

ENFORCEMENT OF E-BANKING CUSTOMER/CONSUMER RIGHTS IN NIGERIA**

Abstract

Banks have commonly been at the forefront of harnessing technology to improve their products and services because of the diversity of their customers as well as the sophisticated nature of their businesses. They have been using electronic and telecommunication to deliver a wide range of value added products and services. Electronic banking encompasses the conduct of banking process of deposits, payments, payment confirmation and enquires through the use of electronic medium. Electronic banking may be defined as a means whereby banking business is transacted using automated process and electronic devices such as personal computer, telephones, fax machines, Internet card payments and other electronic channels. Electronic banking in Nigeria has raised a number of consumer protection issues. Despite the legislative developments and interventions in this area, the Nigeria banking industry is characterized by consumer exploitation. This includes unrealistic and hidden charges, unjustifiable deductions Automated Teller Machine (ATM) deductions without dispensing cash to the customer, slow complaint handling and redress mechanisms etc. This paper examined the legal framework for the protection of electronic banking customers in Nigeria and specifically analyzed the legal regime for e-banking in Nigeria. The enforcement of e-banking consumer rights and redress of consumer complaints in Nigeria was also appraised. The paper observed that a lot needs to be done in the area of financial literacy and consumer education as most Nigerians are ignorant of their rights and the enforcement mechanism of pursuing their rights. E-banking consumers in Nigeria face a number of challenges in the enforcement of their e-banking consumer rights which includes difficulty in proof of electronic signature, loss of audit trail, jurisdictional issues, illiteracy, lack of expert witnesses and delay in litigation. The CBN Consumer Protection Regulation failed to state the timeline within which e-banking complaints which may have escalated to the CBN Consumer Protection Department may be resolved. The researcher recommended among others that the CBN Consumer Protection Regulation 2019, be amended to include a timeline for CBN Consumer Protection Department to resolve consumer complaints. The research also recommended the establishment of an independent body regulated by law and supervised and administered by stakeholders in the banking industry that will ensure that banks comply with the provisions of the Consumer Protection Regulation of the CBN and also handle resolution of consumer complaints.

1i. Introduction

1. Introduction

This Paper examined the enforcement of the laws and regulations that protects electronic banking customers in Nigeria. An effective customer policy focuses on two interwoven strategies namely preventive strategy and redress strategy. This chapter focuses on the redress strategy. The various means through which an e-banking customer can seek for redress of his/her rights is discussed in this chapter as well as the various remedies available to the e-banking consumer. The means for enforcement of consumer rights can be administrative or judicial. In administrative channel, the consumer may report or complain to" the internal dispute resolution mechanism of the bank, the Central Bank consumer protection Department or the Federal Competition and Consumer

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Protection Tribunal. Judicial enforcement involves an action in court of law which may basically be in form of criminal or civil proceedings. The civil proceedings on its part may be in form of an action for breach of common law duties owed by banker to customer, action for breach of contract or an action for negligence under the law of torts.

Every consumer of financial services in Nigeria has, to a large extent, the discretion as to how to enforce his statutory and common law remedies. He may even, as in most cases decline to so enforce.¹ However, the basis of liability would determine the mechanism by which the consumer may enforce his remedies. Thus if the liability is tort or contract based or punitive or regulatory" in character, then the remedy would be enforced accordingly².

2. Administrative Enforcement of E-Banking Customer Rights

Bureaucrats view consumer concern as a matter within the dominion of public law. To then consumer concern, that is, issues of defective and adulterated products, shoddy services, exorbitant prices, and other forms of unfair trade practices impact negatively on the state and indeed is a threat to public safety. To bureaucrats, injury caused to one consumer as a result of unwholesome trade practices portends danger to the entire public.³ It becomes imperative for the state to protect itself and the populace from the antics of unscrupulous producers and service providers by way of Administrative intervention.⁴

There is a conscious legal policy by the Government inspired by the recognition of the vulnerable position which the consumer occupies in the market place.⁵ The Government has sought to ensure the protection of consumers by assigning specific functions to some government agencies,⁶ furthermore, administrative intervention institutionalizing appropriate legal framework has been put in place, leading to the creation of some regulatory agencies. The agencies are vested with authority to supervise, monitor and regulate the activities of producers and providers of services.⁷ In cases where the consumer's remedy is administrative in nature, the consumer may have to file a complaint, in the prescribe manner, to the agency charged with the responsibility of administering the law for the purpose of enforcing consumer rights.⁸ With respect to electronic banking, the enforcement for breach of consumer's right may take form of a complaint to the internal dispute resolution desk of the bank, a report to the consumer protection department of the Central Bank of Nigeria or a complaint to the Federal Competition and Consumer Protection Tribunal.

