EXAMINATION OF KEY LEGAL RELATIONS BETWEEN BANKS AND CUSTOMERS IN NIGERIA

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Abstract

This paper is borne out of the need to clarify essential features of the relationship between banks and their customers, more so, on account of the pervasive lack of awareness or consciousness by a great majority of bank customers of their rights in banking transactions. The paper has therefore examined the special relationship that exists between banks and their customers and found, among other things that a good understanding of each other's legal position and peculiarities can result in a healthy bank and customer relationship that can yield better savings culture and economic growth.

Keywords: *Bank, customer, banking business, savings culture, economic growth, interest rate, joint account, account mandate.*

1. Introduction

The relationship between a bank and its customers has been a controversial, if not enigmatic, one for several decades in Nigeria. Yet, the matter is far from being a settled one. This is partly owing to the frequency and volume of legislations regulating the banking industry with attendant complexities in comprehension, interpretation and application; and partly due to the propensity of bank operators to exploit the loose ends of the regulatory regime and the lack of adequate consciousness on the side of the general public that constitute their customer base to maximize profit, most times unconscionably. For these and other reasons, bank and customer relations in Nigeria is largely defined by some lopsidedness that is generally weighted against the customer. This work, therefore, sets out to explicate the fundamental basis of this relationship and evaluate the law on point in order to create a functional relationship that is fair and just to both parties and can result in sustainable economic growth and prosperity.

1.1 Conceptual Framework

A bank is a financial establishment for the deposit, loan, exchange, or issue of money, and for the transmission of funds. Similarly, banking is the business carried on by or

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with a bank while a bank account is a deposit or credit account with a bank, such as a demand, time, savings, or passbook account.[2] The Banks and Other Financial Institutions Act only defines bank as a bank licenced under the Act; and banking business as the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques drawn by or paid in by customers; provision of finance or such other business as the governor of the Central Bank may designate as banking business.[3] Accordingly, by statutory definition, a bank refers to any institution that undertakes the banking business outlined under the Banks and Other Financial Institutions Act. For that matter, a bank Customer is any person, entity or institution engaged in banking transactions with a bank.

2. Essential Elements of Bank and Customer Relations

The exact nature and dimension of the relationship between a bank and its customers is not specified under the statutes in Nigeria. This is understandable not only because of the fluid nature of that relationship but more because such relationship is essentially contractual and contacting parties have basic rights to agree on the basis of consensus ad idem on the terms and conditions of their contract. Therefore, legislating on such relationship, save broadly, may present quite a good deal of complications. On this account, the relationship between a bank and its customers is essentially and largely dictated by common law and judicial interpretation of extant statutes.

The courts have held in a plethora of cases that the relationship between a bank and a customer is a contractual one. In *Integrated Timber Ltd vs. UBN Plc*,[4] the Supreme Court held that the Customer and Banker relationship is certainly contractual. That is why the same Supreme Court held in *Aminu Ishola v Afribank*,[5] that the principles of law is also well settled that the refusal by a banker to pay a customer's cheque when the customer has sufficient funds in his account tocover the amounts on the cheque amounts to breach of contract. In *Sani Abacha Foundation for Peace and Unity*

[2]Section 66 of the Banks and Other Financial Institutions (BOFIA) Act, 1991. Section 59 of the Nigeria Deposit Insurance Corporation Act also defines a bank as any person who carries on the business of banking which includes the acceptance of deposits. See also section 60 of the Central Bank of Nigeria Act, 2007, which adopts the definition of bank in the BOFIA Act.
[3](2006)26 NSCQR 734 at 738 ratio 5.
[4] (2013)54.2 NSCQR 717 at 722 ration 12
[5](2010)41 NSCQR 360 at 379.

vs. United Bank for Africa Plc,[6] the Supreme Court cited with approval the decision in *R vs. Okon*,[7] to the effect that:

> When money is paid by a customer into the bank, there is a contract between the banker and the customer in which the banker receives the money as a loan from the customer against the promise by the banker to honour the customer's cheque or other orders of the customer.

