

CASE SUMMARY: SUIT NO. FHC/L/CS/1494/2014 – FALAE v. ASSOCIATED AND ANOTHER:Court

Federal High Court, Lagos Judicial Division, per Hon. Justice Shagari

Plaintiffs' Claim

The Plaintiffs pleaded that ‘at about 9:32 hours in the morning of 3 October 2013, and about a minute after take-off ... the aircraft [Flight 361] crashed’ because of the Defendants’ negligence. They further alleged that both Defendants breached their statutory duty to procure a legally binding insurance policy covering the passengers of Flight 361. They invited the court to apply the doctrine *res ipsa loquitur*. The Plaintiffs stated that the ‘only inference that can be drawn from the circumstances of this incident is that the Defendants were negligent’.

Defences

The Defendants argued that Flight 361 was air-worthy and that they did everything within their control to avoid the accident. They also argued that the Plaintiffs failed to prove the facts of the accident for the court to apply doctrine *res ipsa loquitur*. Associated Aviation relied on the defence of inevitable accident. NCAA argued that since it was not in control of the aircraft, the court could not rely on doctrine *res ipsa loquitur*. It alleged that the Plaintiffs must specifically prove negligence against it. It argued further that, having certified the aircraft by issuing, among others, airworthiness certificate, it discharged its duty of care. Associated pleaded that its liability is limited to US\$100,000.

Judgement

The court found that: the Plaintiffs properly invoked the doctrine *res ipsa loquitur* and shifted the burden of proof to the Defendants. The court held that aircrafts do not just crash, especially within one minute after take-off. The court found that the only inference that can be drawn is that both Defendants were negligent. The court also found that both Defendants breached their duties to ensure that there was a legally binding insurance policy covering all the operator’s liabilities.

The court granted all the Plaintiffs’ claims including declarations; general damages of US\$100,000; special damages of ₦219 million.

Appearances

1. The Plaintiffs (**the Falae Family**) – Muyiwa Ogungbenro and Oyinda Olambiwonnu of *Olajide Oyewole LLP*.
2. The First Defendant (**Associated Aviation Nigeria Ltd**) – Aderemi Bashua, U. Ebitumeri, Adedamola Alebiosu of *M.A. Bashua & Co.*
3. The Second Defendant (**Nigeria Civil Aviation Authority**). – Emeka Okpoko SAN and D. Mayange of *Straddle Partners*.