BANKER- CUSTOMER RELATIONSHIP UNDER THE NIGERIAN LAWS.

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DELIVERED ON: THE 14TH OF JUNE 2024.

GREENFIELD CHAMBERS IN-HOUSE LECTURES

TABLE OF CONTENTS:

- Introduction
- Laws regulating banking transactions in Nigeria
- Definition of “bank”
- Who is a customer?
- Nature of the relationship between a bank and its customer
- Rights of a customer
- Rights of a bank
- Duties of a bank to a customer
- Duties of a customer to a bank
- Can the customer have unrestricted access to withdraw the money in his account?
- Jurisdiction to entertain disputes arising as between a bank and its customer
- Possible remedies available to banks and their customer in a banking transaction:
- Conclusion

INTRODUCTION:

- The banking sector plays a very significant role in every commercial transaction, whether it be locally or internationally. The banker-customer relationship is an important component of our financial sector in Nigeria. This relationship is multifaceted and it encompasses a range of interactions of how banks and their customers engage with one another.
- It is established that the relationship between a bank and its customer is basically contractual and that of debtor-creditor. Hence, there exists a fiduciary relationship between a bank and its customer, this relationship legally binds the bank to act in the best interest of the customer.
- In recent years, the relationship between banks and its customers has evolved and banking transactions has been influenced by technological advancement and the high rise of digital banking. Understanding the relationship between a bank and its customers is essential for both the banks and the customers to effectively address any difficulty or issue that may arise from any financial transaction.

LAWS REGULATING BANKING TRANSACTIONS IN NIGERIA:

- The 1999 constitution of the federal republic of Nigeria as amended.
- Central Bank of Nigeria (Estabishment) Act 2007.
- Banks and Other Financial Institutions Act (BOFIA) BOFIA 2020; No. 5, LFN 2004.
- Federal Competition and Consumer Protection Act, 2018.
- Evidence Act 2011; No. 18, LFN 2004.
- Nigerian Data Protection Act 2023.
- Money Laundering Act 2022.

THE DEFINITION OF "BANK"

- The term 'bank' and 'banker' are usually used interchangeably in the banking system. Generally, people see anybody working in a bank as a banker. This may be correct for the purpose of the banking profession, but this research mainly focuses on banking generally as an institution. It is important to refer to the case of **Akwule and Others v. Reginam [1963] All NLR 193, where** the Supreme Court held that:
- *"The word 'banker' does not, in our view, include a person who is a mere employee of a bank. The relationship between a banker and a customer is that of debtor and creditor in respect of the money deposited with the banker by the customer. This position becomes clearer when a customer asks for his money. If the amount is not paid, the customer can sue the bank. The action will lie against the bank, not the bank manager..."*

- Also, the oxford advanced learners dictionary defines "Bank" as: An organization that provides various financial services, for example keeping or lending of money.

THE DEFINITION OF "BANK" CONTD

- Unfortunately, none of the principal statutes governing banks in Nigeria has clearly given a definition of what a bank really is. However, some existing statutes merely describe the term but the definitions given appears limited.
- **Section 2 of The Bill of Exchange Act 1882 (as amended in 1990)** defines a banker as including a body of persons whether incorporated or not, who carry on the business of banking.
- **Section 2(1) of the Evidence Act 2011,** also defines the term as any person, partnership or company carrying on the business of a banker…" These definitions have been rendered obsolete due to the use of the expressions "whether incorporated or not", "any person, partnership" as successive banking legislative enactments such as section 2 of the Banks and Other Financial Institutions Act (BOFIA), which provides that no person shall carry on any banking business in Nigeria except it is a company duly incorporated in Nigeria and holds a valid banking license issued under the Act.
- **However, section 131 of BOFIA** 2020 defines a bank as a bank licensed under the act. The section further defines **"banking business"** as: Means the business of receiving current deposits on current account, saving deposits account or other similar account, paying or collecting cheques, drawn by or paid in by customers; provision of finance consultancy and advisory services relating to corporate and investment matters, making or managing investments on behalf of any person whether such businesses are conducted digitally, virtually or electronically only or such other business as the governor may, by order publish in the Gazette designate as banking business.

WHO IS CUSTOMER?

