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# BANKER-CUSTOMER RELATIONSHIP IN NIGERIA:

## A CASE STUDY OF THE CURRENCY SCARCITY AND ITS LEGAL IMPLICATIONS

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### INTRODUCTION

On 26th October 2022, the Governor of the Central Bank of Nigeria (CBN), Mr Godwin Emefiele while acting with the approval of the President of the Federal Republic of Nigeria and in line with the provisions of sections 2(b), sections 18 (a), 19(a) and (b) of the CBN Act 2007, announced<sup>[1]</sup> that with effect from 15th December 2022, the CBN will be circulating the redesigned naira notes (of the 1000, 500 and 200 naira denominations). The CBN Governor further announced the commencement process of retrieving the old notes of the concerned denominations which according to him, would cease to be legal tender on 31st January 2023.<sup>[2]</sup>

However, transition to the new denominations of the redesigned currencies has come with lots of challenges ranging from lack of adequate availability of the new notes and the conundrum created by the already retrieved old notes without the corresponding availability of the new notes. This article therefore admits that the CBN has the legal mandate to undertake an alteration of the money policy in Nigeria under Section 2 of the CBN Act 2007. The article further interrogates the issues surrounding the entire currency redesign while adopting a legal approach in analyzing the relationship between bankers and customers, vis-à-vis the liability associated with the bankers' failure to honour their customers' request for funds in their custody. The article would also consider the powers of the CBN to undertake and implement the instant monetary policy and the way forward for Nigeria in the midst of the resultant currency scarcity. This writeup shall make reference to various laws regulating banking practices in Nigeria in doing justice to the discourse.<sup>[3]</sup>

### Powers of the CBN and the procedures involved in the implementation of Monetary Policies

As part of the mandates of the CBN as prescribed in the CBN Act,<sup>[4]</sup> the bank has the objects of: guaranteeing a sound financial system in Nigeria,<sup>[5]</sup> issue legal tender currency<sup>[6]</sup> and ensure the stability of price<sup>[7]</sup> thereby combating inflation among others. The Central Bank of Nigeria is expected to be impartial and independent in managing monetary policy in line with the provisions of the CBN Act.<sup>[8]</sup> The Free Market

model monetary policy adopted in Nigeria gives the Board of Governors of CBN the power to make monetary policy, without the control of elected or appointed partisan political officials.[9] It is important to note that the only stipulation in the CBN Act on the design of Naira is the mandatory approval of the President under Section 19. There is no legal burden on CBN to inform or get the approval of the Ministry of Finance.[10] However, for the sake of economic coherence, the President's decision and approval should be brought up at the weekly meeting of the Federal Executive Council. This is because, despite the fact that the CBN plays a role in the redesign of the currency, the decision to do so is part of the Federal Government's monetary policy and will have significant economic and social repercussions.

### **CBN's power to call in its notes**

The CBN Act gives the Bank the authority to call in any of its money upon payment of face value with fair and reasonable notice under Section 20 and to destroy any withdrawn cash under Section 18(d). Banks are required to only transact with legal tender. Their function is to facilitate commerce and the exchange of value for payment. Hence, the procedure for change or redesign of currency is that reasonable notice must be given to the public in line with section 35 of the CBN Act 2007. The Act does not make the approval of the Minister mandatory hence, the CBN Governor is only expected to get the Minister of Finance involved as a supervisor.[11] Upon sufficient notice and approval of the President, the CBN can make any monetary policy including redesigning of new notes and retrieving of old notes.

### **An Overview of the Banker-Customer Relationship: The Duty of a Banker to Honour Cheques Standing to the Credit of the Customer**

The Black's Law Dictionary[12] defines bank to mean a financial establishment for the deposit, loan, exchange or issuance of money as well as transmission of funds. The meaning of a bank customer can be deduced from the provisions of the Banks and other Financial Institutions Act (BOFIA) as one 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 publish in the Federal Gazette designate as banking business.[13]

### **Nature of the relationship between a banker and its customer**

The controversy surrounding the nature of banker-customer relationship was given a judicial intervention in Hill v. Foley[14] where Lord Cottenham pontificated the law thus:

"Money paid into a banker is money known by the principal to be placed there for the purpose of being under the control of the banker; it is then the banker's money; he is known to deal with it as his own; he makes what profit he can which profit he retains to himself...he has contracted, having received that money, to repay to the principal when demanded a sum equivalent to that paid into his hands".[15]

The implication of the foregoing is that the banker-customer relationship primarily appears in the form of a debtor-creditor relationship whereby the banker is the debtor and the customer is the creditor of which the banker undertakes to pay to the customer (upon demand) such an amount standing to the credit of the customer or any part thereof.[16] It must also be noted that being a contractual agreement,

both parties in a banker-customer relationship owe duties and obligations to each other.

