THE PROTECTION OF BANKER – CUSTOMER RELATIONSHIP IN UGANDA. A REVIEW OF THE EXISTING LEGAL FRAME WORK

BY

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A RESEARCH REPORT PRESENTED TO THE SCHOOL OF LAW IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF BACHELORS DEGREE IN LAW OF KAMPALA INTERNATIONAL UNIVERSITY.

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DECLARATION

I **Tumushabe Gerald** declare that this research report is my original work and to the best of my knowledge, it has never been presented elsewhere in any university or institution of learning for approval.

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APPROVAL

I, the undersigned certify that I have read and hereby recommend for acceptance by Kampala International University a research report titled, the protection of banker – customer relationship in Uganda. A review of the existing legal frame work.

Signed .....

Ms. TWIKIRIZE PARTON

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Date .....22/7/2016.....

DEDICATION

I dedicate this piece of work to my father; Mr. Kabwega Julius, mother; Mrs. Kyomugisha Dinnah, brothers; Gilbert and Anthony, sisters; Winfred and Grace, friends; Aston, Sam and Sephas and my lovely classmates in the faculty of Law and my supervisor Ms. Twikirize Parton

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I also extend sincere thanks to my friends; Aston, Alex, Christine, Robert, Juliet, Sam and sephas, brothers; Gilbert and Anthony, and not forgetting my sisters; Winfred and Grace and family members for their inspirations in my studies.

May the Almighty God Bless you abundantly.

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ABSTRACT

Over the last ten to fifteen years, and in response to the huge growth in demand for unsecured consumer credit, Ugandan banks have reviewed, automated, de-skilled and streamlined traditional credit assessment techniques. In pursuit of margin and market share, today's due diligence relies increasingly on centralized data and statistical certainty. During this same period the nature of the banks' safety net, the sanction of bankruptcy and court action has changed too. The effect of this is not only to increase the potential for recovery, in respect of bad debts, but also to increase the moral hazard problem. However, increased risk is masked by creditor power in recovery situations. This research draws on theoretical and empirical research from legal, ethical and economic view points and suggests that a legal of this aspect of the banker-customer relationship is essential to restore trust, prudence and long-term profitability. The researcher recommends that the rule guiding customer/banker relationship cannot be properly appreciated if the recommendations are not taken into consideration and fully applied in every transaction between the profits involved. He also recommends that there should be public awareness on most of the relevant provisions of the law guiding banking establishment and practice. This will clarify the customers of thorny issues and assist them take appropriate legal step where the need arise, that in most local community where customers are ignorant of the law guiding banker and customer's relationship, banks should be made to enforce the rule and fulfill their contractual obligation. This can be achieved by making law that would ensure compliance and in default, provides for remedy and again he recommends that the common law rule as it applies to the relationship is adopted by virtue of a local legislation. Hence its application should therefore follow the qualifications in its subsection which says as local legislations allow it.

The researcher concluded that the relationship existing between a banker and his customer is that of debtor and creditor, with the additional feature that the banker is only liable to repay the customer on payment being made[1]. This conception as painted out involved a departure from the original objective of the depositor which was simply the safe custody of his money, an aim which he probably shared with the majority of his descendants since the average customer at a bank has not the least idea that he is lending his money to a banker to do what he likes with it.

[1] M.C Okany, Nigeria commercial Law",2001,African Fep Publishers Limited at pp 415-437

LIST OF ABBREVIATIONS

BOU	Bank of Uganda
UN	United Nations
UAMLC	Uganda Anti-Money Laundering Committee
ESAAMLG	East and Southern Africa Anti-Money Laundering Group
FDIC	Federal Deposit Insurance Company
CAC	Corporate Affairs Commission
CEO	Chief Executive Officer
URSB	Uganda Registration Service Bureau

LIST OF STATUTES

The Constitution of the Republic of Uganda 1995

Banking Act 1979

Bill of exchange Act

Uganda Registration Service Bureau Act 1998

Money lenders Act Cap 273

Money laundering regulations 2013

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Joachimson v Swiss 1921) All ER 92

KpohrAtor V Wool Wich Equitable building society.

Tournier v National Provincial and Union Bank of England (1924) 1 KB

Joachinson Vs Swiss Bank Corp

Prosperity Ltd Vs Lloyds Bank

Akinwale and Ors v.R (1962) ANLR 193 at p.200

Merchant Bank Ltd v. Federal Minister of Finance (1961) ANLR pt. 4598

Uganda Commercial Bank Ltd v. Ajayi (2002) FWLR (pt. 92) at p. 1716 Per TABAI J.C.A

Johnson(Liquidator of Merchant Bank) Ltd v. Odeka [1](2002) FWLR

Wema Bank Ltd v. Okotwo (1980) 3 CCSCJ 219 at 222.

Chief Festus Yesufu v. Cooperative Bank Ltd (1994) 9 SCNG 6 at 81

Bavins v. London and South Western Bank Supra

Folley v. Hill (1974), 6thedn p.24

Ekpenyong v. R. whereBraiman J

Joachimson v. Swiss Bank Corporation Atkins L.J.

Aderibigbe v. Savage J (1977) All N.L.R. at 401

Adeleke v. NBN Ltd (1978) 1 L.R.N. p.157

Patel Vs. Standard Chartered Bank [2001] Lloyds Rep Bank, 29, Toulson J (2001) Lloyds Rep Bank

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CHAPTER ONE

GENERAL INTRODUCTION OF THE STUDY

1.0 Introduction

This chapter presents the general introduction and the background of the study, objectives of the study, research questions, literature review, methodology and the significance of the study.

1.1 Introduction and background

Banker and Customer protection relationship, in the broader sense, refers to the laws and regulations that ensure fair interaction between service providers herein Bankers and customers. Government intervention and regulation in the area of protection of banker and customer are justified on the basis of inherent information asymmetries and power imbalances in markets, with producers or service providers having more information about the product or service than the customers. A customer and a banker protection framework generally includes the introduction of greater transparency and awareness about the goods and services, promotion of competition in the marketplace, prevention of fraud, education of customers, and elimination of unfair practices.

Banker and customer protection frameworks in the financial service industry are evolving as products become more complex and a greater number of people or customers rely on financial services. An effective customer or a banker protection framework includes three complementary aspects. First, it includes laws and regulations governing relations between service providers and users and ensuring fairness, transparency and recourse rights. Second, it requires an effective enforcement mechanism including dispute resolution. Third, it includes promotion of financial literacy and capability by helping users of financial services to acquire the necessary knowledge and skills to manage their finances.

The recent crisis highlighted shortcomings in the existing banker to customer protection frameworks in high income countries and prompted a number of broad-ranging reforms[2]. The crisis also made apparent the low levels of financial capability among users of financial services in developed countries. Lack of effective disclosure and the existence of deceptive advertising on the provider's side, and failure to understand financial products on the user's side contributed to

[2] Gokhale (2009), Reuters (2009), and Reille (2009).

the collapse of the sub-prime mortgage market in the United States. However, the problem is not limited to developed markets with highly complex products. In emerging markets, the challenge in this area is even greater.

Most countries have protected and witnessed an unprecedented expansion of the financial services industry in the decade preceding the crisis. Hundreds of millions of people opened bank accounts, started transferring payments electronically and took out customer loans. In most cases, the development of the retail financial services industry preceded the development of banker and customer protection legislation. Bosnia and Herzegovina, Morocco and some states in India saw indebtedness rise sharply among microfinance borrowers in 2009, threatening sustainability of these markets.[3] Continued progress in expanding financial access requires introduction of basic protection for the clients of financial services. Knowing that their rights are effectively protected may bring in new customers to the financial sector, and encourage the uptake of new products. Additionally, the lack of sufficient competition for financial service providers and less awareness by customers increases the degree of asymmetric information in underdeveloped financial markets, leading to a disadvantage on the part of customers. Hence, an effective financial customer protection framework is a key component of financial inclusion strategies.

According to CGAP (2009)[4], only 30 percent of adults in developing countries are estimated to have access to basic deposit services and even fewer to credit, insurance and other financial services. The consequence of this is that the poor have to rely on more costly informal financial services to save and to borrow. This inequality of opportunities represents an obstacle to economic development. Effective customer protection regulations and strengthening of financial capability promote equal access to financial services for all by reducing information asymmetries, enhancing competition and innovation, and increasing customer participation in the financial system.

The literature on the broad topic of banker and customer protection is abundant. Yet, there are only a handful of comprehensive studies on the topic of customer protection in financial services.[5]This study contributes to the debate by providing an overview of financial banker and customer

[3]Gokhale (2009), Reuters (2009), and Reille (2009).

[4] Collins, Daryl, Jonathan Morduch, Stuart Rutherford, and Orlanda Ruthven. 2009. *Portfolios of the Poor: How the World's Poor Live on $2 a Day*. Princeton, N.J.: Princeton University Press.

[5] Rutledge (2010) and Brix and McKee (2010).

protection issues in the existing literature, and by providing empirical analysis on the links between customer protection and financial sector outcomes, drawing on the new unique cross-country data set on financial customer protection. To the best of our knowledge, this study is the first to systematically collect and analyze cross-country data on customer protection regulations and policies in financial services. The data used in this paper come from a survey of financial regulators from over 140 countries conducted for the annual *Financial Access* survey by CGAP and the World Bank Group in 2010.[6] The survey and the paper only cover credit and deposit services, and do not include investments, pensions, insurance or other financial products. Broadly, the results of the survey on financial customer protection in deposit and loan services reveal that most countries have some form of customer protection legislation in place, but these do not often address concerns specific to the financial services industry. It also found that enforcement mechanisms are weak, partially due to lack of resources, institutional capacity, and limited enforcement powers of regulators. Although effective third-party dispute resolution mechanisms are essential to implementation of the law, such mechanisms are not common.

Additionally, we compile comprehensive information on the set of laws and regulations relevant for financial customer protection based on the responses to the survey[7].As part of the analysis we conduct a number of statistical tests and discuss the challenges related to the empirical research in the area of financial customer protection.