- A customer can be a person who has an account with a bank or has a relationship with a bank even though he has no account with the bank.
- The definition of a customer is important to determine who can bring an action against a bank. Generally parties to a contract can sue on it and non-parties to a contract cannot sue even if the contract was made for their benefit.
- According to A. S. Hornby, Oxford Advanced Learner's Dictionary of Current English, The word ‘customer’ ordinarily refers to any person who enters into a contract of sale for the purchase of goods or services. A customer is defined as someone who buys goods or services from a shop/store or business, or who uses a bank.

WHO IS CUSTOMER? CONTD

- In the case of **Ekpeyong v The State [1967] 1 All NLR 285**, where the court also noted that in order to be a customer; a person must have an account with the bank or has agreed to open one. A customer is a person who has an account with a bank or has a relationship with a bank even though he has no account with the bank.

WHO IS CUSTOMER? CONTD

- The question of whether a person can hold an account on a third party's behalf was resolved in the case of **Ademiluyi and Lamuye v. African Continental Bank ltd, [1964] NCLR 10.**
- the court held that if a person's name appeared in the bank's book, even when the bank believes that the account is to be held in trust for another party, the person whose name appears in the bank's book will be held as the customer of the bank and not the other party unless the title of the account clearly indicates "Agency" or "Trusteeship".
- It can be deduced from the provisions of **BOFIA** that a customer is a person who engages in the business of paying deposits on current account, savings account or other similar account, draws or pays in cheques, receives finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.
- However, in a banking transaction, a person who is not necessarily the owner of an account but only deposited money in such account, may be able to sue for the money in very limited circumstances, such circumstances can be where there is denial by the bank of his deposit of money into an account or the account is credited with less than the amount he deposited. In both of these cases, the depositor can sue directly on the basis of the deposit receipt issued to him by the bank. See **Ecobank Nig. Plc v. Kunle (2019) 10 NWLR (Pt. 1679) 90.**

WHO IS CUSTOMER? CONTD

- Also, note that anyone whose interest may be affected by the representation of a bank is deemed a customer of the bank giving such representation can affect such a person. The foregoing definition of a bank's customer is consistent with the court's decision in **HEDLEY BYRNE Co v. HELLER PARTNERS, AC 465, 2 ALL ER 575, 3WLR 101, UKHL 4,** where the court held that:
- *"A bank can be liable in negligence to a person notwithstanding that he does not have an account with the bank so long as it is reasonably foreseeable that they shall be affected by the bank's negligence".*
- This foregoing was also adopted in the case of **AGBONMAGBE BANK v. CFAO. LTD. 3PLR/1966/16 (SC).**

NATURE OF THE RELATIONSHIP BETWEEN A BANK AND ITS CUSTOMER:

- The relationship existing between a bank and its customers is basically a contractual relationship which can regarded as a debtor-creditor relationship. This relationship is multifaceted and may arise in diverse ways. A good example can be when a customer deposits money, and the bank on the other hand accepts the deposit then a banker customer relationship can be said to be established in such instance. It is clear that once the bank accepts the money deposited and opens an account in the customer's name, a contractual relationship is created. It is important to note that there are other instances where a banker-customer relationship may arise between a bank and a customer such as mortgagor and mortgagee, trust and beneficiary, etc.
- Whatever form of contractual relationship exists between a bank and a customer, the Nigerian court will give effect to the intent of the parties as expressed in their contract, whether oral or in writing. The Supreme Court, **per Adio J.S.C in U.B.N v. Ozigi (1994) 3 NWLR (Pt 333) 385, 400,** in his "guide to interpretation of documents" held that when a document is clear, the operative words in it should be given their simple and ordinary grammatical meaning, and not the business of the court to make a contract for the parties or to rewrite the one which they have made.

RIGHTS OF A CUSTOMER:

- A bank has a fiduciary relationship towards its customers. This simply means that the bank is legally bound to act in the best interest of its customer.
- In order to ensure that the rights of the customer are protected, the Central Bank of Nigeria published the Bank Customers' Bill of Rights dated 30th September 2022, aimed at ensuring that bank's customers are treated fairly as invaluable stakeholders in the financial sector.

