

Legal Termination of the Customer Banker Relationship: An Overview

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Abstract

Since a modern bank performs a variety of functions, it is difficult to give a conclusive and accurate definition for it. For example, savings banks generally do not issue cheque books but give passbooks and normally the customer's deposit is drawn on application. For merchant banks or commercial banks, their main function is to facilitate trade and accordingly they are heavily engaged in discounting bills and opening letters of credit. This thus, explains why different statutes, cases and legal academic alike have offered varying definitions of the term's "bank" and "banker". Some have defined it in its functional sense as a lender of money. This paper shall discuss the legal ways in which the bank and its customer relationship and lawfully terminated.

Keywords:

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Background to the Study

In *Mobil (u) ltd vU.C.B*¹, it was noted that the relationship between a banker and customer is contractual. It's an implied contract whose terms are in much dependent on the custom of bankers. Because it is a contract the banker customer relationship can as well be discharged or terminated thereby determining the relationship. The banker-customer relationship can be determined on ways applicable to ordinary contracts. There are four methods of discharging contractual obligations in an ordinary contract; these include performance, agreement, impossibility or frustration and breach. However as per the banker-customer relationship the only applicable and practical methods are agreement and frustration also known as impossibility.

The banker-customer relationship will be determined by agreement through mutual agreement where the both the banker and customer agree to extinguish the rights and obligations under the banking contract. This can be enlightened by the latin maxim "*Eodem modo quo oritur, eodem modo dissolvitur*" translated as "*what has been created by agreement can be extinguished by agreement*"

However, in usual banking practice, such cases of mutual termination are rare. Frustration or impossibility will also apply in instances *where the customer is using the account for illegal transactions*. The bank can close the account of the customer without giving reasonable notice to such customer. This is applicable to an ordinary contract where illegality is deemed to be impossibility. This is in line with the bank's superior public duty not to aid an illegality. That's why in *Banex limited v Gold Trust Bank ltd Piatt*² J.S.C noted the bank's duty is to act in accordance with the lawful requests of the customer in the normal operation of the customer's account.

Frustration just like in an ordinary contract will determine the banker-customer relationship where the banker's right to transact a banking business will be terminated once the central bank³ revokes its license as under section 17⁴. In ordinary contracts this can be seen as frustration by government intervention. This is because a banker-customer relationship can be determined by the central bank which is a government body.

Legislation stopping the banker-customer relationship can frustrate the relationship hence determining it. An example would be legislation during time of war against trading with the enemy. This is similar to that of an ordinary contract whereby government interventions through enactments can frustrate a contract. This was the case in *Twentsche Overseas Trading* case where court noted that the contract had been frustrated following an outbreak of war and legislation that followed in its wake.

¹(1982) HCB 64

²Civil Appeal No 29 of 1993, supreme court, unreported

³The constitution of the republic of Uganda 1995 as amended

⁴The financial institutions Act NO 2 2004

In banker-customer, where there are legislation very often confiscate credit balances of an enemy customer thus effectively terminating the bank-customer relationship. In criminal enactments like the penal code Act targeting the offences of corruption, the courts will be empowered to place restrictive orders that appear reasonable if an application is made by the DPP. Mental incapacity is encompassed under frustration and may determine the relationship of a banker-customer as well as that of an ordinary contract. Section I (f)⁵ defines a person of mental incapacity as a person of unsound mind as an idiot or a person who is suffering from mental derangement. In Jackson v Union Marine Insurance Co. Ltd an ordinary contract to write a book was frustrated by the supervening insanity of the author.

Death also arises under frustration as to determination of an ordinary contract. The common law rule is that upon the death of a party to a contract there is automatic assignment of the rights and liabilities of the deceased to his personal representatives⁶ but this law doesn't apply to relations of personal nature⁷ where the banker-customer relationship falls therefore where a bank receives notice of the customer's death its duty and authority to pay a cheque drawn on the bank by the customer is determined as per section 71⁸. This will however depend on the question of facts. The customer's death thus terminates the contract between a banker and such customer. The balances on the account are vested on the legal representative of the deceased customer as appointed under Section 178⁹ and where the customer dies intestate; the administrator first obtains letters of administration.