1.2 Specific objectives of the study

(i) To find out the meaning of the banker and customer
(i) To determine the legal framework for the operation of banking system in Uganda
(ii) To assess how bank-customer relationship be terminated
(iii) To find out the nature of the relationship between a banker and a customer
(iv) To examine the duties of a banker to a customer and a customer to a banker
(v) To find out the findings observed from this research

[6]Ardic*et al.* (2010), CGAP (2009), CGAP (2010) and Kendall *et al.* (2010) for further information on the *Financial Access* database.

[7]For a comprehensive listing of all customer protection legal frameworks, see Annex I.

(vi) To find out the recommendations and conclusions from the study

1.3 Research Questions

(i) What is the meaning of the banker and customer?
(ii) What is the legal framework for the operation of banking system in Uganda
(iii) How can a bank-customer relationship be terminated?
(iv) What is the nature of the relationship between a banker and a customer?
(v) What are the duties of a banker to a customer and a customer to a banker?
(vi) What are findings adopted from this research?
(vii) What are the recommendations and conclusions from the study?

1.4 Research Methodology

The study adopted both descriptive and analytical methodologies. The descriptive methodology was focusing on review in the literary evidences that are available through external and internal sources. As the study is based on the services and their satisfaction thereon. Measurement of satisfactory level is with respect to various service ingredients. Hence the analytical process became inevitable, resulting in the adoption of analytical methodology. This research was primarily based on the primary data collected from the selected respondent customers of the selected commercial banks in Uganda.

1.5 Scope of the study

1.5.1 Content Scope

The content in this study was relating to the protection of banker – customer relationship in Uganda and the existing legal frame work and the related literature about the topic of the study.

1.5.2 Geographical scope

Geographically, the study was regional based. It covered East Africa but basically Uganda as a case study.

1.6 Significance of the study

The findings of the study are significant on the following ways;

To scholars and researchers, the findings of the study are expected to contribute to the existing literature about banker to customer relationship.

To future academicians especially of Ugandan University students, the study will help in gaining insight about laws relating to banking system

The accomplishment of the study will enable the researcher to acquire hands on skills about processing of research work and data analysis. This proficiency will enable the researcher to handle such related work with a lot of precision and proficiency.

1.7 Literature review

This literature review section provides a discussion and argument for the banker and customer relationship. The challenge before the banker is not only to obtain updated information for each customer, but also to use the information to determine the best time to offer the most relevant bank products. It is also important to understand that if customers bring in profits for the bank through the banker, it becomes imperative for the bank to provide excellent services to those customers, otherwise they switch to other banks[8]. Service quality in banking implies consistently anticipating and satisfying the needs and expectations of customers. **Parasuraman & Ors [1985]** also hold the view that high quality service gives credibility to the field sales force and advertising, stimulates favourable word-of-mouth communications, enhances customers' perception of value, and boosts the morale and loyalty of employees and customers alike.

In today's competitive banking industry, customers have to make a choice among various service providers by making a trade-off between relationships and economies, trust and products, or service and efficiency. A research was conducted on customer satisfaction, loyalty, and profitability and found that as compared to public sector, private sector banker - customers' level of satisfaction is comparatively higher. Banker – customer relationship is a key to create a superior banker and customer experience. It manages the relationship by creating a clear understanding by developing services and products based on the added value for target groups, then enabling the actual sale and delivery of services and products through the selected channels and developing long term profitable relationships between bankers and customers after sales services[9]. Many

[8] Ray, 2007
[9] . Hussain & Ors [2009]

researchers have been doing research in various industries especially in the banking sector that focusing on banker - customer relationship oriented services.

Banking deals with people and their money. The people who use banks are called "customers", a term which is different from client, the noun used by accountants and solicitors to describe persons who employ them. The term customer emphasises the need for services.

A person becomes a customer of a bank when he/she goes to the bank with money or cheques and asks to have an account opened in his/her name and the bank accepts the money or cheque and is prepared to open an account in the name of that person, after which he/she is entitled to be called a customer of the bank. So, a customer is clearly someone who uses the services of a bank.

Though the word banker was defined in this study, there is no clear descriptive definition of a bank in either the statute or case law, although the use of the word "bank" or "banker" in various pieces of legislation is of some help. For example, the Bill of Exchange Act 1882[10] says that a banker is: " any person whether corporate or not who carries on the business of banking" The Agricultural Credits Act 1928 states: "A bank can be any firm, incorporated company caring forward banking business which is approved by the Ministry of Finance"

Under the Banking Act 1979, the supervision of the deposit taking institutions is exercised by the Bank of England, and there are three classes of such institutions2: recognised banks, licensed deposit taking institutions and exempt bodies. In this later category come the Bank of England itself, the National Savings Bank, the Trustee Savings Bank, the building societies, the insurance companies

There are numerous kinds of relationship between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction. Thus the relationship is based on contract, and on certain terms and conditions. These relationships confer certain rights and obligations both on the part of the banker and on the customer. However, the personal relationship between the bank and its customers is the long lasting relationship. Some banks even say that they have generation-to-generation banking relationship with their customers. The banker customer

[10] In the United Kingdom.

relationship is fiducial relationship. The terms and conditions governing the relationship is not be leaked by the banker to a third party.

1.8 Meaning of Banker

The words 'banker' and 'bank' are frequently used interchangeably. Therefore, a definition of one suffices the other. Thus in **Akwule & Ors v. Reginam,**[11] 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. It is, therefore, not possible to agree with the view that the first appellant in this case was a banker. If the bank defaults, the first appellant, as manager of the bank, will not be sued; the bank will be sued. The cheques were drawn on the Bank of West Africa Limited and the customer's account is with the Bank of West Africa. The first appellant is not more than an official of the bank carrying out the bank's instruction as to the method its business should be carried out.

There is no statutory legislation elaborately defining a banker/bank. Nevertheless, URSB defines it as thus: "Bank means a bank licensed under this Act[12] Bill of Exchange Act equally defines it as including a body of persons whether incorporated or not who carry on the business of banking.[13] Chartered Institute of Bankers of Uganda Act also defines it as meaning a bank licensed in for example Uganda under URSB 1991 (as amended).[14]Evidence Act states as thus: Bank and banker means any person, persons, partnership or company carrying on the business of bankers and also include any savings bank established under the Federal Savings Bank Act, and also any banking company incorporated under any charter heretofore or hereafter granted, or under any Act heretofore or hereafter passed relating to such incorporation.[15]None of the statutory definitions above has elaborately defined the term 'banker'. It is a considered view that the use of the phrase

[11] (1963) All NLR 193.

[12] Section 66, Banks and Other Financial Institutions Act, Cap 32, Laws of the Federal Republic of Uganda, 2010.

[13] Section 2, Bill of Exchange Act, Cap 37

[14] Section 22, URSB Act, Cap 55

[15] Section 2, Evidence Act, Cap 129

'whether incorporated or not' in the Bill of Exchange Act; as well as the use of the word 'person' (in singular form) in the Evidence Act render the definitions in the Acts super fluous respectively in view of the requirement that banking institutions must be incorporated.[16]From the above statutory provisions and requirement, banker may be defined as an incorporated body carrying on the business of receiving deposits on current account, savings account or other similar account, paying or collecting cheques, drawn by or paid in by customer, provision of finance or such other business as the Governor may, by order published in the Federal Gazette, designate as banking business.

1.9 Meaning of Customer

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.[17] There is no specific statutory definition of a customer of bank. However, a customer of a bank is a person who maintains an account in the bank.[18]It is however deducible from the provision of URSB 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. Having discussed banker, banking business, e-banking and customer, the paper proceeds to discuss the relationship existing between banker and customer.

Like the word bank or banker one can't define a customer with exactness. However, it seems that the major factor determining whether or not a person is a customer must depend on whether or not a person has or will have an account with the bank.

Earlier, it was thought that there must be some sort of account either a deposit or current account or a similar relationship to make a person a customer of the bank thus in,

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[16] Section 66, URSB

[17] A. S. Hornby, *Oxford Advanced Learner's Dictionary of Current English*, (Oxford University Press, Oxford, 2000), p.288

[18] K. I. Igweike, *Law of Banking and Negotiable Instruments*, (Africana First Publishers Limited, Onitsha, 2005), p.70.

According to **Great Western Rail Way Co Vs London & Country Banking**[19], in holding that a person was not a customer of the bank, the House of Lords said that he had no account of any sort with the bank That nothing was put on his debit or credit in any bank or paper kept by the bank.

This case is also authority for the preposition that if a person has no account with the bank and is not about to open an account with the bank, the fact that the bank renders some casual service for him, that alone will not make him a customer In this particular case where a man had been for some years been in the habit of getting crossed cheques, exchanged for cash at the bank where he had no account and for which service was not charged anytime was held not to be a customer

However, one need not have an account to be a customer. An agreement to open an account is sufficient to constitute a person the customer of the bank. Like in all contracts, one has to find a consensus ad idem.

In **Ladhroke Vs Todd** [20] where it was argued that the person doesn't become a customer of a bank until the first cheque is collected Court said that a person becomes a customer of a bank when he goes with money to the bank or a cheque and asks to open an account in his name and the bank accepts the money or cheque and is prepared to open an account m the name of the person After that, he is entitled to be called a customer.

