

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA

CORAM: WELBOURNE M. A. (MRS) J.A (PRESIDING)

MENSAH BRIGHT (MR) J.A.

JANAPARE A. BARTELS-KODWO (MRS.) J.A.

SUIT NO: H1/219/2022

23RD MARCH, 2023

RITA KRIBA ----- APPLICANT/APPELLANT

VRS

AFRICA WORLD

AIRLINES (AWA) ----- RESPONDENT/RESPONDENT

JUDGMENT

BARTELS-KODWO, J.A:

INTRODUCTION :

This is an appeal against the ruling of the High Court, (Human Rights Division) Accra dated 23rd November 2020 refusing an application brought by the Applicant/Appellant (hereinafter, “the Appellant”) for the enforcement of fundamental human rights under the 1992 Constitution.

BACKGROUND:

The factual premises leading to the matter in dispute are that on 11th June 2018 the Appellant caused her solicitors to file at the registry of the High Court Human Rights Division, a motion for the enforcement of human rights under **Article 33 of the 1992 Constitution**. On that motion paper, the Appellant sought various declarations from the High Court, including declarations to the effect that;

1. The Appellant was discriminated against on grounds of her physical disability by the Respondent/Respondent (hereinafter, the Respondent).
2. That the Appellant’s right to human dignity had been violated by the Respondent

The Appellant also sought declarations to the effect that there existed a binding legal contract between the parties which was breached by the Respondent.

The grounds for the motion as far as can be surmised from the affidavit in support of the motion were as follows;

1. That the Respondent refused to permit her to board a Kumasi bound flight on May 5th 2018, despite having sold the flight ticket to her a day earlier through an agent.

2. That the Respondent's refusal to board her for the flight was on account of her disability.
3. That further to the above, the Respondent's employees were "extremely rude" to the Appellant and embarrassed her because she was physically challenged.

The Appellant states that on the 4th of May 2018 she, through an agent, purchased a ticket for a Kumasi-bound flight on the Respondent Airline scheduled to depart Accra at 9:00 am. The Appellant avers that she arrived at the Kotoka International Airport at about 6:00 am. The Appellant then states that she went through the regular formalities for a domestic flight as she prepared to board. Subsequently, according to the Appellant, the employees of the Respondent asked her whether she was capable of boarding the flight unassisted, to which she says she answered in the affirmative.

However, per the Appellant, she was prevented from boarding because of her disability. The Appellant states that she tried to explain to the staff that while she walked with crutches, she was perfectly capable of boarding unassisted, but the staff refused to relent on their denial of access to the Appellant.

The Appellant claims that she tried to get her agent to speak to the Respondent airline staff but they refused to speak to the agent. She also says that due to this alleged conduct of the Respondent, she started a media blitz to raise awareness of her incident as well as the things that disabled people go through. Following the media campaign, the Appellant states that the Respondent wrote to her, claiming that their refusal to board her was on grounds of safety per their policy as it relates to wheelchair bound passengers.

The Appellant is of the belief that the reason given by the Respondent in the letter was an afterthought conjured belatedly to explain their unconstitutional discrimination.

Dissatisfied with their handling of the incident, the Appellant brought a motion before the High Court alleging breaches of her freedom from discrimination and her right to dignity as well as for breach of contract.

The Respondent on its part in its affidavit in opposition stated that it has structural limitations which her ticketing agent ought to have explained to her at the time of booking.

Additionally, the Respondent claimed that the Appellant failed to consider and comply with the Respondent's terms of service which state that persons with special needs ought to make prior arrangements for special assistance.

The Respondent, in paragraph 7 of its affidavit in opposition, admitted that it denied the Appellant carriage on grounds of her disability, but said that it did so only because she failed to disclose her status as a passenger who needs assistance to board. The Respondent then stated that it has classified passengers who require walking aids as special needs passengers in its Conditions of Carriage as being people who require assistance to board. The Respondent argued that boarding her would have been in breach of "safety rules".