Other Ways Determining a Banker-Customer Relationship

1. Closure of account by the customer on demand. By demanding payment of the outstanding balance on the account. However, withdrawal of funds on the account doesn't mean the end of customer-banker relationship. In Wilson v Midland Bank Ltd¹⁰ the bank manager relied on a telephone conversation with the customer, which conversation the customer would not recollect, to close the customer's account. The customer subsequently paid the money into his account which the bank credited to a wrong account and it was dishonoured in the words of the account. The bank was condemned for breach of contract and libel. It is also prudent for the bank to obtain written evidence that the customer is closing the account upon settlement of the overdraft hence that requirement that the customer surrenders all unused cheque forms as a good safeguard for the bank.¹¹
2. Closure of account by the bank with an exception to illegality. This can be done through giving reasonable notice to its customer. In Joachimson v Swiss Bank¹²

⁵The mental treatment Act

⁶ Law reform (miscellaneous provisions) Act cap 74, section 12(1)

⁷ Farrow v Wilson (1869) LR 54, cap 744

⁸Bills of exchange Act

⁹The succession Act cap 162

¹⁰Quoted in Holden Miles J., the law and practice of banking, op cit., page 117

¹¹G.P Tumwine Mukubwa, Essays in African banking law and practice at page 262

¹²(1921)3 KB 110

- Atkin L.J pointed out that it is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice. Where the customer is using the account for illegal transactions, the Bank is under no obligation to give reasonable notice to such customer before closure of his or her account. The banks public duty not to aid illegality is superior.¹³
3. Bankruptcy of a customer. Bankruptcy means a state of a person who has been adjudged to be insolvent. Bankruptcy will have the effect of closing the account. When a debtor commits an act of bankruptcy, the creditor or the debtor himself may petition court to make a receiving order for the protection of the debtor's estate.¹⁴
 4. Winding up of the customer. A company is seen as an individual because of its legal existence. Section 211¹⁵, a company may wind up by either court, voluntarily or as a subject to the supervision of court. In *Re Russian Commercial and Industrial Bank*, it was held that a relationship is terminated when the legal personality of a body corporate ceases to exist. However, where before the presentation of a winding up petition, a resolution had been passed by the company for the voluntary winding up of the company, the winding up shall be deemed to have commenced at the time of passing the resolution.¹⁶
 5. Garnishee orders. This is the order that makes determination of a banker-customer relationship. Garnishee order is the order served on the garnishee attaching a debt in his hands. The garnishee order is under order 20 rules of the civil procedure rules.¹⁷ The garnishee may be commanded to appear before court to show cause why he should not pay the decree holder the due from him to the judgment debtor. The order issued attaching the debt is at this stage called nisi. The order may be made absolute after hearing objections, if any, from the Garnishee and any other interested parties.¹⁸ A customer whose account is thus attached should be informed of the receipt of the order. In *Rogers v whitely*, it was held that un restricted garnishee order completely immobilizes the destroyed account.

Conclusively therefore, its trite to say that a banker-customer relationship is contractual in nature hence its termination must be that of agreement, however, there are other special ways this relationship can be terminated as discussed above.

Termination of the Contract between the Banker and the Customer Closure of the Account by the Customer on Demand

This is where the customer decides to close his account by simply demanding payment of the outstanding balance on the account. The bank is required or advisable to obtain some evidence from the customer of his /her intention to close the account.

¹³G.P Tumwine Mukubwa, *Essays in African banking law and practice* at page 263

¹⁴Bankruptcy Act cap section 2 (1)

¹⁵The companies Act Cap 110

¹⁶*Ibid*, ss 223(1) and 228(2)

¹⁷Statutory instrument No. 65-3

¹⁸Civil procedure rules, rule 3-9

Reliance on mere fact that the customer has withdrawn all the money the account they may not always absolve the bank from it's to honor the clients' cheques. In *Wilson V Midland Bank Ltd.*

The bank manager relied on a telephone conversation with the customer which conservation the customer could not recollect the close the customer's account. The customer subsequently paid money into his account which the bank credited to the wrong account which the bank credited on his account it was dishonored in the word no account. The bank was condemned in change for breach of contract and libel.

