Cristal Advocates

Imposition of Liability for ATM Fraud in Uganda
The case of Stanbic Bank versus Moses Rukidi Gabigogo

Cristal Knowledge Series
August 2024

1. Introduction

Since the first Automated Teller Machines (ATMs) were installed in Uganda in 1997, these machines have become central to modern banking, revolutionizing how financial transactions are conducted. Banks have leveraged this technology to enhance service delivery and broaden their reach, making ATMs the preferred choice for customers. This advancement has allowed users to access their accounts seamlessly outside traditional bank branches, avoiding long waits and restrictive banking hours.

As the use of ATMs has grown, so too has the incidence of ATM-related fraud. Because the amounts involved are usually minimal, many cases remain unreported or uncontested. When disputes however arise, determining who bears the liability between the bank and the customer can be challenging. Recently in the case of Stanbic Bank Uganda versus Moses Rukiidi Gabigogo Civil Appeal 28 of 2023, the High Court in Uganda has examined the circumstances under which liability for ATM fraud may be assigned, clarifying when responsibility falls on either party. This article delves into these developments and their implications.

2. Instances of ATM Fraud

ATM fraud continues to evolve as fraudsters develop increasingly sophisticated methods to exploit bank customers. One common technique is card skimming, where devices are installed on ATMs to capture information from the magnetic strip of a genuine card, which is then used to create a cloned card. Another method, card trapping, involves placing a device in the card reader slot to prevent the card from being returned to the customer; once the customer leaves in frustration, the fraudster retrieves the card.

Card swapping occurs when fraudsters replace a customer's card with a dummy card under the pretense of assisting with a transaction. Additionally, fraudsters may target less tech-savvy individuals, offering help while either copying their PIN or swapping their card. Another tactic involves jamming the ATMs "enter" and "cancel" buttons with glue or pins, making them unusable. When the customer abandons the transaction in frustration, the fraudster then uses the machine to withdraw funds. As technology advances, so do the methods of ATM fraud, requiring constant vigilance and adaptation.

3. Duties of Banks and Customers

Both banks and customers bear responsibilities that may influence the assignment of liability in the event of ATM fraud as discussed further.

a) Duty to obey the customer's mandate

Legally, a bank is required to process a customer's payment order if the account has sufficient funds. In ATM transactions, when the customer inserts their card and enters the correct Personal Identification Number (PIN), this action constitutes authorization for the bank to dispense cash. The bank is then obligated to execute the transaction as instructed by the customer.

b) Duty of care and rreasonable skill

Banks have a duty to exercise care and skill in managing their customers' accounts. This responsibility extends to ensuring that their digital banking systems are secure, well-maintained, and updated. Essential security measures include the use of digital certificates, strong encryption, and notifying customers via SMS after transactions.

Conversely, customers must safeguard their ATM cards and personal information, including PINs. They are responsible for taking reasonable precautions to protect their card's security features and using the ATM card in accordance with its terms and conditions.

c) Duty to keep customers safe while on their premises

Given the special relationship between a bank and its customer, banks are generally responsible for keeping customers safe from violent attacks while on their property and are required to provide customers with adequate security measures such as: security personnel, security cameras and adequate lighting.

4. Liability for ATM Fraud

In determining liability for ATM fraud, the Courts have employed a flexible balancing test that considers several factors. This test evaluates the burdens of imposing a duty on the bank, the social utility of ATMs, and weighs them against the severity of the ATM crime and its likelihood of occurrence. The bank is held liable if the burden of its duty and the utility of the ATM are outweighed by the gravity and foreseeability of the fraud.

Generally, the bank will be liable when the unauthorised transaction takes place in circumstances of contributory fraud/negligence/deficiency on the part of bank, or third party breach where the deficiency lies neither with the bank nor with the customer but lies elsewhere in the system, and the customer notifies the bank within a reasonable time of receiving the communication from the bank regarding the unauthorised transaction, or when it fails to ensure sufficient security to prevent fraudsters from accessing the technology behind its electronic payment system.

However, the customer will be liable for the loss occurring due to unauthorised transactions where the loss is due to negligence by a customer. The customer bears the entire loss incurred until he or she reports the unauthorised transaction to the bank. Any loss occurring after the reporting of the unauthorised transaction is borne by the bank.

Where the loss arose due to violent attacks on the customer while on bank premises, the bank will be liable for the loss and breach of its duty if the Court finds that the bank did not put in place measures to protect against such attacks when the same were reasonably foreseeable at the time of the creation of the contract between the Bank and its customer.

5. Conclusion

Instances of ATM fraud are numerous and diverse. In determining liability for third-party actions, the Court evaluates each case by balancing the bank's duty and the benefits of ATM use against the seriousness and foreseeability of the fraud. This approach ensures fair assignment of responsibility, considering both the bank's security measures and the nature of the fraudulent activity.

IFLR 1000 RECOMMENDED FIRM 2021

IFLR 1000 RECOMMENDED FIRM 2022

IFLR 1000 RECOMMENDED FIRM 2023

Contacts for this Publication.

Opindeni Noah Priest Dragudi
Author

Denis Yekoyasi Kakembo
dkakembo@cristaladvocates.com

- **Energy & Infrastructure**
- **Business support**
- **Employment**
- **Banking & Finance**
- **School of Professional Excellence**
- **Tax**
- **Company Secretarial & Trustee Services**
- **Public Law & Policy Advocacy**
- **Dispute Resolution**
- **Corporate and Commercial**

Contact us

Cristal Advocates
32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda
+256 (414) 971274
admin@cristaladvocates.com
www.cristal advocates.com