

Why Fly540 have to pay disabled doctor Sh400,000 in damages

SUSAN MUHINDI / The High Court has said it is discriminatory and unfair for aircraft to lack facilities that should assist Persons With Disabilities to ascend the flight steps.

As a result, Fly540 will have to part with Sh400,000 in damages after a passenger was able to prove claims of unfair treatment.

Justice Hedwig Ong'undi said the aircraft was obligated by the law to provide the necessary means from the beginning, but it failed to do so.

In citing the Persons with Disabilities Act, the judge said persons with disabilities are entitled to the necessary tools and means to live reasonably and comfortably in society.

The Act under section 2 defines assistive devices as "assistive devices and services" which means implements, tools, and specialised services (including the services of qualified interpreters for the deaf and qualified teachers for the blind) provided to persons with disabilities to assist them in education, employment or other activities."

Article 27 of the constitution on the other hand forbids any person or institution from discriminating against a person based on a disability that they may have. But the local aircraft, according to the judge, went against all these provisions.

"In essence, all passengers must be able to access the aircraft regardless of their physical status. In the instant case, it is plain that the passengers without a disability were provided with the stairway to access the aircraft while the persons with disability in the form of leg mobility were not provided with means to access the flight," said Ong'undi.

She declared the failure by Five Forty Aviation Limited to provide sufficient facilities and equipment to assist PWDs to ascend the aircraft steps and the treatment accorded to Agnes Nyaga was discriminatory, unfair, humiliating, and inhuman.

She also awarded Nyaga Sh400,000 in damages for violation of her rights.

Nyaga filed the case in April 2016. At the time she stated she was a medical doctor and specialised pediatrician at Nyeri County and Referral Hospital.

In her court papers, she detailed how the aircraft treated her unfairly when she was set to travel from Eldoret to Nairobi to attend a three-day seminar.

She explained to the court that when she arrived at the airport, she enquired whether Flight Five Forty had a special chair to assist with boarding of the aircraft. There were

none. But she was told she would be assisted by four male cabin crew members to get up the aircraft steps.

During the process of being carried, she slipped as the stairs were wet from the rain, and her leg got stuck in the staircase. She requested the men to take her back to the first step to enable her to regain her balance.

As she tried to board, she said the pilot came out of the aircraft and in a humiliating manner remarked that it would take 40 minutes to get her up the stairs. He therefore directed that she be carried down and wait for all the passengers to board the aircraft. She was denied access to her walking aids by the pilot.

"It was at that point that I and the pilot had an altercation over the incident and he told me that he had a right to decide who would get aboard the aircraft and in fact I would not get on board," Nyaga said.

"Humiliated, I was wheeled back to the airport waiting lounge. I ended up spending the night at the airport," she added.

During hearing of the case, she explained that her disability was as a result of polio which she contracted as a child. Ngat's why she needed to use two walking sticks.

She indicated that some of the



Fly540 plane at Moi International airport / FILE

aircraft have a chair lift or a forklift to enable access but in this case, it is the pilot who denied her the use of the forklift.

In response to the case, the pilot who was flying the craft Moses Jack Opiyo Odery, a pilot with over 20 years of working experience, told the court he was flying the evening Nairobi-Eldoret route which was running late.

"When the aircraft was ready for boarding, I gave clearance for the passengers to start boarding with priority passengers such as disabled persons," he said.

"When I noticed that it had been 20 minutes and no passengers had boarded, I left the cockpit to go find

out what the problem was. I found the petitioner on the tarmac and there was an ongoing commotion," he added.

He said the petitioner was resisting assistance. She wanted to do it herself. "When I suggested that I and the other personnel assist her up the stairway, she violently pushed me away," Odery said.

The judge in awarding Nyaga, said while the company did indeed discriminate against her, its actions did not amount to inhuman and degrading treatment as alleged.

"Despite its failure to provide the assistive devices, the company attempted to assist the petitioner in the best manner it could."