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LEGAL PRACTITIONERS & ARBITRATORS

# International Day of Banks

## Challenges faced by the banking sector in Nigeria and the way forward.


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# Introduction

On 19 December 2019, the United Nations designated December 4 as the International Day of Banks. This designation was made in recognition of the role as well as the potential of banks to contribute to financing sustainable development with regard to improving the standard of living.

To further highlight the importance of aligning banking practices with sustainable development goals, this year's International Day of Banks is themed "Achieve sustainable development goals and improve the global financial architecture."

AELEX was a participant at the recently concluded 22nd National Seminar on Banking and Allied Matters for Judges, a two-day seminar organized by the Chartered Institute of Bankers of Nigeria (CIBN) in collaboration with the National Judicial Institute.

The programme is an initiative targeted at bringing stakeholders together in the judicial and financial service sectors for collaboration towards economic development and growth.

Discussions at the seminar highlighted the myriad of challenges plaguing the banking sector in Nigeria. We have in this paper discussed some of these challenges and proposed a way forward

# *Bankers Orders*

Prominent among the issues faced by banks is the practice of issuing 'Bankers Orders' by Magistrate courts on the application of police officers. This practice has lingered despite several judicial pronouncements on its inappropriateness. Some of the rulings of the Courts on this point includes:

“The banker's order/order freezing and/or enabling the post-no-debit cannot be validly issued pursuant to a non-existent/repealed Bankers Order Act 1847 and any other irrelevant foreign law. "

“A magistrate lacks the powers to make bankers' orders and/or order freezing or enabling a post no debit on bank accounts pursuant to non-existent/repealed section 7 of the Banker‘s Order Act 1847.”

According to the banks, the police officers relying on these orders pressure the banks to freeze a bank customer's account. This portends adverse consequences for banks as the banks are exposed to legal proceedings by the customers upon their accounts being frozen. The banks end up incurring litigation costs and, in some cases, damages in favour of their customers. This negatively affects the growth of the bank as well as depositors' funds.

# Post-No-Debit

Similar to the above is the post-no-debit instruction given by some law enforcement agencies to banks on bank customers' accounts without the proper procedure of obtaining a court order as established by a plethora of judicial authorities. Banks in these scenarios are put in a precarious position as they are drawn between disobeying the post-no-debit instruction and facing litigations by customers if such instructions are obeyed.

The law is clear on the point that where an account is frozen/restrained without a court order first sought and obtained, the fundamental right of the customer is deemed breached and both the authorizing authority and the bank, may be held liable for this as held in the case of Guaranty Trust Bank PLC v. Mr. Akinsiku Adedamola. The Customer can in such cases claim damages from both EFCC and the bank. In Guaranty Trust Bank PLC v. Odeyemi Oluyinka Joshua, the Court of Appeal held that the bank must ensure that there is an order of the Court before it proceeds to freeze the account of any person.

It further held that without an order of Court, the Economic and Financial Crimes Commission (EFCC) cannot direct the freezing of the account of any person and where the has not fully complied with the provisions of the law, the bank had no business obeying an unlawful directive.

However, we note that there are instances where the EFFCC can direct a bank to effect a post-no debit on a customer's account without an order from the court. By virtue of section 7 of the Money Laundering (Prevention and Prohibition) Act, 2022, the EFCC is permitted to place a temporary stoppage on a suspicious transaction or account for a period not exceeding 72 hours prior to when a court order is obtained, and the bank is compelled by law to comply with such stop order.

Where no order of Court to block the account or transaction is obtained after the expiration of the temporary stoppage, the restriction on the account must be lifted and the transaction processed. This is in line with the Court of Appeal's decision in the case **UBA PLC v. A-G Benue State & ors (2022)**.

Also, in **United Bank For Africa, Plc V. Eriba Jude-Bela Eje & Ors**, the appellate Court held that "it is not in doubt that the 3rd Respondent has the powers to place a stop order or freeze an account suspected to be involved in financial crime for 72 hours, without a Court order. Upon the expiration of the 72 hours and where the commission is not done with its activities in respect of the account, a Court order has to be obtained to extend the life of the order freezing the account.

Where the required Court order is not made available, the stop order or freezing of the account lapses and the financial institution is obliged to unfreeze the account".

Banks are encouraged only to comply with these post-no-debit instructions where such complies with the law.

# *Inappropriate Deployment of Garnishee Orders*

Another challenge facing the banking sector is the inappropriate deployment of garnishee orders. In this case, a judgment creditor proceeds to obtain a garnishee order Nisi against all banks, whether the judgment debtor has an account with said banks or not. This exposes the banks to costs such as the appointment of a lawyer as well as costs involved in filing of documents in court. Further to this, where there is a delay by the bank to file the relevant affidavit, the banks in most cases, end up getting an absolute order against them for the payment of the full judgment debt, regardless of whether the judgment debtor maintains an account with them or not.