The next rationale given for the refusal to board the Appellant by the Respondent was that the type of aircraft operated by the Respondent cannot accommodate specifically passengers with crutches *"as in the event of an emergency such passengers may pose a danger to themselves and other passengers in times of evacuation"*.

The Respondent then stated that the industry they operate in is a highly regulated environment and that the Ghana Civil Aviation Authority imposes restrictions on the Respondent from carrying passengers with reduced mobility on the type of aircraft

operated by the Respondent. This assertion is made without pointing to the specific regulations of the GCAA that prohibit airlines from bringing people with reduced mobility onto the specific aircraft in question.

The Respondent stated that it regrets any embarrassment that ensued as a result of the refusal to allow the Appellant to board, and that it had communicated this regret to the Appellant in its earlier correspondence. The Respondent also denied that its letter to the Appellant sought to justify their discrimination against her. The Respondent concluded its affidavit in opposition by saying that the Appellant was not entitled to her reliefs.

In the judgment, the trial judge put down the following as issues in dispute;

1. Whether or not there is a valid contract between the Applicant and the Respondent to transit the Applicant from Accra to Kumasi.
2. Whether or not the Respondent breached the contract to transit the Applicant from Accra to Kumasi, and
3. Whether or not the Applicant was discriminated against on grounds of her physical disability by the Respondent.

In determining the dispute, the trial judge states *“the existence of a valid contract is so fundamental and this would be the focus of the evidence to be reviewed”* and that *“the centrality of a valid contract to the resolution of the issues in dispute cannot be overemphasized”*. The trial judge then explained in detail the law of contract in Ghana as it applies to this case.

The trial judge then stated, *“having reviewed the various conventions, protocol, statutes and case law on none [sic] discrimination, the right sought to be protected substantively must exist. In the context of this case, the existence of the right allegedly flouted must exist as a right derived from a valid contract of carriage by air.”*

The trial judge added *“As no one has a fundamental human right and freedom to be transported by air, by an airline. Even though, there is a right not to be discriminated against by reason of disability, which is a protected right guaranteed by the 1992 Constitution and statutes which must be protected by the judiciary.”* [sic]

The analysis of the trial judge treats the issue of whether or not the Appellant was discriminated against or not as a supplemental or secondary to the issue of breach of contract. At page 24 in the first paragraph of the judgement, in distinguishing this case from the case of **CHRAJ v. Ghana National Fire Service & Anor** Civil Suit No. HR 0063/2017) the trial judge seems to suggest that because the parties in this case are a private individual and a private company, the existence of the Appellant’s freedom from discrimination on grounds of disability is dependent on a valid contract between the parties.

In conclusion, the trial court dismissed the application for the enforcement of the Appellant’s fundamental human rights after finding that while there existed a valid contract between the parties, the Respondent’s refusal to perform the obligation it assumed under the contract was “excusable”.

Dissatisfied with the decision of the trial court, the Appellant has brought the instant appeal.

GROUND OF APPEAL:

The grounds canvassed for the instant appeal are as follows;

- a. The judgement is against the weight of affidavit and documentary evidence.

- b. His Lordship fundamentally erred in law when he justified the Respondent's breach of contract on the basis of the "objective test".
- c. His Lordship fundamentally erred in law when he concluded that there was reasonable justification for the Respondent's discrimination of [sic] the Appellant.
- d. His Lordship fundamentally misdirected himself, which misdirection resulted in him erroneously arriving at the conclusion that the decision in *CHRAJ v. GNFS & AG* (Civil Suit No. HR 0063/2017) was not applicable in the Appellant's case.

ARGUMENTS OF THE APPELLANT

In the written submission filed on behalf of the Appellant, counsel contends that the Appellant is not a wheelchair passenger and that the Appellant, though on crutches, was capable of embarking and deplaning the aircraft unassisted. The contention is also made that the conduct of the Respondent airline's staff caused the Respondent to suffer public humiliation and ridicule. The Appellant says this caused her to miss a meeting with investors she had scheduled in Kumasi that day.

