 15th November 2022

³⁴ Convention on Offenses and Certain Other Acts Committed on Board Aircraft, Tokyo, 1964.

³⁵ Chinedu Eze, 'Tackling Challenges of Airport Infrastructure' (2022), www.thisdaylive.com. Accessed 15th November 2022

³⁶ 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended in 2011). The Exclusive Legislative list

³⁷ Federal Airport Authority of Nigeria (FAAN) Act, 1999. Cap F5, LFN 2004.

³⁸ (2011) LPELR-827 (SC)

52 states on December 7, 1944.³⁹ It is officially known as the Convention on International Civil Aviation and is also referred to as the Chicago Convention². Here are some key points about the Chicago Convention: The purpose of the Chicago Convention aimed to promote cooperation and understanding among nations, ensuring the safe and orderly development of international civil aviation.⁴⁰ The key objectives of the convention sought to establish principles and arrangements for international civil aviation, including the development of international air transport services on the basis of equality of opportunity and sound economic operation. The Chicago Convention led to the creation of the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations responsible for overseeing international civil aviation. The convention established standards and procedures for international air navigation, ensuring safety and efficiency in air transport. The Chicago Convention has had a significant impact on the development of international air transport, enabling the growth of global air travel and trade.⁴¹

Montreal Convention (1999): Governs liability and compensation for damages arising from international air travel.

Cape Town Convention (2001): Regulates aircraft financing, registration, and ownership.

Other Conventions and Protocols: Such as the Tokyo Convention (1963), the Hague Convention (1970), and the Beijing Convention (2010).

On the application within the Federal High Court of Nigeria, it is important to state that the Federal High Court has exclusive jurisdiction over aviation-related matters, including those involving International Aviation Law. The Court enforces regulations issued by the Nigerian Civil Aviation Authority (NCAA), which are aligned with ICAO standards. The Court has decided several cases involving International Aviation Law, setting precedents for future disputes. It is very important to know and understand the Jurisdiction of court in the resolution of aviation dispute. The 1999 Constitution of the Federal Republic of Nigeria is not quiet about the jurisdiction of court in aviation disputes in Nigeria. Section 251 (1) (k) of the Constitution of the Federal Republic of Nigeria⁴² clearly gives the Federal High Court jurisdiction to entertain aviation disputes. Section 63(1) of the civil Aviation Act 2006⁴³ clear states that The Federal High Court shall have jurisdiction in Aviation matters in Nigeria. In *Cameroon Airlines v Otutuizu*⁴⁴ it was held that the Federal High Court has jurisdiction to entertain aviation matters in Nigeria, also in the case of *Arik Air v Nigeria Aviation Handling Company*⁴⁵, the appellant and respondent entered into an agreement of service relating to aviation. The respondent as plaintiff before the lower court alleged that the appellant has not paid the amount determined in the contract in full. The trial court ruled in favour of the respondent (as the plaintiff) the court check whether the trial court had jurisdiction over the matter under Section 251 of the Constitution. The court held that the Federal High Court has jurisdiction over matters relating to aviation. In the case *Kabo Airlines v the O' Coperation*⁴⁶ it was also reaffirmed that the Federal high court has the jurisdiction to entertain aviation matters in Nigeria. Understanding the jurisdiction of court in the resolution of aviation disputes help aggrieved passengers to know the proper channel to seek redress.

For the purpose of jurisdiction of court, aviation dispute can be divided into; simple contract agreement and aviation contract argument. Aviation contract can be said to be created when there is carriage, where boarding has been completed and/or where there has been an embarkation. In addition, where the said ticket is a return ticket and the first leg has been completed, an aviation contract would be created notwithstanding that the alleged wrong happened during the second leg that is devoid of any form of carriage, boarding or embarkation. In the case of *Delta Airline v. Josef and Anor*, the 1st Respondent who was minor sued through his friend owing to the fact that he was prevented from boarding the Appellant's airline on his return trip from Atlanta to Lagos on the premise that the ticket purchased for the 1st Respondent was bought with a stolen credit voucher. The action against the appellant instituted at the High Court of Lagos State was challenged for being instituted in a wrong venue. The Court dismissed the preliminary objection which was the reason for the appeal. Although, the appeal was allowed, but the Court had to put into consideration the fact that the ticket was a return ticket and for the fact that the first leg has been completed, the Court held that an aviation contract was created. Thus, in cases of return tickets it should be treated as one contract and in a situation where the first leg had been completed, such a contract is an aviation contract which must be entertained by the Federal High Court only. The following can be distilled from the foregoing statement of the Court of Appeal in *Josef's case*:

- (i) Where the ticket is a return ticket and the passenger has completed the first leg such a contract is an aviation contract and only the Federal High Court has jurisdiction.
- (ii) Where the ticket is a return ticket but no form of carriage had occurred (The passenger merely bought the ticket or was in the checking in process to board for the first leg) such a contract is a simple contract and only the State High Court has jurisdiction.
- (iii) Where the ticket is a return ticket and there is a case of delay or denial of boarding during the second leg of the journey the contract is an aviation contract and only the Federal High Court has jurisdiction.