This case therefore illustrates that the relationship between a bank and customers is actually that of a debtor and customer relationship and as such contractual in nature.

There is a further issue of interest rates in relation to banking business. Banks are at liberty to fix their interest rates, the rates at which they can borrow and the rates at which they can lend. However, section 23 of the Banks and Other Financial Institutions Act mandates each bank to display at its offices its lending and deposit interest rates and to render to the Central Bank of Nigeria information on such rates as may be specified from time to time by the Central Bank. This power, however, is exercisable subject to the monetary policy rate determined by the Central Bank and published pursuant to section 35 of the Central Bank of Nigeria Act. That is why the Court of Appeal held in *Standard Trust Bank Ltd vs. Interdrill Nigeria Ltd*,[8] that interest as applicable to the relationship of Bank and Customer is a sum of money payable in respect of the use of the bankers money by the customer which money is often termed principal; and that failure to sufficiently plead that the plaintiff is entitled to an interest to rate agreed by both parties will result into failure to get judgment on that interest so claimed.[9]

In *African Continental Bank Plc&Anor vs. J. N. Okorie*,[10] the Court of Appeal held that the rate of interest is never static. It fluctuates according to the dictates of the Central Bank of Nigeria. The Court also held that in the banking transaction, the question of steady accrual of interest on a particular account is on a matter the court is expected to take judicial notice of under section 74, now section 122 of the evidence Act.[11] The bank

[6](1933-1966)1 NBLR 241 at 253. See further *Foley vs. Hill*, 2HLC28 and *R vs. Deavenfort* (1954)38 CAR 37 at 41
[7] (2007)2 JNSC 364 at 367 ratio 5 and 6
[8] See further *NDIC vs. Ecobank (Nig) Ltd* (2003)11 NWLR (Pt. 830; *Bendel Feed & Flour Mills Ltd vs. N.I.M.B Ltd* (2000)5 NWLR (Pt. 655)29.
[9] (2006)2 C.N.Q.L.R.I at 2 ratio 1,2 and 3.
[10] Evidence Act, 2011
[11] See also *Union Bank vs. Ozigbo* (1994)3 SCNJ 42 at 59 - 60

cannot also unilaterally increase or hike the interest rate payable on loan by the customer without his concurrence or option to continue with the transaction;[12] unless the customer had earlier signed up under an existing contract authorizing the bank to do so. This is a major stratagem exposing unwary or desperate customers to bank exploitation.

There is again the question whether the dismissal of a bank employee will have any effect on the shares he owns in the bank. The Supreme Court in *Osisanya v Afribank*[13] appears to have settled this issue when it stated that:

> The question of share ownership of an employee in a company for which he works generally has nothing to do with the terms of the employee's employment under the company. Share ownership is a relationship governed by the Companies and Allied Matters Act. Outsiders who are not employees of a company buy shares in the company. I do not see therefore why the dismissal or termination of the plaintiff from the defendant's employment would have any effect whatsoever on the shares he owned in the plaintiff's Company.

Again, banks are obligated under the law to disclose the names and addresses of their customers to relevant authorities for purposes of taxing their deposits. Section 49(1) of the Personal Income Tax Act provides that a person engaged in banking shall prepare a return at the end of each month specifying the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company, to the Federal Board of Inland Revenue.[14]

There is also the issue of when funds can be withdrawn from a join account. In *Victor Ndoma Egba vs. African Continental Bank,*[15]the Supreme Court examined the purpose of a jointly executed mandate form by partners in a partnership dealing in banking transactions and held that:

> When the plaintiff and PW2 jointly executed the mandate form, exhibit I, it must have dawned on the defendant that each wanted to protect himself from a situation where the other could unilaterally withdraw the partnership funds. The defendant therefore owed each of the two partners the duty not to allow either of

[12] (2007)29 NSQR 282 at 285 ratio 2
[13] Section 28 of the Federal Inland Revenue Service Act, 2007, and section 61 of the Companies Income Tax Act have similar provisions.
[14] (2005)22 NSCQR 224 at 230 ratio 9 and 10
[15] Section 1 of the Dishonoured Cheques (Offences) Act

> them to draw funds from the partnership account without the concurrence of the other, which concurrence must be signified by the signature of that other as stated in exhibit I. It amounts to making nonsense of the purpose of giving the mandate in exhibit I for the court below to rely on the Partnership Act, 1890, to create an escape route for the defendant in it obligations to the partners.