On the first ground of Appeal, the omnibus ground, the Appellant argues that there exist sufficient grounds for this Honourable Court to overturn the decision of the Court of first instance. The Appellant cites the cases of **Djin v. Musa Baako (2007-2008) SCGLR 686** and **Margaret Mary Adjei v. The Attorney-General [2012] 47 GMJ 61** and argues that the judgment of the trial court is not supported by the evidence on the record.

Specifically, the Appellant points to "section 3.6 of the Manual on access to air transport by persons with disabilities by international civil aviation" and says that this section states that at the point of booking it was the responsibility of the Respondent to inquire

as to whether the person booking required special assistance to board a flight. Additionally, the Appellant says that the trial judge's "finding that the Respondent endeavoured to assist the Appellant using a reasonable man's test" was not supported by the evidence on the record.

The Appellant says the manual on access to air travel also says that no person with disability should be prevented from travelling because the person did not give the aircraft operator the required notice. The Appellant cites the very same guidelines and states that the aircraft operator has an obligation to make all reasonable efforts to accommodate the needs of persons with disabilities who do not provide advance notice of 48 hours.

The Appellant cites Section 3.13 of the manual which says "*Persons with disabilities who wish to travel on short notice should not be prevented from travelling if they are unable to provide advance notice. Aircraft and airport operators should make all reasonable notice to accommodate the needs of persons with disabilities who do not provide advance notice of 48 hours.*" (emphasis the Appellant's).

The Appellant says that the failure of the trial judge to consider this provision led to the wrongful dismissal of her claim of discrimination.

The Appellant then argues that the trial judge failed to consider that the Respondent's own conditions of carriage mandate that the Respondent carries out the "*transport of customers with disabilities of any kind unless there is a specific safety-related regulation that requires us not to do so.*"

The Appellant then quotes extensively from the conditions of carriage and argues that the trial court judge failed to adequately consider these conditions leading to the erroneous conclusion that the Respondent's employees/officers/agents endeavoured to assist the Appellant "*using the reasonable man's test*". According to the Appellant, the Respondent's personnel made no attempt whatsoever to assist the Appellant, and thus the trial judge was wrong in coming to that conclusion.

The Appellant argued that the Respondent's attempt to rely on alleged structural inadequacies of the aircraft operated by the airline are an afterthought to avoid liability. The Appellant says that this supposed structural inadequacy was not communicated to the public in any way before the trip and thus as a result, the trial judge erred by relying on this assertion in deciding this dispute.

On the second ground of appeal, the Appellant argues that while the trial court judge rightly decided that there was a valid contract between the parties, it was erroneously concluded that "*the refusal to perform the obligation under it is excusable*". The Appellant says that the learned trial court judge failed to state the principle of the law of contract which "excused" the Respondent from its contractual obligation to the Appellant. The Appellant cites the opus of the jurist Christine Dowuona-Hammond, *The Law of Contract in Ghana*, wherein the learned author reiterates "*...the function of the judge is not to seek to discover some elusive mental state of the parties, but rather to ensure that as far as possible, the reasonable expectations of honest men are not disappointed.*" The Appellant says that the only ways a party is freed from their obligation under a contract is by mutual agreement, performance, frustration or a breach by the other party. In the view of the Appellant, none of these events occurred which released the Respondent from its obligation under their agreement.

On the third ground of appeal, the Appellant contends that the trial court erred when concluding that the Respondent was reasonably justified in violating the Appellant's rights and freedom from discrimination. The Appellant recites the provisions on anti-discrimination against disabled people both in the 1992 Constitution and in the Persons with Disabilities Act, 2006 (Act 715) and asserts that there are no clauses or sections that allow discrimination against persons with disabilities on the basis of "reasonable justification.