### **Duties and obligations of Bankers and their Customers**

The duties of the customer to the banker include: the duty to ensure that he draws his cheques or mandate in a careful and diligent manner in order not to facilitate fraud on the banker and duty to timeously make a report to the bank where a customer reasonably suspects that his account is being used for fraudulent dealings.[17] On the other hand, the banker owes the customer the following duties: duty to honour cheques and other payment instructions, duty to exhibit due care and skill in the course of his dealings with customers, duty to eschew unauthorized payments, duty of confidentiality inter alia[18].

Of particular importance to this present discourse is the duty of the banker to honour cheques and other payment instructions and issue cash standing to the credit of the customer. The English court has held in JOACHIMSON V. SWISS BANK CORPORATION [1921] 3 KB 110 that:

"The relationship between the customer and banker entails that the bank promises to repay any part of the amount due against the written order of the customer addressed to the bank at the branch." The duty to repay is triggered only by the demand made by the customer. While this demand is traditionally activated by the issuance of a cheque, it can now be activated also by the use of debit cards and electronic fund transfers and payment.[19]

The position of the law is that to the extent that the account is in credit or to the extent of the negotiated overdraft, a banker is required to honor the customer's negotiable instruments. In ECOBANK v. EKPERIKPE [2013] LPELR-20327(CA), the court held as follows:

"...I think it is necessarily a term of such contract that the bank is not liable to pay the customer the full amount of his balance until he demands payment from the bank at the branch at which the current account is kept." Per JOSEPH TINE TUR, JCA (Pp 22 - 23 Paras B - A)[20]

In any event where a banker misrepresents to a customer to the effect that he has sufficient credit to encash a cheque, the banker must honour the cheque.[21] When a creditor makes a claim or instructs the bank to pay someone he designates, the banker has a duty to pay that individual. This obligation which is of antiquity still applies to modern day banking and admits of no exception. The banker agrees to pay cheques drawn in favor of specific people or bearer against the customer's deposit made in his current account. When a bank refuses to honor a cheque or any other mandate including demands through ATMs without good reason, this would amount to a breach of contract, and the customer may be entitled to legal remedies.[22] It must be added that the sacrosanctity of this duty of the bank and failure of a bank to meet the obligations to its customers is a major factor in determining regulatory insolvency under section 572 of the Companies and Allied Matters Act 2020. Section 35 of BOFIA, the major symptom of a failing bank is its inability to pay debt and meets its obligations.

# The Legal Implications of the recent Currency Scarcity and the Banks' failure to meet Customers' Demands

Now, considering the recent happenings in the country following the newly introduced policy of the CBN, which has created the currency scarcity leading to long queues at ATM terminals and unrests in banking halls, do customers have the right to claim damages for breach of contract on the part of the banks in failing to dispense cash upon demand? It will be recalled that relevant provisions of laws under consideration do not make provision for frustrating events such as currency scarcity whereupon banks could rely upon in mitigation to avoid liability where there is a legal action against them for failure to honour customers' demand for payment. The law is that in so far as a customer's account is in credit, his bank must always honour his demand for payment and this obligation does not admit of any exceptions.[23] The relevant provision of the law in this regard is Section 54 of the Bills of Exchange Act 2004 which imposes liabilities on the acceptor (banker) upon presentation of a bill of exchange. The acceptor/banker is mandated to pay the customer according to the tenor of his acceptance and is precluded from denying the customer/holder of the bill of exchange in due course.[24] It must also be added that such a bill of exchange, promissory note or other negotiable instruments is inchoate except it is delivered to the payee or bearer.[25] It therefore follows that whatever challenges that banks could be facing at this time in terms of cash scarcity may not constitute a valid defence for failure to honour customers' demands for payment. See the case of *DIAMOND BANK LTD v. UGOCHUKWU*[26]. In fact, the scope of liability of the banker has been expanded to cover demands made by customers through Automated Teller Machines (ATMs). In the case of *MOSES JWAN v. ECOBANK (NIG.) PLC* (2021) 10 NWLR (Pt. 1785) 449 at 485, the Court of Appeal held as follows:

"The ATM card issued by a bank being akin to a cheque, must be honoured on request once there is enough funds in the customer's account, and failure to do that means the bank is in breach of duty of care owed to its customer."

