



**DECISION OF THE BOARD OF DIRECTORS  
ON THE CONSUMER COMPLAINT**

**BETWEEN**

**DENNIS MWESIGA ..... COMPLAINANT**

**AND**

**MALAWI AIRLINES ..... RESPONDENT**

**DECISION NO. 4 OF 2021**

On 10 June 2020 the Authority received a complaint from one Dennis Mwesiga who was the complainant against Malawi Airlines who was the respondent. The complaint was about cancellation of flight by Malawi Air Ltd. Complainant was travelling for holiday to Johannesburg via Blantyre with his wife Herrieth Kabambo, his kids Belinda Mwesiga and Blessing Mwesiga. The journey was supposed to take place on 22 December 2019, but the flight was cancelled. Mr. Mwesiga and his family were then transferred to Kenya Airways which delayed its flight, thus caused him to suffer damages. He filed his complaint to the Authority in order to pursue damages suffered.

As required by the Civil Aviation Act, Cap. 80 R.E. 2020, the Consumer Complaints Handling Unit (CCU), which is established under S. 59(7) of the Act, investigated the matter as per S. 59(8) of the Act. CCU's attempt to resolve this matter amicably pursuant to S. 59(8) of the Act, was not successful; subsequently the CCU presented a report to the Committee of the Board on 12<sup>th</sup> April 2021.

The Committee received and considered the complaint and conducted hearing before the final position was realised for the Board to make a Decision.

The following was deliberated during hearing - **Whether the respondent is liable for damages caused by cancellation of its flight.**

The Committee noted that, the contract of carriage between complainant and Malawi Airlines ceased when complainant was issued with new Kenya Airways tickets. When complainant travelled with Kenya Airways terms and conditions of carriage applicable were those of Kenya Airways and no longer of Malawi Airlines.

Therefore, Malawi Airlines cannot be held liable in this complaint as the Complainant has sued a wrong party; he was supposed to sue Kenya Airways instead of Malawi Airlines.

The Guadalajara Convention of 1961 made a distinction between the contracting carrier and the actual carrier. A "contracting carrier" is a carrier which, as a principal, makes a contract for international carriage by air with a passenger, whilst another carrier (the "actual carrier") performs the whole or part of the carriage by virtue of authority from the contracting carrier. So for this case, the Contracting Carrier was Malawi Airlines while Kenya Airways was the Actual Carrier.

The Committee having heard all the parties and taking into consideration the observation emerged, found that the respondent should not be held liable for compensation claimed by the Complainant for the following reasons:

- a. The Complainant Sued the Wrong party - based on the Guadalajara Protocol, Malawi Airlines was just Contracting Carrier. The Complainant should have sued the Actual Carrier, Kenya Airways; and
- b. Damages claimed were caused by delay by Kenya Airways and not cancellation by Malawi Airlines.

The Committee further recommended that, the Complainant be advised to seek relief from Kenya Airways, the Actual Carrier.

The Complainant, as a result of cancellation and delay, claims the following;

- a) TZS. 2,000,000 being loss due to failure to arrive at Oliva Tambo International Airport on time;
- b) TZS. 1,300,000 due to cancellation of Comair tickets for himself and his family;
- c) TZS. 1,700,000 due to loss for re-booking Comair;
- d) USD 4500 due to missing a professional talk at Crowd 1 Company in Johannesburg;
- e) TZS. 400,000 being loss of income for payment done at Parade Hotel at Durban; and
- f) TZS. 100,000.00 being damages for harassment and mental torture for the complainant together with his family members.

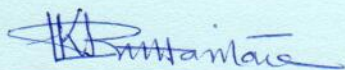
The TCAA Board of Directors having met on 3<sup>rd</sup> June 2021 and read the report and recommendations by the Committee, decided that:

The respondent should not be held liable for compensation claimed by complainant for the following reasons:

- a) The Complainant Sued the Wrong party - based on the Guadalajara Protocol, Malawi Airlines was just Contracting Carrier. He should have sued the Actual Carrier, Kenya Airways; and
- b) Damages claimed were caused by delay by Kenya Airways and not cancellation by Malawi Airlines.

The Board further decided that the Complainant be advised to seek relief from Kenya Airways, the Actual Carrier.

If not satisfied by the Decision, either party may appeal to the Fair Competition Tribunal.

A handwritten signature in blue ink, appearing to read 'Prof. Longinus Rutasitara', is written over a horizontal line.

Prof. Longinus Rutasitara  
Chairman of the Board of Directors  
TCAA

*Encl: Proceedings of the Complaint*