Similarly in **Woods Vs Martins bank Ltd**[21]a bank accepted instructions from the plaintiff to collect money. Paid part to a company he was going to finance and he retained the rest of the proceeds in the bank. He had no account with the bank. Held; that an agreement to open an account is sufficient to constitute the person the customer of the bank. Duration is not of the essence in the relationship of the banker and his customer as clearly stated in **Commissioner of Taxation Vs English, Scottish & Australia Bank**[22]**.**

1.10 A review of banker customer relationship

The banker - customer relationship is one of the oldest relationships in society, developed over time. Initially, bank customers were only the wealthy but, gradually, the banker customer relationship expanded to include almost the majority of the people engaged in banking

[19][19011] Act74
[20][1914] 19 Corn
[21][19561] Q.8 SS
[22][1920] A. C. 683

transactions. Moreover, banking transaction types and functions have expanded to the point that banks have become aware of a great deal of personal information about their clients. Therefore, banker customer confidentiality is a term used to describe how all client information which reaches the bank through the course of the banker/customer relationship should remain confidential and not be published or disclosed to the general public. Disclosing customer information without their previous acceptance may harm the banking sector, as people and organisations may refrain from depositing their money, in order to protect their private information. Nowadays, banks play an essential part in the economic system, promoting savings and investments. Modern trade and domestic and international commercial transactions would be almost impossible without the availability of suitable and robust banking services.

Therefore, a set of moral and professional ethics shapes the boundaries of each profession. Ordinarily, professions are affected by the habits, traditions, values and laws in their societies. Accordingly, bankers set their professional ethics and banking confidentiality at the core of the relationship between banks and their customers; some jurisdictions have codified the duty of confidentiality, others have not. Based on that, a bank's duty of confidentiality has been transformed from merely a principle of honour and professional ethics to a legal obligation – there are many jurisdictions, such as Switzerland and the Lebanon, which have realised the importance of banking confidentiality and implemented a special Act for banking confidentiality. Other jurisdictions have separate Articles within Financial Acts to emphasize a bank's duty of confidentiality; in some countries, such as the UK, banker customer confidentiality is mainly recognised by the common law.

1.11The nature of the banker and customer relationship

The nature of the banker-customer relationship defines the obligations which arise from it. The traditional view has been that the bank is not the custodier of the customer's money nor is the relationship fiduciary but of debtor and creditor.[23]In the case of **Joachimson v Swiss** [24], it was examined in detail and held that the relationship was primarily contractual in nature.[25]As Paget notes, It consists of a general contract, which is basic to all transactions, together with special

[23] Foley v Hill (1848) 2HL Cases 28

[24] (1921) All ER 92

[25] (1921) All ER at p 100 per Lord Justice Atkin

contracts which arise only as they are brought into being in relation to specific transactions or banking services.[26] If the relationship is of a contractual nature, then understandably, the terms of the contract signed will govern the relationship between the two and the banker will be obliged to follow the customer's mandate.[27]

1.12 The obligations owed by a bank to its customer

The ordinary relationship of banker and customer has the effect of imposing certain added obligations upon bankers in the performance of their duties **KpohrAtor V Wool Wich Equitable building society**. Specific duties arise only where special arrangements have been made or special circumstances[28] exist and in the absence of this, more general duties of care are owed. For instance, there exists a duty of confidentiality and also a duty to take reasonable skill and care in dealing with its customer's financial matters. The duty of confidentiality arose in ***Tournier v National Provincial and Union Bank of England***[29] in which states that the duty was binding on the bank unless it could demonstrate that it came within one of the following four exceptions, Where the bank is under a compulsion by law to disclose, Where the bank owes a duty to the public to disclose.[30], Where the interests of the Bank require disclosure and where the bank has obtained the consent of its customer.

1.13 The duty of care owed by a bank to its customer

The specific duties of care that can be owed are far too numerous to mention but instead the growing expansion in the law of negligence in the banker-customer relationship should be examined in more depth. The most important of these arise when giving advice on financial matters, providing a reference of a customer and when giving advice on securities[31].

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[26] Paget at p 110

[27] However, this is subject to certain exceptions, some of which will be illustrated below.

[28] see Kpohraror v Woolwich Equitable Building Society (1996) 4 All ER 119

[29] 1924) 1KB 461

[30] Libyan Arab Foreign Bank v Bankers Trust Co (1989) QB 728

[31] There exists also a duty on a banker of safe custody when he accepts articles for deposit but this is unrelated to proximity and explained further in Langtry v Union Bank of London (1896) 1 LDAB 229.

The expansion in the law of negligence here has been partly due to the change in the nature of the banker-customer relationship. The Jack Report[32] remarks that in the past, the banker-customer relationship of those times was "based on a combination of service and friendliness amounting almost to paternalism". It was all very much in the context of the times; there was a climate of mutual trust and confidence, mistakes by banks was a most unusual occurrence, and frauds on banks very rare.[33]Nowadays, instead of the more paternal image, the bank has taken on a more business like one, its staff acting as salesmen for a wide range of financial products and services.

1.14 The Legal System of Uganda

Uganda inherited its present legal system largely from British India. In pursuance of the Constitution of Uganda 1995, a substantial proportion of its laws have been incorporated into the legal framework of the country. The origin of the existing court system in Uganda also lies with the common law. Legislation, judicial decisions, the divine laws (for example, Muslim personal law) and customs are the basic sources of laws. Notwithstanding its different sources of law, Uganda belongs to the common law system. It is a unitary state and 'a uniform law is applied across the country.[34]

1.15 Legal frame work of banker and customer in Uganda

The lack of an appropriate legal framework in Uganda has made it impossible for the financial and commercial sectors to implement some of the measures that do exist. For example, banks can only report suspicious transactions but are powerless to stop or freeze the transactions because they do not have legal protection. Even the central bank (the Bank of Uganda, hereafter BoU) cannot do much when it comes to individual accounts unless the account holder is on the list of individuals under UN sanctions or is a listed terrorist as per UN Security Council Resolution 1373 of 28 September 2001.

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[32] Banking Services: Law and Practice Report by the Review Committee Feb 1989, Cm 622 HMSO Chairman - Professor R B Jack CBE (The Jack Report)

[33] The Jack Report Chapter 2 Para 18 quoting a statement by one of the consultees to the report.

[34]The legal systems of the world are split into a number of families. For details see, R David and J E C Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law* (3rd ed 1985) London: Stevens & Sons at 17-31.

In an attempt to develop a framework for combating money laundering in Uganda, the government, through its enforcement agencies under the coordination of the BoU, initiated a multi-institutional process to develop anti-money laundering policies and a legal framework. The Uganda Anti-Money Laundering Committee (UAMLC) has been formed to spearhead the process. The formation of this committee was motivated by the initiatives of the Commonwealth and the East and Southern Africa Anti-Money Laundering Group (ESAAMLG), of which Uganda is a member. As the law-making progresses, the BoU developed anti-money laundering guidelines (hereafter the BoU Guidelines) in 2002 for banks and other financial institutions to guide them in establishing and maintaining specific policies and procedures to guard against the use of the financial system for money laundering. But however parliament has introduced the **money lenders Act Cap 273** that regulates and guides financial institutions and other companies that led money to their customers which provides that for every individual or company to lend money must acquire a license that authorizes him or her to do so and a certificate of incorporation legalizing a separate legal entity of that company which acquired the license.

CHAPTER TWO

2.0 LEGAL FRAMEWORK FOR THE OPERATION OF BANKING SYSTEM IN UGANDA

Existing academic literature on financial customer protection spans law and economics, but is rather limited. One strand of literature derives from behavioral economics and is closely linked to financial literacy. Behavioral economics has often been used to examine customer behavior and the reasons behind certain customer choices. This strand of literature acknowledges that the approach of standard models in economics that is, rational customers and competitive markets—may not always hold in actuality[35]. In the financial sector specifically, some studies have argued that customers are subject to certain behavioral biases, including vulnerability to marketing such as being likely to take up offers that are framed in simple terms (Benartzi and Thaler, 2002; Bertrand *et al.*, 2004; Agarwal *et al.*, 2006; Campbell, 2006). Customers may not be well-informed, they can get confused when they are presented with many alternatives, and can eventually make systematic mistakes, which could be exploited by providers. In this regard, even well-established and efficient disclosure requirements may not be sufficient. For example, Barr *et al.* (2008) note that disclosure of useful information to the mortgage borrower prior to signing is crucial, and it would be effective only to the extent that it can be comprehensible and to the point. Hence they suggest developing financial market regulations based on behavioral models in which the underlying reasons of certain decisions by the households are investigated, rather than modeling the way in which rational households should make their decisions. Campbell (2006) suggests the use of financial literacy as an avenue of remedy, in addition to well-designed financial customer protection regulations. Elliehausen (2010) argues that the results of behavioral research could be useful in designing effective regulations in the credit market.

These research findings highlight the importance of financial literacy and disclosure requirements in mitigating information asymmetries in the market for financial products and services. The key challenge for the applied research going forward is to identify effective forms for disclosure. For credit products, evidence suggests that disclosing loan terms to customers can help reduce borrowing costs (Brix and McKee, 2010). Despite their importance, there is no universally

[35] Ardicet al. (2010)

accepted set of disclosure requirements (i.e., which terms and conditions are to be disclosed and when, how information should be presented, etc.) For example, Ebers (2004) suggests that information overload reduces the usefulness of disclosure. One approach used to address this issue is through a standardized format in which information is disclosed to customers, which often includes plain language requirements.[36]Brix and McKee (2010) suggest that financial customer protection regulation in low-access environments should make sure that plain language is used and that the use of complex formulas and calculations is avoided. Other studies (Collins *et al.*, 2009, and FSD-Kenya, 2009) support this claim. For example, customers prefer and better understand when they are quoted the dollar amount of payments and the number of months it will take them to pay off the loan, instead of the details of compounding. However, certain products are necessarily more complex and will require more information to be disclosed, though in the absence of financial literacy, it is unlikely that this complex information will be understood by the customer. For example, a U.S. Government Accountability Office (GAO) study finds that people with limited language proficiency are less likely to have bank accounts and more likely to be susceptible to fraudulent practices (US GAO, 2010). In an earlier study on review of regulations on the disclosure of rates and fees, the U.S. GAO (2006) comes to a conclusion that disclosure forms are complicated, and may contain conflicting information, confusing disclaimers.

