



**Disruptive Technology
and
the E-Banker/Customer Relationship
in Nigeria:
Legal Perspectives**

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Banking transactions have slowly evolved from the convenient way where traders transfer funds from place to place without carrying valuables across treacherous trade routes to a complex and regulated system of collection of deposits, credit and spot investments.

Banks owe a duty of care to their customers in the performance of contractual obligations and will be held liable for breach either in contract or in tort. This position in modern Nigerian banking law. For instance, in the case of *Trade Bank Plc v Benilux (Nig.) Ltd*¹ The court held that bankers who collect cheques and pay them to those not entitled to the proceeds are liable under the tort of conversion. See also *Ndoma-Egba v ACB*² and *Societe Bancaire (Nig.) Ltd. v de Lluch*³

Similarly, bank directors owe duties of care, skill loyalty and good faith to the banks of which they are directors, and by extension, to the banks' customers⁴. The Central Bank of Nigeria (CBN) Code of Corporate Governance for Banks and Discount Houses provides that:

“The Board is accountable and responsible for the performance and affairs of the bank. Specifically, ...directors owe the bank the duty of care and loyalty to act in the interest of the bank's employees and other stakeholders.”

Failure by a director to take reasonable care will ground an action for negligence and breach of duty. Furthermore, each director is liable for actions of the bank, and a director may be held liable even for actions taken in

his absence (even in the case of non-executive directors).

The digital explosion has led to a proliferation of e-banking services and the emergence of fin-tech companies. With the improvement of telecommunications, more people are carrying out transactions using the alternative means of electronic banking platforms such as online portals, mobile applications and USSD codes.

The development of digital financial services has seen a continuing rise in the volume of electronic payments. This has also led to the increase in the prevalence of fraud across electronic banking platforms. Data from Nigeria Inter-Bank Settlement System Plc (NIBBS) shows that Across Counter transactions account for a mere 1.7% of fraud perpetrated in the banking system⁵.

In order to check the growing threat of fraud in e-banking, CBN introduced several guidelines to set out the rights and obligations of all parties in the value chain. One of such guidelines was the *Sanctions on Erring Banks/e-payment Service Providers for Infractions of Payment Systems Rules and Regulations* which amongst other sanctions stipulated that banks will be fully liable for any fraud arising from the use of a card that was improperly issued.

Banks that fail to properly follow laid down guidelines/procedures for electronic transactions, apart from the liability for damages suffered by their breach are also liable to be sanctioned by CBN.

With regard to liability to customers, the cases of cited show a trend by Nigerian courts to hold banks to the strict

¹ 2003) 9 NWLR 825 at 416, *Oguntade JSC*,

² (2005) 11 CLRN 21

³ (2005) 1 CLRN 1.

⁴ Section 2.1.1 – Central Bank of Nigeria, Code of Corporate Governance for Banks and Discount Houses in Nigeria; Section 282 Companies and Allied Matters Act (CAMA) Cap C20 LFN 2010

⁵ <https://nibss-plc.com.ng/fraud-report-2/>

performance of their obligations to their customers. Therefore, in order to avoid liability, it is necessary that banks strictly comply with all contractual and statutory requirements in the performance of their obligations in transactions with or on behalf of their customers.

With the prevalence of fraud and in some cases improperly executed transactions, banks are more likely to face challenges from customers and other affected parties. Directors are described as persons duly appointed to direct and manage affairs of a company⁶. As persons deemed by law to be responsible for steering the affairs of the bank, directors could also be subject to liability if due care is not exercised.

Having noted that banks and directors are liable, it is important to note that any customer alleging breach will still have to prove the claims against the bank. The burden of proof lies on the party that alleges a set of facts, and unless that burden of proof is discharged, a customer is unlikely to obtain favourable judgment from a court of law. In the unreported case of *Kume Bridget Ashiemar v. Guaranty Trust Bank Plc & United Bank for Africa Plc*⁷ the plaintiff sued the defendants at a Benue State High Court alleging that the defendants' ATMs failed to dispense cash, yet her account was debited for the transactions. The court dismissed her claim holding that she failed to prove that the ATMs failed to dispense cash on the occasions alleged. It is important to note however that once the customer satisfactorily discharges the initial burden of proof, the onus falls on the bank to disprove the facts asserted by the customer.

Fortunately for the industry, it appears from the *Ashiemar* case above, that customers, out to prove negligence against bankers particularly with respect to liability arising

from electronic fraud will meet additional challenges as there is inevitably a increased evidential burden in the bulk of this species of transactions.



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⁶ Section 244(1) of CAMA

⁷ Suit No. MHC/198/14