On the fourth and final ground, the Appellant avers that the trial court judge misdirected himself in coming to the conclusion that the case of **CHRAJ v. GNFS (Civil Suit No. HR 0063/2017)** is inapplicable to the instant case. The Appellant is of the view that the distinction drawn between that case and the instant case, being that that case involved public servants and a public body, while this one involved a private individual and a private company is not relevant. The Appellant states that the human rights provisions of the Constitution can be enforced against anyone, private institutions and individuals and public bodies.

The Appellant states that the learned trial court judge misinterpreted and misapplied the Canadian case of **PEEL LAW ASSOCIATION V. PIETERS 2013 ONCA 396** in coming to the conclusion that the distinction between public and private bodies was a material distinction when it came to the enforcement of fundamental human rights.

On this fourth and final ground, the Appellant concludes that the learned trial judge took into consideration irrelevant or immaterial matters which influenced the lower court coming to the wrong conclusion on the dispute.

ARGUMENTS OF THE RESPONDENT

The Respondent in the written submission filed on its behalf by its counsel argued the first three grounds of appeal together.

The Respondent raises as a preliminary issue its view that grounds 'b' and 'c' of the Appellant's grounds of appeal violate rule 8(4) of the Rules of this Court, C.I. 19. That rule reads as follows, "*Where the grounds of an appeal allege misdirection or error in law, particulars of the misdirection or error shall be clearly stated.*"

On the substance of the Appeal, the Respondent first argues that the Appellant had the responsibility to show this Court which pieces of evidence were misapplied, which if applied properly would have tilted the decision of the lower court in its favour. The Respondent is of the view that the Appellant failed in this task.

LAW AND ANALYSIS

Article 12 (2) of the Constitution, 1992, states:

*"Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedom of the individual contained in this chapter but **subject to respect for the rights and freedoms of others and for the public interest.**"*

Article 15 of the 1992 Constitution reads in part as follows;

- “(1) *The dignity of all persons shall be inviolable.*
- (2) *No person shall, whether or not he is arrested, restricted or detained, be subjected to*
- (a) *torture or other cruel, inhuman or degrading treatment or punishment;*
- (b) *any other condition that detracts or is likely to detract from his dignity and worth as a human being.* (emphasis added)

Article 29(4) of the Constitution states as follows;

- (4) *Disabled persons shall be protected against all exploitation, **all regulations and all treatment of a discriminatory, abusive or degrading nature.*** (emphasis added)

Article 29(6) of the 1992 Constitution provides, “*As far as practicable, every place to which the public have access shall have appropriate facilities for disabled persons.*” emphasis added.

Article 33 of the 1992 Constitution provides in part as follows,

1. *Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or likely to be contravened in relation to him, then, **without prejudice to any other action that is lawfully available,** that person may apply to the High Court for redress.* (emphasis supplied)

2. *The High Court may, under clause 10 of this article, issue such directions or orders including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto as it may consider appropriate for the purposes of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled."*
3. *The Rules of Court Committee may make rules of court with respect to the practice and procedure of the Superior Courts for the purpose of this article."*

Section 10(4) of the Interpretation Act 2009 (Act 792) states in part as follows;

- "(4) Without prejudice to any other provision of this section, a Court shall construe or interpret a provision of the Constitution or any other law in a manner*
- (a) that promotes the rule of law and the values of good governance,*
 - (b) that advances human rights and fundamental freedoms,*
 - (c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and*
 - (d) that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana."* (emphases added)

Section 23 of the Persons With Disabilities Act (Act 715) provides as follows;

"The Ministries responsible for rail, air, and road transport and where appropriate the Ministry of Local Government shall ensure that the needs of persons with disability are

taken into account in the design, construction and operation of the transportation network."

Section 28 of Act 715 states;

"The Civil Aviation Authority and any other authority responsible for the management of a port shall provide facilities that will aid the movement of a person with disability at the port."

Relevant portions of Order 67 of C.I. 47 High Court (Civil Procedure) Rules state as follows;

Rule 1: A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33 (1) of the Constitution shall submit an application to the High Court."