Unfortunately systematic data on the levels of financial literacy and awareness of financial concepts remains limited. Lizard and Tufano (2009) present the results of a household survey in the U.S. and find that awareness of financial concepts among borrowers is low, especially among women, elderly, and minorities. The authors find that borrowers with lower levels of financial literacy tend to transact in high-cost manners such as incurring fees. Based on household interviews in Australia, Wilson *et al.* (2009) report similar findings and suggest that low income customers are not only more likely victims of abuse by lenders, but they are also less aware of customer protection provisions and their rights to seek recourse.

Policy papers focusing on the review of customer protection and financial literacy indicate that there is no one-size-fits-all approach when it comes to designing customer protection and financial literacy policy. Financial literacy is low among the poor, especially in developing countries (Miller *et al.*, 2010). There is evidence that individuals lack even the understanding of interest rates

[36]Peterson, 2003; Ebers, 2004; Porteous and Helms, 2005; Wilson *et al.*, 2009; Brix and McKee, 2010.

(Porteous, 2009; FSD-Kenya, 2009).[37]Porteous and Helms (2005) note the large asymmetry between borrowers and lenders in microfinance in terms of awareness of the financial product or service, arising from illiteracy and inexperience on the part of borrowers, and differences in language and ethnicity. In this respect, providing financial education to the poor to raise their financial capability and establishing better customer financial protection regulations may turn out to be a better option. Indeed, there is evidence that disclosure requirements lowered microfinance interest rates significantly in countries with competitive microfinance markets such as Cambodia, Peru, Ghana, many countries in Eastern Europe and the former Soviet Union where new price disclosure requirements are enforced (Brix and McKee, 2010).

2.1 Termination of Bank-Customer relationship

Generally, the relationship of banker and customer is commenced by the customer signing the banker's standard form of contract as it relates to the operating of the client's account. This agreement should set out the provisions which govern the operation as well as the termination of the contract and which when signed by the customer, becomes a contractually binding agreement. Rationalize.

2.1.1 Closure of account by a customer

This will depend on the type of account if it is a current account the normal practice is that the balance on the customer's account is repayable on demand as a customer can close his current account by simply demanding for payment however, sometimes the more fact that the customer has withdrawn all the money on the account may not absolve the bank from liability therefore the bank would need to obtain evidence of the customers intention to dose the account. In Uganda most banks require minimum deposits on current accounts therefore the customer can't close his account by simply withdrawing all the balance since the bank would be under no obligation to repay the balance unless the customer intimates to the bank that he intends to close the account.

[37]This issue is not confined to developing countries. For example, US GAO (2005) reports similar findings regarding APR.

An overdrawn current account can only be closed by the customer on repayment of the overdraft together with the accrued interest. Savings and deposit accounts are closed by application by the customer and a period of notice is required which varies from bank to bank.

2.1.2 Closure of account by banker

The bank can close the customer's account after giving reasonable notice, the requirement for notice arises out of the banker's actual obligation and was started in **Joachinson Vs Swiss Bank Corp** where it was held that it is a term of contract that the bank will not cease to do business with the customer except upon reasonable notice.

In **Prosperity Ltd Vs Lloyds Bank** court held that what is reasonable time depends on the special facts and circumstances of the case.

Some of the facts to take into account are:

i) size of the account
ii) nature of the business
iii) geographical distance to which the customer sends his cheques.

On the basis of Tarquand's case- court held that the bank's duty is to act in accordance with the lawful requests of its customer in the normal operation of the customer's account the bank refused to carry out the lawful request and wrongfully suspended the account in out 1987 until the high court gave judgment in 1993. It was in breach of its contract with the company for all this time.

2.1.3 Death of a customer

Section 74[38]provides that whom a bank receive notices of its customers death, its duty and authority to pay is determined, the law does not state what constitutes notice whether this will be a question of fact depending on the circumstances.

Any balance of the customer account is treated like any other property of the deceased person and is vested in the legal representative of a customer who is either the executor or administrator of his estate. Where the deceased customers account is overdrawn the bank can under order to rule for and order 28 rules 182 of the C. PR sue the executors or administrators for the debt.

[38]Bill of exchange Act

2.1.4 Winding up the customer - Company wound up

Upon winding up of a company ceases to have legal existence and all its actual relations come to an end as soon as the bank learns of the passing on a resolution for winding up the company or the presentation of a winding up petition in court, it should not honour cheques drawn on the companies account, it should treat its mandate to operate the account as determined.

The relationship of a bank and its customers is one which is rooted in contract and, along with relevant legislation and regulations e.g. The Banking Act; it is this contract which governs not only the operation of the account but its termination **Joachimson v Swiss Bank Corporation.** A bank undertakes to receive money and to collect bills for its customer's account, the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept, and during banking hours. It includes a promise to repay any part of the amount due against the written order of the customer addressed to the bank at the branch, and as such written orders may be outstanding in the ordinary course of business for two or three days, it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice

2.2 Legal relationship between banker and customer

There are numerous kinds of relationship between the bank and the customer. The relationship between a banker and a customer depends on the type of transaction; products or services offered by bank to its customers. The legal relationship between a bank and its customer differs in several important respects from the relationships between most other service providers. In order to answer the question, this study describes and analyzes the legal relationship between a bank and its customer. After that, it goes on to compare that between other service providers and their customers.

The general legal relationship of bank and customer is contractual relationship, started from the date of opening an account. When customer deposits money into his bank account, the bank becomes a debtor of the customer. No new contract is created every time there is a new deposit as the account is continuing in nature. The banker is not, in the general case, the custodian of money. The money paid into a bank account becomes the property of the bank and bank has a right to use the money as it likes. The bank is not bound to inform the depositor the manner of utilization of

funds deposited by him. Bank does not give any security to the debtor (depositor). The bank has borrowed money but does not pay money on its own, as banker is to repay the money upon payment being demanded. Thus, bank's position is quite different from normal debtors. On the other hand, when the bank lends money to his customer, the relationship between the bank and customer is reversed. Then the bank takes the position as a creditor of the customer and the customer becomes a debtor of the bank. Borrower executes documents and offer security to the bank before utilizing the credit facility. Therefore, the general relationship between bank and its customer is that of a debtor.

2.3 Banking Regulation

Bank regulation is a form of government regulation which subjects banks to certain requirements, restrictions and guidelines, designed to create market transparency between banking institutions and the individuals and corporations with whom they conduct business, among other things.[39]

Given the interconnectedness of the banking industry and the reliance that the national (and global) economy hold on banks, it is important for regulatory agencies to maintain control over the standardized practices of these institutions. Supporters of such regulation often base their arguments on the "too big to fail" notion. This holds that many financial institutions (particularly investment banks with a commercial arm) hold too much control over the economy to fail without enormous consequences. This is the premise for government bailouts, in which government financial assistance is provided to banks or other financial institutions who appear to be on the brink of collapse. The belief is that without this aid, the crippled banks would not only become bankrupt, but would create rippling effects throughout the economy leading to systemic failure.

The banking industry offers an excellent opportunity to study regulatory behavior because commercial banks can choose among three primary federal regulators. The primary regulator depends on a bank's chartering agency and on whether it is a Federal Reserve System ("Fed") member. A nationally-chartered bank is regulated by the Office of the Comptroller of the Currency (the "OCC"). A state-chartered bank has the Fed as its primary federal regulator if it is a Fed member and the Federal Deposit Insurance Company (the "FDIC") otherwise.[40] To examine how

[39]*Section 115, Dodd–Frank Wall Street Reform and Consumer Protection Ac*
[40]Regulatory authority for state-chartered banks is shared with the appropriate state chartering agencies.

the regulatory structure interacts with the risk and return choices of banks, we focus on banks that switch primary regulators, asking why banks switch and, after they do, what the effect on performance is.

2.4 Legal Framework for the Operation of Banking System

The most significant legislation to affect banking transactions in Uganda was the Banking Act 1952 as amended by the Banking Act 1969 and subsequently in 1991[41]and 1997[42]. The current law is the Banks and Other Financial Institutions Decree No 25 of 1991[43]. The Provisions of the Banking Act made it mandatory for a valid license to be obtained before any banking business could be transacted in Uganda. An application for a license shall be forwarded to the Governor of the Central Bank of Uganda and all licenses to be issued shall be with the prior approval of the Minister of Finance.[44]

The Company and Allied Matters Acts is also relevant in the sense that the proposed person must first of all register as a company before applying for a banking licence. In other words, no person shall carry on banking business in Uganda except it is a company duly incorporates in Uganda under the Act.[45]The Central Bank on Uganda nowadays is responsible for issuing the Ugandan currency and maintaining the country's external reserves is also the sole licensing authority for banks and other financial institutions.

The Act that established the Central Bank of Uganda is another statute that governs banking regulation[46]. The Act vest on the central Bank of Uganda extensive regulatory and supervisory power over the operation of licensed banks and financial institutions. Apart from the power to issue and revoke banking licences, it can also carry out periodic inspections into the affairs of any bank, sanction banks which violate banking regulations (as imposed by it) and assume control and management of failing banks. For instance, to date, in a bid to sanitize the financial industry, the Bank of Uganda has revoked the licenses of many banks.

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[41]Cap 28 LFN 1990
[42]BOFA No 4 of 1991
[43]Now designated as Cap. B3 LFN 2004
[44]See Sec. 3 Subsection (5) of BOFA as amended
[45]Section 2(1) Ibid

[46]The BOU Act No 24 of 1991 as amended by Act No 3 of 1997 now Cap. C4 LFN 2004

Any organization desirous of carrying on banking in Uganda must first be incorporated under Uganda Registration Service Bureau (URSB) 1998[47]as a limited liability company. As it was held in the case of **Akinwale and Ors v.R[48],** only a company or corporate body can operate a bank in Uganda. An alien or foreign company subject to the provisions of any law regarding the rights and capacities to engage in trade or business[49]. Section 54(4)[50] every foreign company intending to carry on business in Uganda must take all steps necessary to obtain incorporation as a separate entity.