In Uganda the banks required minimum deposits on account. This means that a customer cannot close the account by withdrawing all the balance since the bank would be under the obligation to repay all the balance unless intimate to bank, he/she wants to close his account. The bank has to obtain written evidence that the customer is closing the account upon settlement of the over draft. It requires the customer to surrender all unusual cheque forms.

The customer who wishes to close such accounts must give requisite notice of his/her intention to withdraw all balance on the account and close the same.

Closure of the Account by the Bank.

The bank has a right to a customer account only upon giving notice to its customer. This is because giving notice is always a requirement before closure of the account as part of the contract between bank and its customer.

This principle was stated by Lord Atkin in *Joachimson V Swiss Bank Corporation*¹⁹ I think that there is only one contract made between the bank and the customer. The terms of the contract involve between obligations on both sides.

It is a term of the contract that the bank will not cease to do business with the customer except upon reasonable notice.

The question of reasonableness depends on the facts and circumstances of each case. *Prosperity Limited V Lloyds Bank Limited*²⁰ Lord Atkin_“Held that reasonable notice depends on the nature of the account and the facts and circumstances of each case. The circumstances may include the nature of business of the account holder, the geographical distance which the customer sends his /her cheque, the number of cheques still in circulation and the number of transactions handled on the account, the size of the account. The reasonable notice is required to enable the customer in his /her circumstances to organize alternative banking arrangements”. However, when the customer is using an account for illegal transactions the bank is under no obligation to give to such customer

¹⁹[1921]3 KB 110, at 127

²⁰(1923) 39 TLR 372

notice before closure of his account. This is because the bank holds public duty not to aid the illegality in superior.

In *Banelimited V Gold Trust Bank Ltd*²¹ “The bank suspended operations on its customer s account owing to the re organization of the company where by one of the directors was dropped and a new director appointed. Although the company presented a registered resolution containing these changes, the bank insisted that the director who had been dropped should agree to the changes before the new directors could be allowed to operate the account. The court held that the bank should have accepted the company's resolution on the basis of *Turquands Case (Royal British Bank V Turquand*²² stated the banks duty in the following terms.

The duty of a banker is to act in accordance with the lawful request of his customer in normal operations of the customer's account. The bank refused to carry out a lawful request and wrongly suspended the account from October 1987 5till the high court gave judgment. It was a breach of its contract with the company for all this time.

Bankruptcy of a Customer

In Uganda he/she makes a conveyance or assignment of his /her property to the trustee for the benefit of his / her creditors generally. The court will appoint a receiver to manage the property of the debtor under section 7²³ If the debtor has a bank account, the account automatically becomes subject to the receiver s protection. After the appointment of the receiver or interim receiver is appointed, the bank can no longer honor cheques drawn by its indebted customer since the money on the account since the money has to be preserved for the benefit of the creditors. There is not a direct prohibition against the bank honoring cheques drawn by its customers during the period between the presentation of bankruptcy petition and interim receiver order in favour of the customer's creditors who are not aware of the debtor's act of bankruptcy or representation of a bankruptcy petition. This payment may be protected as bona fide transactions under section 47, and 48 which gives protection to bona fide transactions.

However, the bank should act with caution because if payment to the creditor is intended to give such creditor preference to other creditors before the receiving order is made, such payment may be deemed fraudulent and void as against the trustee in bankruptcy under section 46²⁴.

In such event the bank and the creditor who received the money would have to refund the money to the trustee in bankruptcy. The bankruptcy may have the effect of closing account where the bankrupt's account is overdrawn the bank like any other creditor will have to prove its debt before the trustee in bankruptcy.