Order 67 rule 2 (1): "The application shall be made to the Court by motion supported by an affidavit signed by the applicant or by the applicant's lawyer and shall contain the following particulars:

- (a) the full name and address for service of the applicant and the lawyer of the applicant;
- (b) the facts upon which the applicant relies;
- (c) the relief or remedy sought by the applicant and the grounds on which the applicant seeks the relief or remedy: and
- (d) the full name and address for service of any person directly affected by the application.

Order 67 rule 2 (2): "A copy of the application shall be served on the Attorney-General and such other persons as the Court may direct."

Rule 3—(1) The application shall be submitted to the High Court within

- (a) six months of the occurrence of the alleged contravention; or*
- (b) three months of the applicant becoming aware that the contravention is occurring or is likely to occur.*

Order 67 rule 3 (2): “Notice of the application shall be served on the Attorney-General and all parties named in the affidavit of the applicant as being directly affected.”

Order 67 rule 8: “The Court may issue such directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms of the Constitution to the protection of which the applicant is entitled.”

In short, the above means that if someone is of the view that their fundamental human rights have been violated, the proper forum is the High Court and the process that commences the action is an originating motion on notice. The rules also specify that the Attorney-General must be made a Respondent in addition to the person alleged to have committed the rights violation. Per Order 4 Rule 5 of C.I. 47, the failure to join the Attorney-General to this action is not fatal. Per sub rule 2 of Order 4 Rule 5, even at this appellate stage, this Court has the power to order the Attorney-General to be joined as a party if the Court is of the view that the Attorney-General ought to have been joined as a party or that the Attorney-General’s presence before the Court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon.

The action must be commenced a maximum of six months after the violation occurs or three months after the Applicant becomes aware of the alleged violation. For more on the time for bringing the application, see the case of **Abena Pokua Ackah v. ADB** 2017-2020 1 SCGLR 226.

The rules also give the High Court the power to issue orders, directions or even prerogative writs to halt the rights violation or otherwise enforce and protect the rights of the Applicant.

It is also important to note that the right of an Article 33 Applicant to bring an action for the enforcement of their fundamental human rights is without prejudice to their right to pursue other actions that are borne out of the action that constitutes a breach of fundamental human rights, such as an action in tort or in contract. Consequently, this Court is of the view that the Applicant ought to have decoupled its action seeking damages for breach of contract from the instant application seeking the enforcement of her fundamental human rights and freedoms.

The enforcement of contractual rights occurs under a writ and not an originating motion on notice. It is for this reason why Article 33 preserves the right for a person alleging a breach of their fundamental human right to sue in other actions to enforce other rights. The claim for damages for breach of contract is therefore hereby dismissed without prejudice to the Appellant's right to pursue that claim in the appropriate manner.

This leaves for resolution the issue of whether or not the Respondent violated the Appellant's fundamental human rights, which ought to have been the main (and

perhaps the sole) issue in this action. The central allegation by the Appellant under this issue is that the Respondent violated the Appellant's fundamental right to freedom from discrimination and right to human dignity.

When it comes to the issue of discrimination on grounds of disability, in her affidavit in support of the motion, the Appellant states in paragraph 9, *"That to my dismay however, I was prevented from boarding the flight by officials/employees/agents of the Respondent on grounds of my physical disability"*. This is the conduct that the Appellant contends amounts to unconstitutional discrimination on grounds of disability.

In their affidavit in opposition to the motion, the Applicant states thus, *"The Respondent admits paragraph 9 of the Respondent's Affidavit and would say that the Respondent was not allowed to board the flight because she failed to indicate her status as a passenger who needs assistance to board."* This is essentially an admission by the Respondent of the conduct that the Appellant accused them of. It is therefore curious that the trial judge at page 24 of the 29 page judgment stated *"The Respondent has denied discriminating against the Applicant and cited Exhibit "2" which is the Ground Handling Manual dated 15th February 2015, as justification and excuse for the conduct complained about"*.