Hence, any foreign bank wishing to carry on banking business in Uganda must undergo another set of registration procedure except where the law provides to the contrary. By Section 35 of the following documents must be submitted to the C.A.C.-Corporate Affairs Commission:

(i) Memorandum and Articles of Association
(ii) Address of the registered office
(iii) Particulars of Directors
(iv) Statement of authorized share capital, signed by at least a Directors

Statutory declaration of compliance signed by a legal practitioner. Where the Corporate Affairs Commission refuses, the applicant must be notified within 30days. By Section 56[51], the National Council of Ministers may exempt foreign companies from complying with the provision requiring foreign companies to register in Uganda before they can operate. Foreign companies operating in Uganda before the Act should have the word "Uganda" on their names.

2.5 Licensing

After incorporation as a company in Uganda, the company must obtain a banking licence from the minister of finance after consultation with the Central; Bank. The applicant must submit a copy of the memorandum of understanding and articles of association as well as the certificate of incorporation. The Bank and Other Financial Institution Act[52]provides that no banking business shall be transacted in Uganda except by a company duly incorporated in Uganda which is in

[47]Cap. 51 L.F.N. 1990 now Cap. C20 L.F.N. 2004
[48](1962) ANLR 193 at p.200
[49]Sec. 20(4) of CAMA
[50]Ibid
[51]URSB Act
[52]Cap. B3 L.F.N. 2004

possession of a valid licence granted by the Ministry of Finance authorizing it to do so and unless before its incorporation in Uganda the objects of the company as defined in it Ministry of finance shall have been submitted to the minister in writing through the BoU for its consideration and approval accordingly.

By Section 5(3)[53], if the applicant is already carrying on business outside Uganda, a copy of its latest audited accounts and balance sheet must be submitted. By Section 8 of the Act, the minister may by order revoke any licence for the following reason: *if the holder ceases to carry on business in Uganda or is in liquidation, where the bank operation is detrimental to the interest of the depositors or creditors or has insufficient assets to cover its liabilities.* The minister may however take any of the following steps prior to revocation; *Appoint an expert to advise the bank on the proper conduct of the business; The minister will report the circumstances to the Federal Executive Council who may order the revocation, The minister must give the bank reasonable notice of its intention to revoke and allow the bank to reply with a written statement.*

A banking licence granted under the Act is not within the contemplation of civil rights under the constitution. Thus, in ***Merchant Bank Ltd v. Federal Minister of Finance***[54]the Minster made an order revoking the licence of the plaintiff for breaching regulations regarding liquidity ratio and other conditions and the proper running High Court sought a declaration order that the order was void and different from injunction to be granted to restrain the minister from winding up the bank. The counsel to the Bank argued that the licence can only be revoked by the court or other tribunal established by the constitution.

The bank further argued that it is only the court that has the power to deter mine the civil rights of any citizens including a corporate body. The Federal High Court dismissed the action and the Supreme Court it was held that a licence to engage banking business can be revoked by the Minister. It was further held that a licence was a privilege and it was for the minister and not the court to exercise the powers. The function of the court begins when it is alleged that the powers have not been exercised in accordance with the provisions of the law.

[53]Ibid
[54](1961) ANLR pt. 4598

It must be noted that where there is any dispute relating to breach of or non-compliance with certain formulates required by law for the lawful operation of banking business, the Federal High Court is the appropriate court[55] for the action because it involves government measure except the federal government is a necessary party.

2.6 Legal Control of Banking Staff

Bank as a legal entity operates via the activities of some people such as managers, Directors a principal officers. It is therefore important to consider the legal control of these staff with respect to banking business and operations.

Section 18(1)[56]provides that bank staffs must disclose interest with regard to loan and advances. Staffs are further prohibited from having personal interest in any loan, credit or advances and if he has, shall declare it[57]. Thus in the case of ***Uganda Commercial Bank Ltd v. Ajayi***[58], the Court of Appeal held as follows;

> *Where in the course of his duties and using the bank facilities, an officer of the bank receives money from the customer which he either uses or fraudulently converts to his own use; the bank is liable to the customer notwithstanding the fact that it had adopted all necessary measures to prevent the officer from doing so. In the likely manner, where the officer of the bank fraudulently withdraws money from the account of customers, the bank is liable to the customer.*

The above quotation from the learned Justice of Court of Appeal elucidates the responsibility of the bank to its customer even though the bank staff is responsible for such injurious act done to its customer. This principle has a bearing with the tortuous law of vicarious liability[59].

Section 19(1)(a)-(b) further provides that a person who is bankrupt or has suspended payment or compounded with his creditors or fond of profession misconduct shall be managed by agent except as approved by BoU[60]. Subsection (2) prevents a director of another bank or company who has a voting right above 100 percent from being a director of the bank, while subsection (3) prevents a

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[55]See Jamal Steel Structures v. African Continental Bank Ltd (1973) 1 All N.L.R. (part 3) 28; See also the Federal Revenue Court Act No 13 of 1973; Sec.228-230 of the 1979 Constitution and Sec. 249-252 of 1999 Constitution of the Federal Republic of Uganda.

[56]Uganda Registration Service Bureau (URSB) Act

[57]Section 18(b) and (c) of URSB Act (as amended)

[58](2002) FWLR (pt. 92) at p. 1716 Per TABAI J.C.A.

[59]See Kodilinye: The London Law of Torts; 1990; Spectrum Law Publishing at p.229-249; Dola v. John(1973) 3 ECSLR 302; Attorney General v. Dadey (1971) 1 E.L.R. 228; Popoola v. Pan African Gas Distributors Ltd (1972) 1 All N.L.R. (part 2) 395; James v. Mid Motors Ltd (1978) 2 L.R.N. 187

[60]Section 19 (1) (a)-(b) URSB Act

director of another bank o company not being subsidiary of the bank or who is engaged in another vocation.

Every staff of a bank is expected to sign a code of conduct upon the prescription of BoU from time to time[61]. Similarly, the Chief Executive Officers (CEO) of the bank shall cause the officers to sign its own code of conduct approved by the Board of Directors of the bank[62]

Section 29[63] provides for the appointment of approved auditor who is to provide annul information of the bank to stakeholders on the bank account, balance sheet, profit and loss account and every such other report and information as may be requested by BoU. Section 30 make provision for the appointment of directors of banking and examiners. In other to compliment this, Section 32 provides for special examination and investigation of the books and affairs of the bank where it is satisfied that in the interest of the public, depositors and customers, the bank has a no sufficient assets to cover its liabilities of its banking business is seen detrimental to the public.

Although Section 41[64] gives the president of the Republic of Uganda power to declare a trade union not to exist where its members employed in banking industry tends to distraught the activities of the banking sector and Ugandan economy via a publication of official gazette, yet, this provision is contrary to the Fundamental Human Rights of individual to join association granted under the constitution[65]

Section 43[66] deals with the act of corruption of banking officials. It states that:

> *Any director, manager, officer or employee of a bank or nay person receiving remuneration from the bank who ask for, receives, consents or agrees to receive any gift, commission, employment, service, gratuity, money, property or thing of value for his own personal benefit or advantage or for that of any of his relations, from any person.*

It is important to point out that all the above provisions on bank staff regulations are put in place to ensure a level of sanity and to repose confidence in the banking sector.

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[61] Section 19 (4) of URSB Act

[62] Section 19(5) URSB Act
[63] Section 29URSB Act
[64] Section 41URSB Act
[65] Section 40 1992 Constitution
[66] Section 43 URSB Act

CHAPTER THREE

BANKER AND CUSTOMER RELATIONSHIP

3.0 The Nature of the Relationship

Earlier, we have defined a customer as a person who has some account either deposit or current account or some similar relationship with the bank[67]. In the same manner, the Bills of Exchange Act defines a banker to include a body of persons whether incorporated or not to carry out the business of banking. The business of banking according to the Act generally must include a major part of the business apart from lending the acceptance of deposits and collection of cheques and other orders of payment.

The relationship between a banker and customer is essentially contractual but fundamentally is that of debtor (banker) and creditor (customer) with the roles reversed. It may also be the relationship between the principal and the agent. Also, it may be the relationship between the bailor and the bailee[68].

Generally speaking, the relationship between a banker and customer is governed by the following:

3.1 The General Rule of Contract

The relationship between a banker and customer is contractual in nature and there is no comprehensive definition of duties and obligation specified of the parties involved. Therefore, everything is implied. In ***Johnson Liquidator of Merchant Bank) Ltd v. Odeka***[69], the court held that where a bank lends money to a customer, no action accrues until the banker make notice or demand the return of money. Hence, the bank cannot sue without express demand for the money.

Similarly in ***Wema Bank Ltd v. Okotwo***[70], the court held that there exist a relationship between a banker and customer constitutes a special contract. The relationship between a banker and its customer is that of a debtor and creditor. The relationship between a banker and its customer is that of a debtor and creditor. When a person has an account which is in credit, the bank is deemed to be his debtor

[67]Oku v. Banigo (2003) FWLR (pt. 175) p. 422 and Section 2 Bills of Exchange Act Cap. 38 L.F.N. 2004
[68]See Steven Industries v. Bank of Commercial Credit International Nig. Ltd (1999) 7 SCNG 238
[69]1968) 3 A.L.R. 41
[70](1980) 3 CCSCJ 219 at 222

to the extent of the credit balance[71]. In ***Chief Festus Yesufu v. Cooperative Bank Ltd***[72], the Supreme Court held that the relationship between a banker and its customer is that of a debtor and creditor and is founded in a simple contract. A banker is under an obligation to pay his customer the amount standing to the customer's credit on his account.