RIGHTS OF A CUSTOMER CONTD

- **THE FOLLOWING ARE SOME OF THE RIGHTS AS CONTAINED IN THE BILL:**
- **Right to be informed:** A customer has the right to be informed or educated of the product and service which the bank offers; terms and conditions involved including any changes introduced by the bank, and as well as the right to demand for further clarification, if the need arises. This right enables the customer to make rational choices. The bank will be in breach if it withholds any information or deliberately or negligently misleads the customer in any way. This right is also in accordance with the provision of section 114, Federal Competition and Consumer Protection Act, 2018, which provides that where a customer is required by law to be informed, that such information must be in a language which the customer can understand and comprehend. In **UBA PLC V. GOSTAR INVESTMENT CO. LTD, (2018) LPELR-4486 (CA)**, where the appellant bank refused to honour the cheque issued by the respondent and placed a lien on the account on suspicion of fraudulent transaction, without giving notice of the dishonoured cheque and reason to the customer within a reasonable time. The Court held that the appellant was negligent for its failure to give notice of the dishonoured cheque to the customer within a reasonable time.

RIGHTS OF A CUSTOMER CONTD

- **Right to privacy and confidentiality:** Nigerian law protects customer's data privacy. A bank cannot share its customer's information, such as bank details or account balance or any other sensitive information particular to a third party without the customer's consent. This right is in accordance with the right to data privacy provided under the **Nigerian Data Protection Regulation 2019 and the Nigerian Data Protection Act 2023**.
- In **UBA PLC v. CAC & ORS (2016) LPELR-40569 (CA), the Court of Appeal (per ABIMBOLA OSARUGUE OBASEKI -ADEJUMO, JCA at Pp 28-35 Paras F-C)** posited that
- *"It is beyond doubt that a banker owes his customer a legal duty of confidentiality not to disclose information to third parties, and any breach of this duty could give rise to liability in damages if loss results. This duty arises between a banker and customer upon the opening of an account and continues beyond the time when the account is closed. It covers all transactions concerning the account and information obtained by virtue of the relationship between the banker and its customer".*

RIGHTS OF A CUSTOMER CONTD

- However, there are exceptional circumstances, where the bank may disclose customer's information without the prior consent of the customer. This includes:
- Where the bank is mandated by law to make such disclosure (for example, the Money Laundering Act 2022 imposes some reporting obligations on banks to disclose certain suspicious transactions by its customers).
- Where such disclosure is to stop the commission of a crime or for public good. The bank may also be compelled by law enforcement agencies to disclose customer's information; however, the bank is required to inform the customer of any subpoenas or legal compulsion.
- **BANKES, L.J. in TOURNIER v. NATIONAL PROVINCIAL AND UNION BANK OF ENGLAND (1924) 1 KB 461 at 472,** the court stated that:
- *"In my opinion it is necessary in a case like the present to direct the jury what are the limits, and what are the qualifications of the contractual duty of secrecy implied in relation of banker and customer. There appears to be no authority on the point. On principle I think that the qualifications can be classified under fours heads: (a) Where disclosure is under compulsion by law; (b) where there is duty to the public to disclose; (c) where there is interest of the bank requires disclosure; (d) where the disclosure is made by express or implied consent of the customer".*

RIGHTS OF A CUSTOMER CONTD

- **Right to safety and good service**: All bank customers have the right to be treated with respect and dignity by banks and their staff. A customer has the right to be safe and protected while on the bank's premises, and free from any form of harassment while transacting in the bank or using the bank's facilities. Also, the bank is obligated to make its premises safe for customers and to render adequate treatment to the customer when they have complaints of sustaining injury on the bank's premises. This is in line with **Section 130, Federal Competition and Consumer Protection Act, 2018** which requires services to be provided in a reasonably safe manner and to meet reasonable standards of quality.
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- **Right to equality:** Customers are to be treated fairly and equally as other customers regardless of their financial standing, gender, age or ethnicity or status. It is wrong for a bank to give preferential treatment to some customers at the expense of other similar kinds of customers. This is in accordance with the fundamental human right principle against discrimination of persons as provided under Section **42, 1999 Constitution of the Federal Republic of Nigeria as amended.**
- However, it is important to note that banks reserve the right to offer certain schemes or products to a particular class of customers depending on their dealings with the bank. In this regard, some customers may be provided some services which others might not receive.