While the Respondent did cite the manual in an effort to justify its conduct, the Respondent's response to the Appellant's paragraph 9 is essentially an admission. The question of whether or not the Appellant was prevented from boarding the aircraft **on account of** her disability no longer remains. All that is left is a determination of whether or not the rationale given for this disability-based discrimination is legally tenable.

The Respondent gives quite a number of reasons in its attempt to justify the decision to refuse to board the Appellant on grounds of her disability. First the Respondent says

that it refused the Appellant carriage because the Appellant failed to give advance notice of the fact that she required assistance to board the Appellant's aircraft. Secondly, the Respondent says that even though the Appellant says that she could have 'easily' boarded the aircraft, due to her use of crutches, the Appellant falls into a class of passengers that it has created called Special Needs passengers, and that allowing her to board would have been in breach of "safety rules". Thirdly, the Respondent says that the aircraft it operates for that flight cannot accommodate passengers with clutches because they "*may pose a danger to themselves and other passengers*" in an evacuation in an emergency situation. The Respondent then suggests that the Ghana Civil Aviation Authority's regulations restricts the Respondent from carrying passengers with reduced mobility on the aircraft operated by the Respondent. These are a cascading flow of increasingly relevant potential justifications for the decision to discriminate against the Appellant on account of her disability.

It is worthy of note that in the affidavit in opposition, the Respondent does not point to the particular "safety rules" or GCAA regulations that prevent it from boarding the Appellant. The Respondent does not mention the specific type of aircraft and the structural limitations that prevent it from boarding passengers on crutches.

*Let us draw wisdom from the supreme law of the land, **the 1992 Constitution. Article 29**, as stated above, prohibits discrimination on the grounds of disability. The Respondent cannot purport to resort to exceptions or terms in its conditions of carriage as legally tenable justification for failing to comply with constitutionally endowed rights or freedoms from discrimination. It goes without saying that the conditions of carriage are subordinate to the Constitution of the Republic of Ghana. Nothing in the conditions of carriage survives if found to be inconsistent with the provisions of the Constitution. The same applies to the GCAA regulations, the IATA rules or any other rules, regulations or laws lower than the Constitution.*

Apart from the Constitution, our lawmakers have, in their wisdom, enacted laws further enshrining the prohibition on discrimination against the disabled. Sections 23 and 29 of the Persons with Disability Act, 2006 (Act 715) contain mandates for the Ghana Civil Aviation Authority and other port authorities to ensure and facilitate the movement of PWDs in Ghana's ports, including the airport.

A provision requiring a disabled person to give 48 hour notice of their disability to an airline, failing which they will be refused carriage, is itself a discriminatory provision. Firstly, this means that disabled people cannot travel if the need arises less than 48 hours before the time for the flight. If a disabled person needs to fly in an emergency or rapidly developing situation, according to this policy, they will not be able to. As a result, if, for example, a disabled person hears that their parent has 24 hours to live, according to this policy, they should forget flying home to see their dying parent. Disabled people under this policy will be unable to pursue time-sensitive opportunities to make money or otherwise improve their lot, should this policy be upheld. This policy is thus discriminatory without justification and is unconstitutional. Thus, citing it as a reason why the discrimination against the Appellant was carried out is legally untenable. In any case, the very same policy requires the airline staff to attempt to accommodate the disabled person even if the appropriate notice period was not given.

Article 12(2) contains the only legally acceptable basis for refusing to uphold the fundamental human rights and freedoms of an individual. The Respondent would have to demonstrate (after its admission that the refusal of carriage was on account of the Appellant's disability), that non-discrimination in this case would have posed a danger to the rights and freedoms of others, particularly other passengers. A feeble attempt at this was made by the Respondent when it asserted that allowing the Appellant to board

may have posed a danger to the safety of other passengers in the event that the aircraft got into an emergency situation and an evacuation was being conducted.

This Court is of the view that this, as the Appellant contends, comes across as a belated excuse, conjured to justify the Respondent's breach of the Appellant's constitutional rights. In any case, if it is true that the aircraft is not suited to carry persons who use crutches, what use would it have been for the Appellant to provide the Respondent with 48 hour notice in advance of the flight time?