3.2 The Rule of Agency

The rule of agency can be identified where the banker acts as agent for its customer in collecting or paying cheques on its behalf. In this case, that banker is the agent while the customer is the principal. The agent (banker) is bound to accept and pay the order made by the principal (customer) in the cheques. This is however, subject to certain rules of exceptions66[73]. According to ***LayiAfolabi***[74]:

> *The acceptability of cheques as a medium of payment in a society depends on a number of factors which include, the development of banking habit, the legal provision against the issuance of dud cheque could be converted into cash and some specific protection the cheque guarantee card systematic... offered.*

Thus, in **Bavins v. London and South Western Bank**[75], the plaintiff received an instrument in the form of a cheque reading pay to J. Bavins the sum of sixty-nine pounds provided the receipt form at the foot hereof is duly signed, stamped and dated." This document was stolen from the plaintiffs, the receipt form being then unsigned. Afterwards, it was paid into the defendant bank for collection bearing an endorsement and with the receipt form signed, these signatures were forged. In an action, it was held that the instrument was not a cheque.

3.3 The Rule of Bailor and Bailee

Where the banker retains its customers deeds and documents for safe-keeping, it is said to be acting as a bailor for the customer(bailee) the principal business of a banker is to receive money form customer either a current account or deposit account ad in the former case to pay cheques drawn by the customer. A banker also discounts bills and promissory notes and makes advances by way of loans and overdraft.

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[71]Expeyoung v. State (1967) 1 All N.L.R. 285 at 287; Braimoh v. C.O.P. (1968) 1 NMLR 272 at 277
[72](1994) 9 SCNG 6 at 81
[73] Barins v. London and South Western Bank (1900) Q.B. 270
[74]Layi Afolabi: Law and Practice of Banking ; Heinemann Educational Books Nig. Plc. (1999) p.131
[75]Supra

A banker sometimes undertakes agency of other foreign banks, effect purchases and sales of securities collect cheques, dividends, coupons and foreign bills, make periodically and other payment, pay customers acceptances, issue drafts and letters of credit, conduct foreign exchange business, accept bills for customers takes charge of securities and other valuables for customers.

3.4 The Rule in Folley v. Hill[76]

The debate over the relationship between a banker and customer became conspicuous in the locus classics case of ***Folley v. Hill***[77]. It was clearly stated that money once paid into a bank ceases altogether to be the money of the customer. It is the money of the banker who is bound to return an equivalent by paying a similar fund to the depositor with the banker wherever he asks for that amount.

The fact of the case was that the plaintiff sued the defendants in chancery for an account of money received by them as his bankers. The account being so simple as not to be a matter for a court of equity, the plaintiff shifted his ground and claimed that the relationship was equitable like that of principal and agent, and that he was entitled to an account on that basis. The defendants had received the money in question many years before the suit was brought, and had agreed to pay 3 percent interest, but no interest has been paid or credited for over six year. The plaintiff claimed that the relationship being of a fiduciary nature the statutes of limitation did not apply to it.
It was held that the relationship was the ordinary relation of debtor and creditor. According to **Lord Cottenham:**

> *Money paid into a bank 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*[78].

The above case no doubt, confirms that this debtor and creditor relationship is the basic principle of the law of banking[79]then is the complication of the rule in ***Folley v. Hill***? It means that the bank deposit is a loan of money to the bank by the depositor. Once the bank is in possession of it, it

[76](1848) 2 H.L. Cas. 28
[77]Lord Chorley and J.M. Holden, Law of Banking (1974), 6thedn p.24
[78]Ibid
[79]See Midland Bank Ltd v. Conway Corporation (1965) 1 W.L.R. 1165

becomes the property of the bank to use it as it pleases. This was explained by the Supreme Court in the case of ***Ekpenyong v. R. whereBraiman J.*** said to the following effect:

> *When a person has an account which is in credit, the bank is its debtor to the extent of the credit balance and when he draws money in his account, the money he is paid, is the money of the bank.*

In other words, the customer's right to be paid the outstanding in his account is contractual. Where the right is denied, his remedy is to claim for the repayment of the debt. As it has been pointed earlier on, the contract between a banker and customer lacks original formality. This lack of formality means that the contract is made by oral rather than written agreement, completion of largely administrative forms, the sending of brief letters are on the basis of banking custom and practice Another implication of the rule is that demand is conditional precedent that must be complied with before there could be a liability on the part of the bank. Thus, in ***Joachimson v. Swiss Bank Corporation***[80] ***Atkins L.J.*** reiterated that:

> *The bank undertakes to receive money and collect bills for its customers but the bank borrows the proceeds and undertakes to repay them. The promise to repay is to repay at the branch of the bank where the account is kept and during banking hours. It includes the promise to repay any part of the amount due against the written order of the customer, addressed to the bank at the branch and as such, written orders may be outstanding in the ordinary course of business for 2 or 3 days. It is a term of the contract that the bank will not cease to do business except upon reasonable notice. The customer, on his part, undertakes to exercise reasonable care in executing the written orders so as not to mislead the bank or to facilitate forgery. 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 repayment from the bank at the branch.*

The issue emphasized here is whether demand was necessary to create the cause of action against the banker and it was held on the affirmative.

From the foregoing, the relationship between a banker and customer apparently creates obligations and duties for the parties involved. While the banker owes the customer certain duties, the customer on other hand has obligations to perform. Thus, for there to be an actionable suit, the party claiming must have kept his own side of this duty to shift the liability on the other party.

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[80](1921) 3 K.B. 110

3.5 Duties of a banker to a customer

The duties of a banker could be many owing to the dynamism in business world and changes in technological advancement, the duties of a banker to a customer can be an omnibus one encompassing various aspects of banking business. However, there are major duties which are fundamental. They include:

(i) Duty to honour customers' cheques

A banker owes it an obligation to honour customer s cheques once there is sufficient credit in his favour to meet up the demand. If the amount is not paid, the customer can sue the bank[81]. The law is that a banker is bound to pay a cheque drawn on him by a customer in legal form provided he has in his hands sufficient and available funds for the purpose or provided the cheques are within the limit of an agreed overdraft and may so pay them within a reasonable margin after the banks advertised closing time.

In the case of cheques and other documents, the banker is entitled to a reasonable time for learning or collecting according to their respective nature. Mere crediting as cash is not sufficient to entitle the customer to draw against the cheque before clearing. This must be an agreement express or implied to permit the customer to withdraw[82].

In **Aderibigbe v. Savage J**[83]identified two important conditions which must guide a bank in distinguishing the primary duties to honour cheques of customers.

> *the first is that the account of the customer is in credit or there has been an overdraft facility granted to warrant same; and -Secondly that there is no legal reason or excuse to the contrary.*

Where originally there is a restriction the moment the bank becomes aware of the lifting of the embargo, it must allow the customer to draw on the account.

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[81]See Akwale&Ors v. Queen (1963) All N.L.R. 193 at 200; Allied Bank Nig. Ltd v. Jonas Akubueze(1995) 4 N.W.L.R. pt. 390, p.439

[82]Onyech v. NBN Ltd (1977) 1 All N.L.R. 296 at 303
[83](1977) All N.L.R. at 401

A customer of a bank whose cheque was wrongly dishonored can bring claims for defamation and breach of contract together in one single action[84].The imputation of wrongful dishonor of cheque from either the very act of unlawful dishonor of the cheque where the customer has enough funds to meet the amount on the cheque or the endorsement "R/D" thereon is that the customer is dishonest and untrustworthy[85]

In **Adeleke v. NBN Ltd**[86], an action on libel was however successful instituted where the plaintiff, an army officer issued a cheque which the defendant bank on receipt erroneously presented for payment to one of its own branches. In consequence, the cheque was returned unpaid though the plaintiff had ample fund in his bank account. A senior officer was given notice of the dis honour. It was held that the notice of dishonor constituted a libel to the plaintiff.

Banks duty to honor the customer's mandate

When a customer opens an account with a bank, he will give the bank authority to operate the account in accordance with his instructions, So long as the bank acts within its mandate, it may debit his account. The mandate should be clear and unambiguous. E.g. by clearly identifying the person or persons who - can draw money on the account, A bank that pays out on a patently ambiguous mandate without first seeking the mandate of the customer, runs the risk of being unable to debit the account. This position was discussed in the case of **Patel Vs. Standard Chartered Bank [2001] Lloyds Rep Bank, 29, Toulson J**[87]. From time to time, a bank is under a duty to obey instructions as long as they comply with the original mandate. In the past most payment instructions were given by use of cheques but in modem banking practice they are as s likely to be given by electronic means. (E.g. through the use of a debit card at a retail or through use of telephone banking or an internet banking system).

In the case of **Sierra Leone Telecommunications Company Ltd Vs Barclays Bank Plc**[88] (Commercial Court) Caswell J. observed: It is a basic obligation owed by a bank to its customer that the bank will honor on Presentation a cheque drawn by the customer on the bank provided (here are sufficient fluids in the Customer's account to meet (he cheque or the bank has agreed to

[84]Balogun v. NBN (1978) 3 Sc 155 at 173
[85] Ibid
[86](1978) 1 L.R.N. p.157
[87][2001] Lloyds Rep Bank,
[88][1998] 2 ER 821 Q.B.D

provide the customer with overdraft facilities sufficient to meet the cheque. Where the bank honors such cheque or other instructions it acts within its mandate, with (he result that the bank is entitled to debit the customer's account with the amount of the cheque or other instruction.

Bank's duty to obey the customer's countermand

The converse of the bank's duty to obey the customer's instructions is the duty to obey the customer's countermand. In simple terms, this means counseling or stopping the instructions by the customer. With regard to cheques, this obligation is defined by statute. Section 74 of the Bills of Exchange Act states that the duty and authority of the bank to pay a cheque drawn on him or her is determined by:

(a) Countermand of payment
(b) Notice of the customer's death.
The notice of countermand must be clear and unambiguous according to the case **Westminster bank Vs Hilton**[89]and it must be brought to the actual (not constructive) knowledge of the bank, according **to Curtice V London City and Midland Bank Ltd**[90] In this case, the plaintiff drew a cheque payable to Jones After buslnes5 hours on the same day, he countermanded payment by telegram which he placed in the bank's letter box after finding the bank closed. The bank did not cheque its letter box until after two days. By the time the bank got to know about the countermand, the cheque had already been paid. On Appeal, Cozens Hardy AIR noted:

"*.Countermand is a matter of fact. It means much more than a change of purpose on the side of the customer. It means, in addition, the notification of that change of purpose to the bank. There is no such thing as constructive countermand in a commercial transaction of this kind*

Bailment; A banker who accepts goods for safe custody is a bailee for reward. In **Port Severlenham Authority Vs Ins Wu & Co.**[91]-The Privy Council held; in any event a bank which offers its customers the service of looking after Their goods deposited with it c-an hardly be described a gratuitous bailee. The bailee must take care that the bailed goods are not damaged or destroyed.