³⁹ P C Haanappel, *International Aviation Law*, (Kluwer Law International, 2017) 78.

⁴⁰ A. A. Afolayan, The Role of International Aviation Law in Ensuring Safety and Security *Journal of International Aviation Law*, 2018, 67.

⁴¹ A. O. Adesanya, Aviation Dispute Resolution in Nigeria: An Analysis of the Federal High Court's Jurisdiction *African Journal of Dispute Resolution*, 2019, 89.

⁴² Constitution of the Federal Republic of Nigeria, 1999 (as amended 2011), Section 251(k).

⁴³ Civil Aviation Act (Re-enactment) 2006, Cap A51, LFN 2004. Section 63(1)

⁴⁴ *Cameroon Airlines v Otutuizu* 217 Sc.2004

⁴⁵ *Arik Air v Aviation Handling Company* 73 NGCA 2016

⁴⁶ *Kabo Airlines v The O' Coperation* 60 LN-e-LR 2002.

- (iv) Where the ticket is a return ticket and there was delay or denial of boarding before carriage in the first leg of the journey could take place such an action can only be instituted at the State High Court as it is a simple contract.
- (v) Where it is a one-way ticket and there was no form of carriage, the contract is a simple contract which only the State High Court has jurisdiction.⁴⁴
- (vi) Where the ticket is a one-way ticket and there was delay or denial of boarding before embarkation such a contract is also a simple contract and the proper venue is the State High Court.

In situations where the ticket even though is a return ticket but there had been no embarkation by the passenger nor had the first leg of the journey been completed, it is to be deemed as one bereft of any form of carriage and in this case, the contract is merely a simple contract and not an aviation contract.

Therefore, the key areas of application of international aviation by the Federal High Courts includes but not limited to; aviation Safety and Security. The Court ensures compliance with ICAO safety and security standards, investigating accidents and incidents. Also, air navigation and traffic control, the court resolves disputes related to air traffic control, navigation, and route allocation. In the same vein, aircraft registration and ownership, the court handles cases involving aircraft registration, ownership, and financing, applying the Cape Town Convention. Also, in liability and compensation, the court determines liability and compensation for damages arising from international air travel, applying the Montreal Convention. The court also is involved in dispute resolution and provides a forum for resolving aviation-related disputes, including those involving international airlines, airports, and ground handlers.

There are however challenges and Opportunities which entails compliance with international standards: Ensuring Nigeria's aviation industry meets global standards, aligning with ICAO and other international organizations. Capacity Building enhances the court's capacity to handle complex aviation cases, through training and resources.⁴⁷

4. Enforcement of Aviation Contracts

Aviation Industry has been a significant driver of economic growth in Nigeria, contributing significantly to the nation's economic progress. Despite its positive impact, challenges such as flight delays, cancellations, air accidents, and baggage loss persist. While aviation companies are pivotal in facilitating travel and commerce, incidents causing damage to passengers or third parties are unfortunately common. In Nigeria, addressing the liability of aviation companies and providing legal recourse to affected parties are subjects of great scrutiny. In 2022, the Civil Aviation Act was enacted, followed by the Nigerian Civil Aviation Regulations of 2023, aimed at effectively regulating the Aviation Industry. These regulations govern air service and airline operations under the oversight of the Nigerian Civil Aviation Authority. Furthermore, it is imperative to know that in matters concerning simple contracts, jurisdiction lies with the State High Court rather than the Federal High Court. This principle was evident in the case of *Air France v. Majasan*⁴⁸ where the respondent initiated legal action at the Ikeja High Court of Lagos State over a dispute involving the purchase of an air ticket and subsequent refund. Although the appellant argued that the contract was an aviation contract, the Court of Appeal determined that it constituted a simple contract based on the terms and conditions outlined in the ticket. As a result, the jurisdictional decision favoured the State High Court, emphasizing the importance of understanding the nature of the contract in legal disputes. This implies that legal action can only be initiated as an aviation suit if either the passenger or carrier has boarded the aircraft. Furthermore, matters concerning simple contracts, such as the purchase and refund of airline tickets, are under the jurisdiction of the State High Court rather than the Federal High Court.