Internal Dispute Resolution of Banks

The resolution of electronic bank customer dispute shall be the responsibility of the bank involved- The consumer complaints shall first be lodged with the institution i.e. banks for timely resolution

¹ Nwobike Joseph 'Legal Regime for the Protection of Consumers of Financial Services in Nigeria <<http://www.jnclawfirm.com/articles.php>>accessed 10 August 202).orm www.

² Kanyip Benedict 'Consumer Redress' [1998] (2) (2) *Modern Practice Journal of Finance and Investment Law* 78

³ Etefia E. Ekanem "Institutional Framework for Consumers Protection in Nigeria' [2011] (2) (1) *International Journal of Advanced Legal Studies and Government* 34

⁴ *ibid*

⁵ Boma A.F "Control of Advertisement as a Consumer Protection Measure in Nigeria' (Unpublished PhD Thesis, University of Calabar 2008) 178

⁶ These includes several consumer pretention agencies in Nigeria including SON and NAFDAC

⁷ Etefia E. Ekanem (n.3) 34.

⁸ Nwobike (n.1) at24

and redress.⁹ The banks shall provide multiple dedicated channels to receive and handle consumer complaints including verbal complaints. The channels may include letters, emails, telephone lines, social media and digital software platforms.¹⁰

The banks are required to establish an Internal Dispute Resolution (IDL) structures and processes for the effective management of consumer complaints.¹¹ Banks licensed by the Central Bank of Nigeria are to designate a unit for complaint handling independent of other products or business functions taking into consideration, the nature and complexities of their Business.¹²

Section 6.3.2 of the Central Bank of Nigeria Consumer Protection Regulation 2019 provides that upon the receipt of a complaint, communicate to the consumer within 24 hours, an acknowledgment containing: a unique identification or tracking number, contact details of the complaint desk, expected resolution timeline escalation options, and an assurance that the complaint is being addressed.”

The consumer complaints shall be resolved within the time specified in the timeline for complaints resolution contained in Annexure D to the Regulation.¹³ Complaints with respect to ATM Card activation or deactivation. ATM functionality, Card Pin issues, ATM fraud (Domestic), internet banking fraud, non functional ATM or POS, POS receipt/slip issues, trapped cards, ATM dispense error, mobile banking issues, chargers on non receipt of transaction alerts, password reset issues, account unblock, login issues, online transaction limit, OTP generation issues, failed transaction (WEB/POS), other POS issues, internet banking funds transfer failure shall be resolved by the banks internal dispute resolution department within three (3) working days.¹⁴

Where a complainant is dissatisfied with the decision communicated by the institution/bank, the complaint shall within 30 days from the date of the receipt of the Summary Resolution Communication (SRC), request in writing for a 2nd level review.¹⁵ Upon receipt of a request for 2nd level review, the institution shall review, resolve and communicate decision(s) within the timeline for complaints resolution by institutions as contained in Annexure D for second level review.¹⁶

The consumer complaint shall in the 2nd level review be resolved within the timeline stated in Annexure D of the Regulation. Complaints with respect to ATM card activation or deactivation, ATM functionality, card PIN issues, ATM domestic fraud, internet banking fraud, non functional ATM or POS, POS receipts/slip issues, trapped cards, ATM dispense errors, mobile banking issues, charges on non receipt of transaction alerts, password reset issues, account unblock, login issues, online transaction limit, OTP generation issues, failed transaction (web/POS), other POS issues, internet banking funds transfer failure shall be resolved by the banks within (2) two working days in the 2nd level review.¹⁷ After exhaustion of the 2nd level review opportunity an aggrieved

⁹ Consumer Protection Regulation 2019, s 6.1

¹⁰ *ibid* s 6.2

¹¹ *ibid* s 6.3

¹² *ibid* 6.3.4

¹³ *ibid* s 6.3.6

¹⁴ See Annexure D to the Consumer Protection Regulation 2019

¹⁵ *ibid* s 6.3.13

¹⁶ *ibid* s 6.3.14

¹⁷ See Annexure D to the Consumer Protection Regulation 2019

complainant may approach the consumer protection department of the Central Bank with his complaint.

Complaint to the Consumer Protection Department of the Central Bank of Nigeria

The Board of the Central Bank of Nigeria created the Consumer Protection Department of the Central Bank of Nigeria in April 2012 as part of their internal reforms.¹⁸ The Department was created in furtherance of one of the CBN's core mandate to "promote a sound financial system in Nigeria as enshrined in the Central Bank Act."¹⁹ The consumer protection Department of the Central Bank of Nigeria basically performs three primary functions namely: complaints management, market conduct and development and consumer education/financial literacy.