[89](1926) 43 TLR 124
[90][1918] 1 KB 293
[91][1979] Access

3.6 Duties of a Customer to his banker

A customer owes his banker certain duty. This is the corresponding effect of banker/customer relationship. Such duties include but not limited to the following;

A customer has a duty to exercise reasonable care in drawing cheques to guide against alteration and from being misled. **London Joint Stock Bank v. Macmillan &Authur**[92], a clerk was influenced by the respondent to prepare cheques. He prepares a cheque payable to a firm to the bearer showing the sum of two pounds in figure only but not in words. One of the parties signed the figure of 120 pound and wrote the amount in words and cashed the cheque at the London Joint Stock Bank. The House of Lord held that the plaintiff action must fail because the customer holds a reasonable duty to take care in drawing the cheque.

The customer has a duty to notify the bank of cheques in his name which he knows are forged. Where a customer discovers that his signature is being forged and such forgery appears as genuine, he is obliged to inform his bankers immediately. His failure will stop him from claiming from his bankers payments made on such forged signatures.

A banker on being notified of the forgery cannot debit his customer's account on the basis of a forged signature since he has no mandate from the customer[93]. A bank who collects for a customer an amount stated on a forged cheque will be liable for money it has received for conversion at the instance of the true owner unless the bank did so in good faith and was not negligent. In the case of **Standard Bank v. Bank of America**[94], a bank mistakenly pays out money in honour of a cheque which was later discovered to be a forged document; such money is recoverable at the instance of the bank.

In **Joachimson Vs Swiss bank Corp.** Lord Asian Said that it is the term of the contract between the bank and its customer that the customer on his part undertakes to exercise reasonable care in executing his written orders so as not to mislead the bank or to facilitate forgery. This duty had already been recognized in the case or **London Joint Stock Sank Vs Macmillan & Ors.**

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[92](1918) A.C. 977
[93]UBA Ltd v. Savannah Bank Ltd (1977) 10-12 C.C.H.J. 255 at 259
[94](1976) 1 F.N.L.R. 112 at v114

A similar decision was reached in **Mobil (U) Ltd Vs Uganda Commercial Bank** — in this case, a cheque for shst6, 301 was changed to read sb.40, 301.

The High court of Uganda held that if a cheque is drawn in such a way as to facilitate an increase in amount by forgery or if a cheque goes into dishonest hands, forgery is not a remote but a very natural consequence of negligence, Not only must a customer draw his cheques in such a way as to facilitate forgery but he also has a duty to inform his bank if he knows that the cheque on his account has been forged.

In **Greenwood Vs Martins Bank**[95]the plaintiff had an account with the defendant's bank. The wife of the plaintiff had over a period of time forged her husband's name. On the wife's request, the husband had refrained in from notifying the bank about the frauds. When the husband threatened to notify the bank, the wife committed suicide. The husband brought an action for the amount paid by them on a forged signature. The claim was rejected because the plaintiff had breached his duty of informing the bank of forgeries, held deliberate abstention from speaking in those circumstances amounted to representation that the forged cheques where in fact in order and assuring that the fact followed by the bank they were all element for an estopel.

Although the eases talk of the guilt of breach of duty, this doesn't mean that the parties owe each other a duty of care in tort. This is instance made clear by the Privy Councils decision in **Tai fling Cotton Mill Ltd Vs Liu Chong Hing bank Ltd**[96]

Their Lordships said that this duty is a contractual duty and does not extend to tort. They were of the view that it has never been the law that a person who had the choice of suing in contract or tort can fail to contract yet nevertheless succeed in tort. That one can't rely on the law of tort provide him with a proper protection than that of which sly or impliedly he has contracted with the bank. However, the learned author of Puget's if banking contests this view. He asserts that they could be situations in which the principle doesn't preclude the imposition of a duty of case in tort between parties who stand in a contractual relationship.

[95](1932) 1 KB 371
[96]On [1986] AC. 80

CHAPTER FOUR

SCOPE OF BANKER TO CUSTOMER RELATIONSHIP

4.1 Introduction

In **Warren Metals Ltd v Colonial Catering Co Ltd**[97] held that, a customer is someone who is in such a relationship with the bank that the relationship of a banker and customer exists. The legal position implies that opening an account is the crucial element in establishing the banker-customer relationship. Nevertheless, it should be noted that modern banks also offer other services to non-account holders creating a relationship. These services may include offering Credit Cards, bank loans or general financial services to a person who does not have a deposit account. In Africa, banks are required to know their customers under the **Money Laundering Regulations 2013**. The regulations require a bank to apply customer due diligence measures when it establishes a relationship with the customer. The banker-customer relationship in Africa is governed by the Law of Contracts, Statutory Legislation and Case Law. Given that Africa is part of the African Union, there are European directives on consumer protection that affect Laws.

It is contractual because the association gives rise to a debtor and creditor obligation. When an account is opened, specific legal rights and obligations come into play. A contract is essentially a promise to perform an action or fail to act. Legal action can be taken if such promises are contravened by either parties to the contract. Banks and their customers are continually entering into various contracts. These may include deposit taking and loan agreements. In loan agreements, the bank gives the money to the customer now in return for the customer's promise to pay back in the future typically with interest. A customer pays insurance premiums now in exchange for the promise by the insurance provider to indemnify the customer in the event of a claim. In view of the distinctive nature of bank deposits, it is essential to consider whether the deposit made with the bank is the customers' money or the bank's money. In the **landmark case Foley v Hill**[98] the court held that Money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy if he engages in a hazardous speculation;

[97] [1964] AC 465 HL

[98] Foley v. Hill, (1848) 2 HLC 28, 9 ER 1002

he is not bound to keep it or deal with it as the property of the principal; but he is, of course answerable for the amount, because he has contracted, having received that money, to repay to the principal, when demanded, a sum equivalent to that paid into his hands. This case then infers the existence of a contractual claim by the customer against the bank. Subsequently, the bank will make available adequate funds in anticipation of any customer demands on a given day. The remainder of these deposits is then employed by the bank in profitable ventures like investing and trading.

4.2 Customer due diligence for banks

Supervisors around the world are recognising the importance of ensuring that their banks have adequate controls and procedures in place so that they know the customers with whom they are dealing. Adequate due diligence on new and existing customers is a key part of these controls. Without this due diligence, banks can become subject to reputational, operational, legal and concentration risks, which can result in significant financial cost Sound know-your-customer procedures must be seen as a critical element in the effective management of banking risks. The know-your-customer safeguards go beyond simple account opening and record-keeping and require banks to formulate a customer acceptance policy and a tiered customer identification pogramme. These procedures constitute an essential part of sound risk management as in by providing the basis for identifying, limiting and controlling risk exposures in assets and liabilities, including assets under management.

Certain key elements should be included by banks in the know-your-customer procedures. Such essential elements should start from the banks' risk management and control procedures and should include customer acceptance policy, customer identification, on-going monitoring of high risk accounts, and risk management.

Banks should not only establish the identity of their customers, but should also monitor account activity to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account. Banking supervisors must determine if banks have adequate policies, practices and procedures in place, including strict know-your-customer rules that promote high ethical and professional standards in the financial sector and prevent the banking from being used, intentionally or unintentionally, by criminal elements.

Financial institutions should develop programs against money laundering. These programs should include, as a minimum: the development of internal policies, procedures and controls, including the designation of compliance officers at management level, and adequate screening procedures to ensure high standards when hiring employees; an ongoing employee training programme, an audit function to test the system.

4.3 Classification of the Relationship

The relationship between a bank and its customers can be broadly categorized in to General Relationship and Special Relationship. If the researcher look at Sec 5(b) of Banking Regulation Act, he would notice that bank's business hovers around accepting of deposits for the purposes of lending. Thus the relationship arising out of these two main activities are known as General Relationship. In addition to these two activities banks also undertake other activities mentioned in Sec.6 of Banking Regulation Act. Relationship arising out of the activities mentioned in Sec.6 of the act is termed as special relationship.

4.4 Legal attempts on reviewing a bank

There are different legislation that have attempted to review a bank for example the Bills of exchange Act cap 68 notes unless the context otherwise require bankers include a body of persons whether incorporated or not who carry on the business banking.

The evidence under Bankers book Act provides that a bank or banker means any person carrying on banking business in Uganda. The stamps Act- Banker means a bank and any person acting as a banker, The BOU Act defines the Bank as the bank of Uganda established under Act. The FIA defines a bank to mean any co licensed to carry on financial institutions business as its principle business and includes all branches and offices of that company in Uganda.

4.5 Case law attempt on reviewing a bank

Case law like the statutes have not reviewed the word bank but have listed the characteristics of the banking business.

In the case of **UNITED DOMINIONS TRUST LTD V KIRK WOOD**[99] it was noted that there are three characteristics usually found in bankers today;

[99] (1966) 2 QB 431

i)They accept money from and collect cheques for their customers and place them to their credit

ii) They honour cheques for orders drawn on them by their customers when presented for payment and debit their customers accordingly,

iii) They keep current accounts or study of that nature in their books in which the credit and debits are entered.

No one and no body corporate or otherwise can be a banker who does not;

a) *Take current account*

b) Pay cheques drawn on himself

c) Collect cheques for his customers

There are also other characteristics which don't make a banker soundness, stability and Probity and in case of doubt one should look at the reputation of the company amongst intelligent commercial men.

In the same case Lord Diplock added that to constitute the business of banking the banker must also undertake to pay cheques drawn upon himself (the banker) by his customers in favour of third parties up to the amount standing to their credit in the current accounts and to collect cheques for his customers and credit the proceeds to their current account.