The Court however went further to clarify that:

> It needs to be said, however, that the basis of the liability ascribed to the defendant is in the tort of Negligence. It is not a case of absolute liability. The question is, had the defendant exercised due care and diligence in the procedure it adopted in making payments on exhibits 2,3 and 4? The degree of perfection achieved in the simulation of the genuine signature of a customer may be so high that even the banker may not be able to discover it is a forgery. It is not therefore the law that when a banker pays money out from a customer's account on a cheque, which he believes to be genuine but which turns out to be a forgery, the banker is willynilly liable. The basis of liability in such a case is the failure to exercise reasonable care and diligence to process the cheque before payment. If there is cogent evidence, which the court accepts that the banking official before paying out money from a customer's account on a forged cheque did all that is necessary to compare the signature on the cheque, which turns out to be forged with the specimen signature of the customer in its possession, the basis of liability in negligence is displaced

The foregoing decision does not, we submit, apply to a savings account since the bank official acting on a withdrawal slip has ample opportunity to interrogate the identity of a customer making a withdrawal from a claimed account. On the issue of dud cheques, the Dishonoured Cheques (Offences) Act makes it an offence for any person to obtain or induce the delivery of anything capable of being stolen either to himself or to any other person; or obtain credit for himself or any other person by means of cheque that when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn. A person drawing such a cheque in the case of an individual shall be sentenced to two years imprisonment without any option of fine; and in the case of a body corporate, to a fine of not less than five thousand naira. However, a person shall not be guilty of the above offence if he proves to the satisfaction of the court that when he issued that cheque he had reasonable grounds for believing, and did believe in fact, that it would be honoured

if presented for payment within three months from the date of issue.[16] By section 2 of the Dishonoured Cheques (Offences) Act, if any offence committed by a corporate body is attributable to any officer of the corporate body through his consent, connivance, or negligence then that officer shall be proceeded against and punished as an individual.

Finally, there is the issue of court jurisdiction in resolving bank and customer disputes. In *Integrated Timber Ltd vs. UBN Plc*,[17] the Supreme Court settled the debate when it held that the Federal High Court does not have exclusive jurisdiction in banking and customer and banker relationship. For the court, where the relationship of individual customer and banker is established, any dispute arising from any such transaction is triable in the State High Court as well as in the Federal High Court. In *Oyegoke vs. Iriguna*,[18] the Court held that the subject matter in dispute, i.e. exchange of foreign currency, can at best be a subject matter of concurrent jurisdiction between the Federal High Court and a State High Court. Similarly, in *UBN vs. BTL*,[19] the Supreme Court stated that:

> As the claim has nothing to do with monetary or fiscal policy of the Federal Government of Nigeria in the pleadings and evidence before the Court, the mere fact that the unit of account is foreign currency for which the respondent paid the naira equivalent does not make it a foreign exchange matter.

Furthermore, a customer can sue a bank for failure to remit money abroad for which the customer has placed a demand. And the action lies in breach of contract.

3. Conclusion

The relationship between a bank and its customers is borne out of contract regulated by common law, case law, and in some circumstances, statutes. Consequently, the bulk of the transactions a customer can make with a bank is contractual in nature. When a customer deposits money in the bank, he becomes a creditor to the bank which in turn becomes his debtor. Such money must be paid to him on demand without prejudice to reasonable bank service charges. Where this does not happen, the customer is entitled to a remedy for breach of contract.

[16] Supra at ratio 3 and 4
[17] (2002)5 NWLR (Pt. 760)417 at 438
[18] (2006)28 NSCOR 381 at 388 ratio 10 and 11
[19] CCB (Nig) Ltd vs. Mbakwe (2002) 7 NWLR 163