

# **CASE DIGEST**

**BANKING: BANKER/CUSTOMER  
RELATIONSHIP; DUTY TO HONOUR  
CUSTOMER'S CHEQUE; WHEN IS A  
BANK UNDER OBLIGATION TO  
HONOUR A CUSTOMER'S CHEQUE?**

---

**BIYI CONCEPTS VENTURES LIMITED &  
ANOR v. POLARIS BANK LIMITED.**

## **BANKING: BANKER/CUSTOMER RELATIONSHIP; DUTY TO HONOUR CUSTOMER'S CHEQUE; WHEN IS A BANK UNDER OBLIGATION TO HONOUR A CUSTOMER'S CHEQUE?**

BIYI CONCEPTS VENTURES LIMITED & ANOR v. POLARIS BANK LIMITED.

HIGH COURT, F.C.T, ABUJA (ABUJA DIVISION)

*(PETER O. AFFEN, J)*

### **Background Facts**

Biyi Concepts Ventures Limited & Anor (Claimants) by a writ of summons and an amended statement of claim alleged that Polaris Bank Limited (Defendant) was intentionally negligent in failing and/or refusing to honour and give value to a cheque drawn by the 1st Claimant - in favour of the 2nd Claimant - Oluwabiyi Oluwakayode, who is also the 1st Claimant's Managing Director/CEO. The Claimants for this reason took out an action, claiming against the Defendant the following reliefs: (i) An Order of the Court that the Defendant's refusal to honour the First Claimant's Skye Bank Plc (now Polaris Bank Limited) for the sum of ₦1,000,000.00 (One Million Naira) issued in favour of the 2nd Defendant amounts to a breach of contract and liable in damages. (ii) An Order of the Court by way of damages from the Defendant for the sum of ₦100,000,000.00 (One Hundred Million Naira) being the damages caused to the Claimants for her intentional negligence, failure and or refusal to honour the First Claimant's for the sum of ₦1,000,000.00 (One Million Naira) issued in favour of the 2nd Defendant notwithstanding having enough fund in the account to cover the amount on the cheque. (iii) Ten Million as general damages. (iv) Costs of the action.



The Defendants joined issues with the Claimants by filing their amended statement of defence. At the trial, the Claimants on the one hand, and the Defendant on the other hand, fielded one (1) witness each. Plenary trial wound to a close whereupon the parties filed and exchanged written final addresses as enjoined by the Rules of this Court, which addresses were adopted by the respective counsel for the parties in open court. The issue condensed for determination was: whether the Defendant breached its duty (as banker) to honour a cheque issued by the 1st Claimant (as customer) which had sufficient funds standing to its credit in the peculiar facts and circumstances of this case.

## Arguments

Counsel for the Claimants argued that the Defendant being a banker was duty-bound to honour a cheque issued to it by its customer in favour of a third party, so long as that customer has sufficient funds in the account. He further stated that despite the 2nd Claimant's enquiries as to why the cheque will not be honoured, he was met with stiff replies as the Defendant still refused to honour the cheque without any consideration of the fact that their failure to honour the cheque would seriously affect the reputation and goodwill of the Claimants' business. Counsel stated in conclusion that the negligence and failure of the Defendant to observe the standard expected of a reasonable bank despite the fact that the 1st Claimant's account was funded enough to take care of the ₦1m cheque drawn in favour of the 2nd Claimant as shown in the statement of account amounts to a breach of contract and renders the Defendant liable in damages.

Counsel to the Defendants in response stated that though a banker is bound to honour a cheque drawn by its customer, it is however subject to several factors. Counsel in this regard stated that the sum of ₦1m, was not honoured because the 2nd Claimant presented the cheque late to be made payable to the 2nd Claimant's personal account with United Bank for Africa PLC; and the same was received and stamped by the Defendant at 4:01 p.m., which was minutes after the time the Nigerian Interbank Settlement System (NIBSS) upon which all Nigeria banks conduct interbank transactions under the supervision of the Central Bank of Nigeria (CBN) automatically shuts down. Counsel further stated that even if the Claimant had brought the cheque within time, it would still be impossible for the 1st Claimant's cheque to be honoured, as the category of account which the 1st Claimant maintains mandates it to maintain a minimum balance of ₦500,000 in order for the Claimant to enjoy Commission Turn Over (COT) free transactions which it was subscribed. The 1st Claimant had the sum of ₦1,062,844.82 standing to its credit, hence the impossibility of honouring the 1st Claimant's cheque. Counsel on this note prayed the court to hold the Defendant not liable for any form of damages as postulated by the Claimants.

## Decision of the Court

In resolving this issue, the High Court held that:

The essence of an action founded on wrongful dishonour of a cheque is to seek reparation for the customer's injured feelings or for damage done to his personal reputation or business goodwill. The banker's duty to honour a cheque drawn by the customer is however subject to several limitations. A banker is under an obligation to honour a cheque only if the customer's account is either actually in credit, or, where it is in debit if the customer has been given an overdraft. Thus, if the customer has made a deposit, but a cheque is presented before the banker has had reasonable time to credit the amount deposited into his account, he is not liable if he dishonours the cheque. It is therefore wrong to hold the bank liable for the dishonour of the 1st Claimant's cheque when the banking practice is taken into consideration.

Issue resolved in favour of the Defendant.

Onyeka Osigwe, Esq., Ekene Azubalaeze, Esq., Rowland Udemezue, Esq., for the Claimants

M. A. Awuru, Esq., S. J. Hamza, Esq., O. E. Pereira, Esq., Bashir Shehu, Esq., and F. S. Onifade, Esq., for the Defendant

This summary is fully reported at (2023) 3 CLRN.

[www.clrndirect.com](http://www.clrndirect.com)

[info@clrndirect.com](mailto:info@clrndirect.com)

Counsel submitted that the Respondent is a law-abiding financial institution and will not venture into the melee relating to investigations by the EFCC, and that the Respondent was left with no other option but to inform the 1st Appellant of its intention to activate the indemnity as a result of the inaction of the Appellants towards the travails of the Respondent occasioned by the act of the 1st Appellant. According to Counsel, the liability incurred by the Appellants with respect to the instant suit was caused by the inaction of the Appellants when they were prompted by the Respondent to care of the investigations carried out by EFCC on the Respondent as a result of their actions.

## Decision of the Court

In resolving this issue, the Court of Appeal held that:

An indemnity contract arises where the indemnifier promises to meet any legal liability which the indemnified is held to be under. **To be liable on the indemnity, the Respondent must show that an action, claim or proceeding, had been brought or made against the Respondent by reason of clearing the alleged 3rd party cheque and as a result, the Respondent suffered loss and damage.** There is no evidence or claim from Oyo State Government that its money was missing or any evidence that any money was paid to Oyo State, the supposed beneficiary of the 3rd party cheque. The appellate court further held that best evidence of proving payment into a bank account is by production of a bank teller or an acknowledgement showing on the face of it that the bank has received payment, and that in the instant appeal, there is no evidence of any acknowledgement or receipt from Oyo State Government that they were paid any money.

Issue resolved in favour of the Appellant.

John Duru Esq., for the Appellants

Adetunji Adedoyin, Patrick Mgbeoma, and Ayobami Folarinde for the Respondent

This summary is fully reported at (2023) 3 CLRN.

[www.clrndirect.com](http://www.clrndirect.com)

[info@clrndirect.com](mailto:info@clrndirect.com)