On the strength of the above holding, the Court of Appeal consequently awarded the sum of N500,000.00 (Five hundred thousand Naira) general damages against ECOBANK for failure to pay its customer, Mr. Moses Jwan the sum of N10,000.00 (Ten thousand Naira) through the Bank's ATM.

In essence, based on the extant laws and recent judicial authorities on the subject, we are of the opinion that the current inability of the banks to dispense cash upon demand by customers constitutes an aberration in a legal sense and a breach of the banker's duty to customers which may attract legal remedies in Court. Such breaches will essentially attract remedies under the law of contract such as injunctive remedies, specific performance, damages inter alia.

The various failed ATM transactions as well as the public confirmations by commercial banks that they lack cash to dispense to their customers during this time may have given rise to causes of action against banks. Hopefully, as the situation unfolds, we await the outcome of a legal challenge of this situation in our jurisprudence by aggrieved customers in line with extant banking laws and recent judicial pronouncements.

## REFERENCES

- [1] In line with section 35 of the CBN Act 2007
- [2] Tope Fasua, Nigeria's currency redesign 2023: A case study approach, (February 6, 2023) Available at <https://www.premiumtimesng.com/opinion/580328-nigerias-currency-redesign-2023-a-case-study-approach-by-tope-fasua.html> Accessed 7th February 2023
- [3] Such laws include Banks and other Financial Institutions Act 2004 and the Central Bank of Nigeria Act 2007
- [4] Section 2 CBN Act 2007
- [5] Section 2(d) CBN Act 2007
- [6] Section 2(c) CBN Act 2007
- [7] Section 2(a) CBN Act 2007
- [8] Section 1(3) CBN Act 2007
- [9] Section 51 CBN Act
- [10] Section 1, BOFIA
- [11] Section 1 BOFIA 2004
- [12] B A Garner, Black's Law Dictionary (9th edition, USA: Thomson Reuters, 2009) p. 164
- [13] J O Enyia, The Law of Banking in Nigeria: Principles, Statutes and Guidelines (Lagos: Malthouse Law Books, 2018) p.5
- [14] (1848) 2H LC28; see also *Tournier V National Provincial bank* (1924) KB 461
- [15] *Ibid*
- [16] M C Okany, Nigerian Commercial Law (Enugu: Africana First Publishers PLC 2009) 544
- [17] Bello Damilola, An Overview of the Bank- Customer Relationship in Nigeria. Available at <https://dnlegalandstyle.com/2022/an-overview-of-the-bank-customer-relationship-in-nigeria/> Accessed 7th February 2023
- [18] *Ibid*
- [19] See also *Foley v. Hill* [1848] 2 HL CAS 28.
- [20] See also *GTB v. Ogboji* [2019] LPELR-47642(CA) where the court held that: "It is the duty of bankers to their customers to receive monies, cheques, and other instruments and to pay cheques and other withdrawal authorities properly drawn by the customer during banking hours at the branch where the account is kept or elsewhere as agreed; *Nwosu v. Zenith Bank Plc.* (2015) 9 NWLR (Pt. 1464) 314.
- [21] Nwabachili Chudi, 'Bank-Customer Relationship' [2015] 3(1) International Journal of Business & Law Research
- [22] Olamide Benedicta Abe, 'An Appraisal of the Legal Relationship between a Banker and its Customer: The Statutory Protection Afforded to Bankers in Nigeria in Paying Cheques' [2017] 1(2) Unilag Law Review, 124.
- [23] Section 10 of the Bills of Exchange Act 2004 provides for the payment of Bills of Exchange upon demand. The instruments covered by the Bills of Exchange Act 2004 includes: Promissory Notes (see section 85), Bill of Exchange (see section 3), Cheques (see section 73), draft drawn by a banker upon himself and payable on demand at an office of his bank (see section 2(c) and a document issued by a customer of a bank which is not a bill but is intended to enable a person obtain payment from the banker of the sum mentioned in the document e.g ATM Debit cards (see section 2(b)
- [24] Section 54(a) and (b)
- [25] Section 86 Bills of Exchange Act 2004
- [26] (2007) LPELR-8093(CA)

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