In the case of **RE SHIELD'S ESTATE, GORVENOR AND COMPANY OF THE BANK OF IRELLAND**, it was noted that the real business of the banker is to obtain deposits of money which one may use for profit by lending it out again. General common law characteristics include

i) *Conducting accounts on which they deposit money on customers and which shows debits and credits.*

ii) Lending out money deposited with it for its profit

iii) Collecting cheques or orders for customers and

iv) Payments cheques drawn on the bankers

4.6 Legal attempts on reviewing a Customer

The term customers is not easy to define however the major factor of whether or not a person is a customer will depend on whether or not such a person has/will have an account with the Bank. There must be some self of account either a deposit or current account or similar relationship to make a person a customer of the bank.

In the case of **GREAT WESTERN RAILWAY CO V LONDON COUNTY BANKING CO. LTD**[100], If a person has no account with the bank and is not about to open on account with the bank, the fact that the bank renders some casual service to or for him does not qualify him as a customer. However an agreement to open an account is sufficient to constitute a person a customer of a bank.

Court held that a person need not have a series of dealings with the bank before he acquires the status of a customer. He becomes a customer the moment the bank receives money/cheque and agrees to open an account for him.

A person becomes a customer of a bank when he/she goes to the Bank with money/cheque and asks to have an account opened in his/her name and the bank accepts the money /cheque and is prepared to open an account in the name of that person. After that he/she acquires customer's status.

4.7 Impediments towards banker – customer relationship

The expansion of the banking sector was based on a very inadequate legal framework which would threaten systematic collapse of the banking sector nearly a decade later. An alternative argument says that the legacy of British colonial rule and the dominancy of foreign owned banks- because these banks were subsistence and they had their own prudential management rules challenged the creation of a robust legal framework for the sector. The flip side however, the government at the time should have exercised diligence when rolling out local banks.

The rapid expansion of the cooperative society Bank and UCB – operated in an environment that was short of experience and professional personnel. These circumstances coupled with the weak regulatory framework undermined the banks efficiency and internal controls. The banks were managed in the absence of prudential lending regulations- leading Uganda Commercial Bank to accumulate non-performing loans of 75% of its total portfolio. The increase in the number of banking players was increasingly met by banking challenges including but not ltd to;

(i) Automatic liquidity support for UCB from the central Bank

(ii) UCB lacked proper accounting procedures,

(iii)Political influences and patronage –this was supplemented by corruption practices.

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[100] (1901) AC 414

(iv) Lack of regulation

(v) Since most loans were politically influenced, borrowers repayment feedback was poor

(vi) Absence of supervisor/advisor

(vii) Lack of proper accounting procedures across the sector

Weak law regime.

In response to the above, the 1993 financial institutions Act addressed some of the Banking challenges.

i)It increased paid up capital to 500 m UGX for local banks and for foreign banks 1 billion UGX, the exception was that, that could be reviewed by the ministers.

ii) Minimum capital requirement could be adjusted to respond to inflation.

Iii) There were restrictions to insider lending, large credit exposure, investment in the non bank business and purchase of real estate.

IV) Bank of Uganda had power to conduct or site and off site supervision.

Lack of financial literacy, the financial isolation of poor people often results in their lack of financial understanding, which in turn leads them to further distance themselves from formal financial institutions. Although banks had some products which were suitable for the needs of poor people, the same people had either no knowledge, or an incorrect understanding, of those products and hence were reluctant to use them. Evidence also shows that poor financial literacy represents a significant barrier to accessing and properly using formal financial services. Poor financial literacy limits people's capacity to be aware of financial opportunities, make informed choices, and take effective action to improve their financial well-being. Adolescent girls in particular stand to gain from financial education, as it mitigates their vulnerabilities from sexual and domestic violence, school dropout, illiteracy, early marriage and pregnancy.

Gender discrimination, research shows that women reinvest up to 90 per cent of their income in their families, compared with 30 to 40 per cent by men. Despite this, and despite being recognised across the world as a better credit risk, women are more likely to be financially excluded than men. In developing economies, 46 per cent of men report having an account at a formal financial institution, while only 37 per cent of women do. In Kenya for example, it has been found that men are more likely to use banks while women predominantly use the informal sector.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSIONS

5.1 Recommendations

Without prejudice to either the legal or banking profession on the view regarding banker/customer, the recommendations made underneath are general and of useful importance in strengthening the relationship and reforming the rules that guides it. Although many of the recommendations are not new to either of the profession, yet, they are often overlooked and jettisoned. Thus, it is believed that the rule guiding customer/banker relationship cannot be properly appreciated if the recommendations are not taken into consideration and fully applied in every transaction between the profits involved. It is therefore my recommendation:

I. that a thorough and reformed study be carried out from time on the topic banker-customer relationship as to update and appreciate the rule that provides for same.

II. that a comprehensive compilation and definition of terms be made and published on banking which will accommodate most of the terms defined in the search work.

III. There should be public awareness on most of the relevant provisions of the law guiding banking establishment and practice. This will clarify the customers of thorny issues and assist them take appropriate legal step where the need arise.

IV. that in most local community where customers are ignorant of the law guiding banker and customer's relationship, banks should be made to enforce the rule and fulfill their contractual obligation. This can be achieved by making law that would ensure compliance and in default, provides for remedy.

V. that the common law rule as it applies to the relationship is adopted by virtue of a local legislation. Hence its application should therefore follow the qualifications in its subsection which says as local legislations allow it.

It is my submission that the debtor /creditor relationship as well as other implications of the rule should be applied subject to the circumstance generally established in the transaction.

i. That the duties of a banker to a customer and that of a customer to a banker are subject to new developments and as such not exhaustive.

ii. That the rule on banker and customer relationship be expanded to cater for new transactions not apprehended by the rule in **Folley v. Hill**[101] and subsequent once. This can best be done through judicial interpretation.

iii. That a special law report should be carried out on cases decided by court of appeal and supreme court by interested individual or government so as to help further studies and research on banker/customer relationship.

5.2 Conclusion

In conclusion, this work has successfully explored and discussed all necessary ingredients of banker and customer relationship. No doubt, the relationship existing between a banker and his customer is that of debtor and creditor, with the additional feature that the banker is only liable to repay the customer on payment being made[102]. This conception as painted out involved a departure from the original objective of the depositor which was simply the safe custody of his money, an aim which he probably shared with the majority of his descendants since the average customer at a bank has not the least idea that he is lending his money to a banker to do what he likes with it.[103]

Thus, the introductory part of this work had related the necessary terms used in banking law and practice as far as it affects banker/customer relationship .It is discovered that the operation of banks today can be traced back to its history especially in Nigeria. Although there are different kinds of banks established for different purposes and functions, their core duty does not leave out the concept of banker/customer relationship. It therefore believed that this project would go a long way in reshaping and restructuring the use and misuse of terminologies as well as appreciating the lessons of the past on forecasting the future development in the banking law and practice.

To buttress the above, the legal framework of any contractual transaction cannot be underestimated in the operation of such transaction or business. This is true in the operation of banks. Bankers and

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[101] (1848) 2 HLC 28, 9 ER 1002

[102] M.C Okany, Nigeria commercial Law",2001,African Fep Publishers Limited at pp 415-437

[103] Op cit.

customers, though freely involved in a contractual agreement s of different sorts are confined within the specification of law. In Nigeria therefore, the appropriate laws and legislations such as; common law, company and Allied matters Act 1990, central Bank Act, Banking and other Financial Institution Act, Banking and other Financial Institution And money laundering Act, Economic, Financial and Crime Commission (Establishment) Act among others serves as regulatory mechanism for proper sharpening of the relationship that exist between banker and customer.

These legislations does not only stipulates what should be done, within the contractual agreement, but also regulate the activities of the bank most of which favours the customer for example, it was explained how relevant sections of the relevant Acts compel registration of the banks before they can be licensed to operate. Such grant of license could even be revoked where appropriate by the appropriate authority. Other provisions include the requirement of law as to minimum- paid-up capital; opening and closing of branches of a bank, legal control of banking staff. These regulations are put in place to ensure the integrity of financial institution as well as promote the use of banks by customers.

Consequently, banker and customer relationship is adequately guided by law. But the attendant question is how effective or efficient are the number of local legislation in Nigeria as far as the issues between bankers and customers are concerned, obviously, the advert of technological advancement globally which had major impact on the banks has not yet been catered for by our legislation. Also, the question whether or not the common law doctrine should always be applied without any cote of reservation as far as banker and customer relationship is concerned begs for answer.

As reiterated above, the basic target of the banker/customer relationship is debtor-creditor relationship; this is the general rule as firstly discussed in the chapter three of this work. In simplifying the concept, three different rule apply ipso fact .This include the general rule of contract, the rule of agency and the rule between a bailor and bailee /customer relationship therefore, is a combination of these three[104].

[104] (1980) 3 CCSCJ 219 and 222

Following these precedents are the reciprocal duties and obligation a well explained here that the duty of a customer to a banker is important in order to ensure a corresponding adherence to the contractual agreements. Where either of the party wants to discontinue the relationship, the law provides the termination which has pointed out can be;

i). by death i.e. by operation of law
ii). by the banker, or
iii). by the customer

Certainly, the new development in the banking sector call for modification on the banker customer relationship. With the use of Automated Machine otherwise known as ATM, online transfer, e-banking, and use of credit card, the scope of banker customer relationship might be extended to cover new issues or grounds as they arise.

Thus, research work will not be completed without suggested solutions to some of the visible problems that features in the application of the rule that guides the relationship-more so, that various sector of Uganda legal system is witnessing updated reformation, It is believed that the banking sector should not be left behind.

In addition to the recent bank reform, witnessing recapitalization, consolidation, restructuring and sanitization exercise recently carried out by the Governor of Bank of Uganda, issues involving banker and its customer will definitely need a more comprehensive legal regime.

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