²¹Civil APP NO.9 of 1993 SUPREME COURT UNREPORTED

²²(1836) 6 E & B 327

²³Of the bankruptcy act cap 69

²⁴Of the bankruptcy Act

Death of the Customer

The rule under common law is that upon death of the party to a contract, there is automatic assignment of the rights and liabilities of the deceased upon his personal representatives. Pursuant to section 12 (1)²⁵ provides that on the death of any person, all causes of action subsisting against or vested in him shall survive against, or as the case may be, for the benefit of his estate

However, this section doesn't apply to contracts of personal nature like where contracting parties are master servant. Thus, the ruling in *Graves Vcohen*²⁶ the contract for personal services will be terminated by the death of either party. The common law treats the contract between banker and the customer as one in the nature of personal services. The bank is under obligation on receiving notice of its customer's death its duty and authority to pay a cheque drawn on the bank by the customer is terminated.

Before a bank is put on notice of its customer's death, it can honour the cheque drawn by the customer before his or her death. The customer's death terminates the contract and any balance on the account are then treated like any other property of the deceased person which is vested in the legal representative of the deceased customer who is either the executor as from the date of death. However, in case the customer dies intestate, the administrator has a right to first obtain letters of administration from the court before the balance on account can vest in him/her.

Mental Incapacity of the Customer

Where a bank receives reliable information that its customer has developed a mental disorder, it is prudent practice for the banker to treat its mandate to honour such customer cheques as determined. The rationale for such practice is that a customer under mental disorder is incapable of consenting to an order to the banker to pay. Whatever cheque he signs in such condition is in reality non est. factum.

In *Drew V Nunn*²⁷

Where the customer has prior to his mental incapacity authorized a 3rd party to act for him / her and draw cheques upon his account, that the 3 party's authority is determined by the mental incapacity of the customer. When the customer repairs his mental faculties, the bank should resume normal banking relations with him or her.

Winding Up of the Customer

Upon winding up of a company it ceases to have any legal existence and its contractual relationship comes to an end. However, there is usually a fairly long-time lag between the commencement of the winding up process and its conclusion. During that intervening period the company remains a legal entity and the relationship between it and the bank still exists.

²⁵The law reform (Miscellaneous provisions) Act cap 74

²⁶(1929)46 TLR 121

²⁷(1879) 4 QBD 661

The winding up of the company is either by court or by voluntary or subject to the supervision of the court under section 211(1)²⁸ before the presentation of the winding up petition to court; the company comes up with a resolution. As soon as the bank learns of the passing of the resolution for winding up the company or presentation of the petition in court, it should not honour cheques drawn by the company's account. It should treat its mandate to operate the account as terminated. The case of *Re Grays Inn Construction Co Ltd*²⁹. The court of the Appeal of England held that payments into and out of the company's bank account during the period between the date of presentation of a winding up petition and the date when the winding up order was made constituted disposition of the company's property.

However, the courts have in some instances allowed the company to continue trading and operating its bank account specially to allow banking on the account after the presentation of winding up petition but before making the winding up order if in the circumstances the dealings do not amount to a disposition of the company's assets but rather benefit the creditors. As it was discussed in the case of *Re operator Control Cabs Ltd*³⁰ Winding up of the bank

Where the bank is wound up, it ceases to have legal personality and hence its contractual relationship with the customers is terminated. The bank's right to transact banking business will be terminated once the central Bank revokes its licence as provided under section 17³¹ The licence may be revoked where the Central bank is justified that the bank has ceased to carry on business, has been declared insolvent, has gone into liquidation, has been wound up and has failed to comply with the conditions stipulated in its banking licence.

Legislation Stopping the bank- Customer Relationship

The legislation may be enacted whose effect is to suspend or even sometimes terminate the contractual relationship between the banker and its customer.

In conclusion the relationship between the banker and its customer which is generally contractual as discussed in the case of *Sudan Commercial Bank v El Saddik Muhammed* and it can be terminated on various grounds as discussed above like winding up of the customer (company), winding up of the bank and the closing of the account by the customer as discussed above.

²⁸Of the company Act cap 110

²⁹[1980]1 WLR 711

³⁰[1990]3 ALL ER 657

³¹The financial institution Act No. 2 of 2004