RIGHTS OF A CUSTOMER CONTD

Right to seek redress: Banks must provide their customers an internal redress mechanism to express their grievance or displeasure. All customers of a bank have the right to seek redress where the bank has failed in the duty owed them. This must be free, accessible, transparent, timeous and as well convenient. However, in a case, where the customers are dissatisfied, they can escalate it by either reporting the bank to the Central Bank of Nigeria or commencing a civil action against the bank. In **ASHEIK v. GOV., BORNO STATE (1994) 2 NWLR (Pt. 326) 344 (CA) (P.352, para-D)**, the Court stated that *"Where the interests of a person have been adversely affected such a person has the constitutional right to seek redress in a court of law".*

DUTIES OF A BANK TO A CUSTOMER:

- **Duty of Care and Skill:** Banks must exercise reasonable care, skill, and diligence in all their operations, ensuring that they provide competent and professional services to their customers.
- **Duty of Confidentiality:** Banks are required to maintain the confidentiality of customer information, only disclosing such information under specific circumstances, such as with the customer's consent or when required by law.
- **Duty to Provide Accurate Information:** Banks must provide customers with accurate and timely information regarding their accounts, transactions, and other banking matters. This includes regular account statements and notifications of any changes in terms and conditions.
- **Duty to Follow Customer Instructions:** Banks must adhere to lawful instructions provided by customers concerning their accounts and transactions, provided there are sufficient funds and the instructions comply with banking regulations.
- **Duty to Resolve Customer Complaints:** Banks must establish and maintain effective mechanisms for handling and resolving customer complaints promptly and fairly.
- **Duty to Act in Good Faith:** Banks must act in good faith in all dealings with customers, ensuring honesty, transparency, and fairness in the provision of banking services.

DUTY OF A CUSTOMER TO A BANK

- **Duty of knowledge and understanding:** This involves the customer's reasonable effort to search for relevant knowledge that should lead him to making informed decisions and enhance his benefits;

- **Duty to meet with financial obligation:** The customer is required to repay credit facilities obtained from the bank, and the agreed interest chargeable on the loan.

- **Duty to protect bank instruction and information:** Customers owe a duty to protect their bank information in order to make it easier for banks to protect them. Consequently, sensitive information such as Bank Verification Number (BVN), ATM cards, passwords and passcode should be kept safe and secure at all times.

- **Duty to provide factual information and not to mislead the bank:** Customers owe the bank and the public a duty to provide factual information about relevant transactions they perform.

DUTY OF A CUSTOMER TO A BANK CONTD

- **Duty to report suspected fraud or error:** Where a customer suspects a fraud or compromise, whether on his accounts or in respect of relevant information /transaction, he is duty bound to promptly report his discovery to the bank and relevant authorities accordingly. In **GREENWOOD v. MARTINS BANK LTD (1932) UKHL J0705-1,** where the appellant discovered that his wife was in the habit of obtaining money from his account by forged cheques. Eight months after the discovery, he sought to recover all the monies obtained by his wife through the forged cheques. It was held that since he delayed for so long before informing the bank of such, his action for recovery should fail.

THE BIG QUESTION IS CAN THE CUSTOMER HAVE UNRESTRICTED ACCESS TO WITHDRAW THE MONEY IN HIS ACCOUNT?

- My answer is in the affirmative, this is because the relationship between a bank and its customer is clearly that of debtor/creditor, in an instance where there is sufficient credit balance in the client's account, the bank in that instant becomes a debtor to the customer and must pay the customer (creditor) on demand. In **CHIEF FESTUS YUSUF v. COOPERATIVE BANK NIG LTD (1994) 7 NWLR, 676. Bello CJN (as he then was)** stated that:
- *"The relationship between a bank and its customer is that of a debtor and creditor and it is founded on a simple contract. This is because the banker is under an obligation to pay his customer on demand the amount standing to the customer's credit on his current account. However, it is when a customer has made a demand for payment and the banker has failed to meet the demand, then a case for action of recovery of the amount can be said to have arisen".*

Can a customer have unrestricted access to withdraw money in his account contd:

- Despite the fact that it has already been established that a customer should ordinarily have unrestricted access to withdraw money in his account, there can however, be exceptional circumstances where such access can be restricted. They may include:
- Where there is not enough credit balance in the customers account to withdraw.
- Where here is a restriction on the account by law or any of its agencies while investigation is pending.
- Where there is a court order made in such regard.
- Where the bank suspects any fraudulent activities on such account, they can place a restriction, but this is subject to informing such customer.