Identify the jurisdictional indicators

In the case of *Delta Airline v. Josef & Anor*⁴⁹, the Court of Appeal meticulously delineated the criteria for categorizing a matter as an aviation matter. The court pronounced the following:

- a. A simple contract falls under the jurisdiction of the State High Court as per Section 227 of the 1999 Constitution.
- b. The addition of aviation elements to a simple contract does not automatically elevate it to the jurisdiction of the Federal High Court under Section 251(1) of the Constitution.
- c. Analogy: Just as bearing an Ibo name doesn't make a Yoruba man an Ibo man, adding aviation aspects to a contract doesn't make it an aviation matter.
- d. For a contract to qualify as an aviation matter, it must involve carriage in an aircraft with goods or passengers in the custody of the aircraft.
- e. The breach of contract becomes an aviation matter only when the passenger has embarked on the journey by entering the aircraft.
- f. Breaches occurring before actual embarkment, such as at the check-in counter, fall under the jurisdiction of the State High Court as a simple breach of contract.
- g. Carriage by air only occurs when the passenger has been carried by the aircraft, not just checked in at the counter.
- h. Delays, cancellations, or changes before embarkment can be resolved in the State High Court, as carriage by air has not taken place.
- i. To fall under the jurisdiction of the Federal High Court, the passenger must have boarded the aircraft; anything less does not confer jurisdiction to the Federal High Court under Section 251(1)(k) of the Constitution.

⁴⁷ A A Utulu, *Nigerian Aviation Law* (Malthouse Press, 2015) 98.

⁴⁸ (2017) LPELR-43500 (CA)

⁴⁹ (2019) LPELR-46921 (CA)

Statute of limitations for aviation suit

In Nigeria, there are limitations applicable to various litigations, so it is necessary to understand the statute of limitations before going to court. The statute of limitations is a law that defines the period during which a lawsuit can be brought in court. Once the timeframe is outlined in a statute of limitation, it signifies that legal actions can no longer be pursued as they are prohibited by law.⁵⁰ This principle is applicable in aviation lawsuits, as an action against an air carrier for injury or death must be filed within the two-year limitation period stipulated in Article 35 of the Montreal Convention. The cases determined under the Warsaw Convention in Nigeria recognized and upheld the time limit set in Article 29 of the Warsaw Convention and it is envisaged that questions on limitation arising under the Montreal Convention will follow the precedent laid down in these cases. The time limit is not subject to tolling.⁵¹ Also, in Nigeria, an action is deemed to have been instituted or commenced against a party on the date the originating process is filed in court. In this regard, to determine whether the action was commenced within the time limit stipulated under any limitation law, the courts will usually look at the pleadings of the plaintiff to ascertain the date of the accrual of the cause of action as averred by the plaintiff and compare that with the date of the filing of the originating process. If the time between these two periods is more than the period limited for bringing the action before the courts, the suit is held to be statute-barred and will be dismissed.⁵² The differentiation between simple contracts and aviation matters holds significant importance in determining jurisdictional matters. Specifically, a contract is deemed an aviation matter only if it involves carriage within an aircraft, and any breaches must occur after the passenger embarks on the journey. Conversely, breaches occurring before actual embarkation are subject to the jurisdiction of the State High Court and are treated as simple breaches of contract. Additionally, a thorough comprehension of the statute of limitations is imperative when initiating legal proceedings in aviation-related cases. It is crucial to file lawsuits within the prescribed time limit, as failure to do so may lead to the dismissal of the case.

5. Conclusion

International Aviation Law plays a vital role in ensuring the safety, security, and efficiency of global air transport. The Federal High Court of Nigeria's application of International Aviation Law is crucial in promoting compliance, resolving disputes, and supporting the growth of Nigeria's aviation industry. By understanding and addressing the challenges and opportunities in this area, Nigeria can maintain its position as a key player in international aviation. While aviation companies are pivotal in facilitating travel and commerce, incidents causing damage to passengers or third parties are unfortunately common. In Nigeria, addressing the liability of aviation companies and providing legal recourse to affected parties are subjects of great scrutiny.

⁵⁰ Limitation of Actions in Nigeria. available at Limitation of Actions in Nigeria (resolutionlawng.com), accessed on 12 July, 2024.

⁵¹ Etigwe Uwa SAN, Queenette Hogan and Chinasa Unaegbunam, 'Aviation Liability in Nigeria'. Available at: <https://www.lexology.com/library/detail.aspx?g=ab7603b1-1a40-4d24-a3c1-088ede0ef573>, accessed on 12 July, 2024.

⁵² *ibid.*