Additionally, the Respondent failed to demonstrate or prove to the Court that the carriage of the Appellant posed a danger to the safety of others in the event of an emergency. Even vague references to the particular aircraft were made without explaining how the aircraft in particular was ill-equipped for carrying passengers who use crutches. In other words, the Respondent failed to demonstrate to the Court below and to this Court, how granting carriage to the Appellant would threaten the rights and freedoms of others. This would have been the only acceptable justification of the conduct of the Respondent.

CONCLUSION:

In the absence of a legitimate **Article 12(2)** justification for the discriminatory conduct, this Court is constrained to overturn the decision of the High Court and finds in favour of the Appellant.

The social theory or model of disability is a model of disability that moves away from focus on individual bodies and medical conditions as creating disability, to the idea that a person is only disabled as long as their society does not take them into consideration in crafting policy and building public infrastructure. According to that theory, disabled people have a lot to contribute to society but in many cases are unable to because infrastructure and policy that would enable them contribute more fully to society does not exist. Sociologist Jerry Allan Winter goes more in depth about the sociological aspect of disability rights in his article **The Development of the Disability Rights Movement as a Social Problem Solver** published in Volume 23 of the journal **Disability Studies Quarterly**.

While the framers of the **Constitution** and the **Persons with Disabilities Act, 2006 (Act 715)** may not have made specific reference to this theory, it is clear that they subscribe to the theory that society has the power to harness the full potential of persons with disability through the law and policy. This Court is guided by the imperative placed on interpreters of Ghanaian law to interpret the laws in a manner that advances or protects human rights, as well as promotes the creative development of the law, which in turn promotes the development of the country.

Upholding the decision of the High Court would amount to upholding a decision or an interpretation of the law which stagnates or sets back the rights of the physically disabled in society. Such a decision is not in conformity with the spirit of the law on disability rights in Ghana as a whole as analysed above.

Consequently, the instant appeal is granted in part in the following terms;

- a. Issues to do with breach of contract are struck out as being inappropriate to be raised under an originating motion for the enforcement of human rights;
- b. This Court declares that the conduct of the Respondent violated the fundamental human rights of the Appellant, particularly the right to freedom from discrimination on grounds of disability and the right to human dignity;
- c. A pecuniary award of Twenty Thousand Ghana Cedis is awarded in favour of the Appellant for the breach of her fundamental human rights; and
- d. The Respondent shall bear the Appellant's cost of the litigation.

In addition, this Court recommends that the Ghana Civil Aviation Authority, as well as all other port authorities in this Country conform with their mandate under the **Persons with Disabilities Act, 2006 (Act 715)** and ensure that facilities, buildings, public spaces and air and seacraft are made accessible to disabled people. If there truly are such craft which are incapable of modifications for use for disabled persons, it is recommended that the use of such craft be gradually phased out of use.

This judgment should serve as a reminder that discrimination on the basis of disability is unacceptable and will not be countenanced or tolerated by the Courts. Disabled people form an integral part of society. No society can benefit the full potential of its people without working out a way to harness the full potential of its disabled people. The Appellant, like all disabled people, is entitled to equal treatment under the law. The Respondent and other operatives in its industry must take proactive steps to ensure inclusion of people with disabilities in the use of their services and facilities.

(Sgd.)

JANAPARE A. BARTELS-KODWO (MRS.)

(JUSTICE OF APPEAL)

(Sgd.)

Welbourne, (J. A.)

I agree

MARGARET WELBOURNE (MRS.)

(JUSTICE OF APPEAL)

(Sgd.)

Mensah, (J. A.)

I also agree

P. BRIGHT MENSAH

(JUSTICE OF APPEAL)

COUNSEL:

- ❖ **Florence Mensah for Respondent/Respondent**
- ❖ **Harold Tivah Atuguba for the Applicant/Appellant (Absent)**