JURISDICTION TO ENTERTAIN DISPUTES ARISING AS BETWEEN A BANK AND ITS CUSTOMER:

- Both the High Court of a State and the Federal High Court have concurrent jurisdiction to entertain an issue that relates to banker-customer relationship. See the decision of the Supreme Court in **ECO BANKV. ANCHORAGE LEISURES LTD & ORS (2018) LPELR 45125 (SC) .** Also see **NDIC v. Okem Enterprise Ltd, (2004) 4SC(Pt.11) 77.**

POSSIBLE REMEDIES AVAILABLE TO BANKS AND THEIR CUSTOMER IN A BANKING TRANSACTION:

- There is a general principle in law is that where there is wrong, there should be a remedy, expressed in the latin maxim “ubi jus ibi remedium”. Banks and its customers are not exempted from benefitting from this principle of equity. Thus, when there is a breach of contractual duties. There is always a remedy in law for any breach of contractual obligations at the instance of any of the parties. The most common form of remedy where there is a breach in a banker-customer relationship is damages, although the court will also occasionally grant an order of recovery, specific performance and injunction in deserving cases.

POSSIBLE REMEDIES AVAILABLE TO BANKS AND THEIR CUSTOMER IN A BANKING TRANSACTION CONTD

- **SOME OF THESE REMEDIES INCLUDE:**
- **Damages:** This involves receiving monetary compensation for loss or injury caused by the wrongful act of another, this is mostly obtainable in a civil matters. The purpose of damages was stated by **Parke B in ROBINSON v. HARMAN (1848) 1 Ex Rep 850, 154 ER 363,** as follows:
- "The rule of the common law is that where a party sustains a loss by reason of a breach of contract, he is so far as money can do it, to be placed in the same situation with respect to damages, as if the contract has been performed".
- In **UBN PLC v. CHIMAEZE (2014) LPELR-22699(SC) (Pp 40-41 Paras F-A)**, the court held that by dishonouring the respondent customer's cheque when his account was in credit to accommodate the amount on the cheque, that the appellant bank breached the fiduciary relationship between them, to which the customer was entitled to compensation by way of damage.

POSSIBLE REMEDIDES AVAILABLE TO BANKS AND THEIR CUSTOMERS CONTD:

- **Recovery:** This is the act of getting back, or vindication of a right or property by judgment or decree: especially the obtaining of damages or amount awarded by a court. **In GTB v. OYEWOLE (2013) LPELR-22166(CA),** held that: where respondent claimed restoration of the amount of N960,000.00 for four cheques from his cheque book which were paid out to four different people, and the 1st respondent denied authorizing any payments and alleges connivances between the appellant and the beneficiaries of the cheques to steal the said sum of money. The trial court directed the bank to return the amount to the customer. The bank appealed, the court dismissed the appeal of the appellant bank and upheld the decision of the lower.
- **Injunction:** This is an order of the court directing a party to do or to refrain from doing a particular thing. In **BassMatt. Ent. (Nig.) Ltd. v. Keystone Bank Ltd. (2015) 1 NWLR (Pt. 1441) 609,** the court held that a mandatory injunction may be granted even though the act sought to be restrained had been completed before the action was begun. The law recognizes a reversal of a completed act by interlocutory injunction; if the process by which it is sought makes it feasible such an injunction may be granted in a deserving case.

CONCLUSION

- The banker-customer relationship under the Nigeria law is essentially contractual, thereby creating rights and obligations for each of the parties. This relationship is guided by a comprehensive legal structure aimed at safeguarding the interest of both parties.
- Having a better understanding of the banker-customer relationship under the law, will in no doubt play a crucial role in maintaining the balance of these rights and obligations, fostering trust, and ensuring the stability and integrity of the banking sector in Nigeria.