



Bankers' Duty of Care to Customers in Uganda **Overview of a Recent Court Decision**



1. Introduction

On 16th August 2023, Uganda's High Court rendered its verdict in the case of ***Excellent Assorted Manufacturers Ltd and Ephraim Ntaganda versus DFCU Bank Limited and the Commissioner Land Registration***. The Plaintiffs had challenged multiple debits made by DFCU's predecessor, Crane Bank Limited, to their accounts.

The Plaintiffs maintained various accounts and had obtained different loan facilities from Crane Bank. Their claim centered on Crane Bank's annual "Renewal" facility letters, which imposed various charges. In line with these facility letters, Crane Bank deducted funds from their accounts which the Plaintiffs' contended was a breach of duty of care owed to the customers.

Given that the assets and liabilities (including the Plaintiffs' loan portfolio) of Crane Bank were taken over by DFCU Bank Limited, the suit was brought against DFCU which itself contended that the deductions were in the Plaintiffs' interest, aimed at reducing their liabilities, and were authorized through binding facility and sanction letters the customer had with the Bank.

2. Court's determination

The Court largely sided with the Plaintiffs, finding DFCU, through Crane Bank Ltd, in breach of contractual and fiduciary duties. The Court established, among others, that several of the impugned debits on the Plaintiffs' accounts including but not limited to arrangement fees, legal fees, stamp duty fees, or utilisation fees among others were not only unauthorised but also unexplained thus ordering for a refund of such.

3. Judgement highlights

This judgment not only brings resolution to a specific legal case but also serves as a poignant reminder of the fundamental principles that underpin banks' duty of care to their customers. These principles are intricately designed to safeguard and protect the interests of customers.

a) Bank Record Keeping

The Court amplified the bank's duty of care, underscoring the significance of maintaining accurate

account records. It observed that several debits on the Plaintiffs' account lacked proper documentation and explanation, thus the bank's challenge in supporting its claims against the borrowers. The absence of source documentation highlighted the critical importance of proper record keeping in banking transactions.

b) Customer transactions

The Plaintiffs' primary contention was the lack of sufficient explanation for certain debits, which they deemed 'unexplained or irregular.' The Court reiterated a well-established legal principle, that where a Claimant demonstrates that bank withdrawals violate a mandate, the burden shifts to the Bank to prove that the withdrawals were intended to settle the Claimant's liabilities or benefit the Claimant without causing any loss to the customer.

If the Bank fails to justify a debit or withdrawal, it is presumed to be irregular. This principle extends to the common practice of Banks using coded language in transaction descriptions, which must be satisfactorily explained when contested, or else they risk being considered irregular, unless they genuinely benefited the customer without causing any loss."

c) Sanction letters

Sanction letters play a crucial role in loan transactions, providing a formal record of the loan's terms. However, the Court's ruling emphasized that the existence of a sanction letter doesn't grant banks unchecked authority to debit customer accounts solely based on the customer's agreement. It firmly rejected the notion that signing a sanction letter automatically authorizes unilateral debits by the bank.

Additionally, the Court stressed the need for transparency in service charges, requiring banks to inform customers about the service, its costs, and obtain customer knowledge and consent. Ultimately, the Court's stance underscores the importance of clarity in such agreements and ensures that any debits genuinely serve the customer's benefit to avoid being labelled as 'irregular.'

d) Central Bank as Regulator

The Court's position underscored the authority of the Central Bank as the regulator. In this case, the Plaintiffs contested certain charges debited to their accounts, arguing that these charges had not been lawfully

published by the Central Bank. They specifically asserted that the utilization fees should not have been charged and that such unlisted charges violated Regulation 8(a) of the BOU Financial Consumer Protection Guidelines of 2011.

The Bank argued that the Central Bank's publication of fees aimed to promote transparency and competition in the financial sector rather than regulate fees charged by individual banks. However, the Court was not persuaded by this argument.

The Court's viewpoint was clear: when a regulator issues and publishes official charges without room for deviation, entities subject to such regulation are expected to adhere to it. The Court observed that the practice of banks charging fees not endorsed by the regulator, the Bank of Uganda, is illegal and poses risks to the economy.

This position raises two significant questions: First, whether the Central Bank has sole authority over all fees charged by banks in Uganda, and second, whether parties can alter their contractual obligations solely because a fee was not published by the Bank of Uganda. It's important to note that while banking practices should be regulated, this should not hinder innovation. The key is ensuring that customers fully understand the transactions they enter into and are duly informed by the bank, as required by Consumer Protection Guidelines.

e) The Financial Consumer Protection Guidelines

In 2011, the Bank of Uganda passed the 'Bank of Uganda Financial Consumer Protection Guidelines 2011' to protect consumers of financial products from potential misconduct in the banking industry. The prevailing view, as stated by the High Court, has been that these Guidelines lack legal enforceability and cannot be relied upon.

However, this case reaffirms that, in the absence of a superior legal instrument, guidelines issued by a regulatory body carry persuasive authority, and the Court can derive valuable guidance from them. The Court emphasized that financial institutions must adhere to these Guidelines and avoid open violations, particularly when such violations result in evident

injustices.

This ruling rekindles the debate on whether these Guidelines have the force of law, but the Court's position is clear: they possess persuasive authority, and compliance is expected from all supervised financial institutions."

f) Customers' silence is not acceptance

In cases of account mismanagement, the question of whether a customer's silence implies acceptance has been contentious. However, this case took a different stance. The Court emphasized that when a customer opens an account, the bank has a duty to safeguard their money from unauthorized actions.

The Court noted that a customer's failure to notice or complain about an illegal or irregular debit is not a valid excuse for the bank. Customers shouldn't be obliged to monitor their accounts daily. Therefore, silence regarding account mismanagement shouldn't be seen as consent. Ideally, any issues should be addressed promptly.

This ruling poses challenges for banks, potentially opening the door to claims from dissatisfied customers unhappy with how their accounts have been managed.

4. Conclusion

The Court's judgment, while encompassing various principles, primarily revolves around the critical duty of care that banks owe to their customers. One central theme in the judgment highlights the bank's obligation to promptly inform customers about any developments that could potentially harm their interests.

The essence of the Court's decision is to reiterate that banks cannot act unilaterally, even when faced with seemingly clear customer instructions. To ensure secure and compliant dealings with customers, banks are duty-bound to keep customers informed about any significant developments concerning their accounts. This responsibility is rooted in the fact that when a customer opens an account with a bank, the bank assumes the vital role of utilizing its skills, expertise, and safeguards to safeguard the customer's funds from the actions of third parties and unauthorized individuals.

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