We note the difficulties faced by judgment creditors in ascertaining where a judgment debtors’ funds are domiciled, hence the need to obtain an order nisi against virtually all the banks requiring them to file an affidavit showing cause.

Banks are encouraged to ensure that the relevant affidavits are filed within time to avoid an order absolute been made against them for the entire judgment sum. To save cost, a retainer can be entered with a law firm to deal with such cases (on an annual basis) at a reasonable cost, rather than treating the cases separately.

Another challenge faced by the banking sector revolves around cyber-crimes and attacks on the banks. Recently, a telecommunications company in Nigeria sued several banks after losing a considerable amount from its mobile money service. The issue of delays in the perfection of security interest (especially where it relates to real properties) as well as difficulties encountered during enforcement of most security interests, are challenges faced by banks in Nigeria.

# *Resolution of Disputes in the Banking Sector*

We note that disputes/conflicts are bound to arise in business relationships; what is key is how these disputes are resolved. The disputes referred to may be between a bank and its customer, 2 (two) banks, or banks and a regulator. We note that while litigation may be an option/avenue for dispute resolution (including in the banking sector), there are other ways to resolve such disputes expediently. Some of the available options are the Consumer Protection Department of the Central Bank of Nigeria (CBN) and the Bankers Committee's sub-committee on Ethics & Professionalism.

# *Bankers Committee's sub committee on Ethics & Professionalism*

We will briefly consider the Bankers Committee's sub committee on Ethics & Professionalism ("the subcommittee") particularly as an alternative dispute resolution body. The subcommittee was established on 19 December 2000 for the identification of practices considered unethical in the banking industry as well as the development of a code of ethics and professionalism guiding practitioners in the industry. The subcommittee identifies and handles conflict between banks and their customers, banks and the general public and even banks and regulators. The subcommittee comprises of highly experienced personnel, and the process is cost effective, has standardized procedure and provides ease of enforcement.

An interesting point to note by stakeholders in the banking sector (including bank customers) (potential complainants) is that, where a bank is penalized but refuses or delays in paying the penalty, a deduction can be made from the bank's fund with the Central Bank of Nigeria.

Thus, the complainant is guaranteed ease of enforcement. To lay a complaint:

- The complainant must ensure that the complaint contains the complainant's name and address as well as that of the bank. The complaint(s) should also be stated briefly and clearly.
- A complainant using the services of a consultant must issue a letter of authority to said consultant.
- Complaints are to be submitted to the Secretariat of the Subcommittee (CIBN). Such complaints must be submitted in duplicate.
- The complaint is to be acknowledged immediately with the letter of acknowledgement containing a clause prohibiting all parties to any issue before the Subcommittee from commenting on the matter in the mass media pending the resolution of the case or initiation of Court proceedings.
- The Secretariat will request for a response from the defendant as well as other parties mentioned in the complaint.

# *Consumer Protection Department (CPD)*

In April 2012, the Consumer Protection Department (CPD) was established, aligning with one of the fundamental mandates of the Central Bank of Nigeria (CBN) to “promote a sound financial system in Nigeria,” as outlined in the CBN Act of 2007. The primary objective of establishing the CPD is to formulate and execute an effective consumer protection framework, fostering confidence among consumers in the financial system.

The department carries out three key functions:

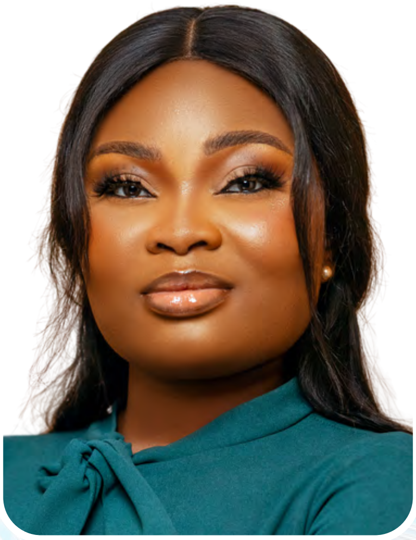
- Complaints Management: Resolving consumer complaints against financial institutions under the CBN’s oversight.
- Market Conduct & Development: Establishing fair and responsible conduct among financial institutions concerning their customers.
- Consumer Education/Financial Literacy: Promoting and disseminating financial education and awareness among consumers and potential consumers to enhance their economic well-being.

Rather than going to the Court as a first recourse, an attempt can be made to resolve disputes at the CPD. This will save time as well as cost for both the complainant and the bank.

# *Conclusion*

In conclusion, the banking sector is a key sector in the Nigerian economy and as such its sustainability, growth and development is paramount to the development of our eco-system. The implementation of the proposed solutions to the challenges facing the banking sector, would go a long way in improving the financial architecture in Nigeria.

# Authors



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