Consumer complaints must first be lodged with the consumer's financial institution.²⁰ Section 6.4.1 of the CBN Consumer Protection Regulation provides that a complaint shall only be escalated to the CBN: if the complainant has exhausted the institutions Internal Dispute Resolution (IDR) process; if an institution fails to acknowledge the complaint within 3 days; within 90 days from the date of the receipt of a decision from an institution; if it is not undergoing the process of resolution or already considered and resolved by a recognized ADR channel; if it is not under litigation or already adjudicated upon by a court of law, except where the aspect before the court is distinct from the matter brought to the CBN or where the court is dealing with the criminal aspect of the matter. The implication of the above is that if an Alternative Dispute Resolution (ADR) process or litigation in respect of the same consumer complaint is ongoing, the CBN Consumer Protection Department will not entertain the complaint. However, it does not include criminal cases, for instance a fraud involving an (ATM) Automated Teller Machine will be dealt by the Consumer Protection Department even while the criminal trial is ongoing. Complaints to the department shall be in writing and addressed to the director, Consumer Protection Department, Central Bank of Nigeria Abuja or sent via an e-mail to cpd@cbn.gov.ng attaching all documentary evidence.²¹ The Consumer Protection Department could receive petitions from law enforcement agencies like police, EFCC etc or where matters are referred to it by the courts.²²

Dispute Resolution by the Federal Competition and Consumer Protection Tribunal

The Federal competition and consumer protection Act 2018 came into effect on the 30th day of January 2019.²³ The Act²⁴ repealed the Consumer Protection Council Act.²⁵ The Act²⁶ established the Competition and Consumer Protection tribunal.²⁷ The tribunal shall adjudicate over conducts prohibited under the Federal Competition and Consumer Protection Act.²⁸

¹⁸ See CBN Press Release: CBN creates two department to enhance operations available at ,www.cbnbank.org. Accessed 30th August 2021

¹⁹ Central Bank of Nigeria Act, 2007

²⁰ Consumer Protection Regulation 2019, s 6.1

²¹ See FAQ of the Consumer Protection Department of the Central Bank of Nigeria (n.24)

²² *ibid*

²³ See Commencement Section of the Federal Competition and Consumer Protection Act, 2018

²⁴ Federal Competition and Consumer Protection Act.

²⁵ Cap C25 LFN 2004

²⁶ Federal Competition and Consumer Protection Act 2018

²⁷ *ibid* s 39(11)

²⁸ *ibid* s 39(2)

It is to be noted that from the commencement of the Federal Competition and Consumer Protection Act on the 30th day of January 2019, the Act applied to complaints by e-banking customers of banks in Nigeria up till the 12th day of December 2020 when the Banks and Other Financial Institutions Act 2020 came into effect. The Banks and Other Financial Institution Act, 2020 limited the jurisdiction of the tribunal to banks and banking product/services.

3. Judicial Enforcement of E-Banking Customer Rights

The judiciary is generally seen as the hope of the common man and the safe sanatorium for the legally injured.²⁹ In the power relation between the consumer and the producer, the consumer is seen as a weeping child, the common man. He therefore looks up to the courts for protection from the antics and vagaries of unscrupulous businessmen, who would usually resort to sharp and unfair trade practices to maximize profits at the consumer's expense.³⁰ The incidences of the supply of deficient and adulterated goods, coupled with provision of shoddy services in the market place have assumed an alarming situation in Nigeria.³¹

The judiciary provides the primary avenue for obtaining redress in consumer protection matters especially in e-banking consumer complaints. Judicial enforcement may take the form civil or criminal enforcement of consumer's right in Nigeria.

Civil Enforcement of Consumer Protection Rights in Nigeria

The bulk of the remedies available to the consumer are enforced in the court system. Depending on the nature of the claim, the consumer will have to file his claim either at the Magistrate Court, High Court or Federal High Court.³² The jurisdiction of these courts is specified in the Constitution³³ and in the Magistrate Court laws³⁴ of each state of the federation. The civil enforcement may be in form of an action for negligence. It may also take the form of an action for breach of common law duties owed to a customer by a banker. A bank customer may also sue the banker for breach of contract.

Actions for Breach of Common Law owed to Customers by Bankers

Common law has predominantly influenced the rules of the Nigeria banking industry with regards to duties owed by the banker to its customers. The obligation of the bank includes the duty to keep multiple accounts separate, duty to report forged cheques to customer, duty to give notice before closing account, duty to collect cash and other instruments on customers behalf, duty to keep customers statement of accounts accurate, duty to give notice for repayment of overdraft, duty to make payment only with customer's authority and duty to exercise duty of care and professional diligence.

²⁹ Oputa Chukwudifu A '*Quod Vadis-Nigē'ia Supreme Court: Judicial Activisms or Judicial Rascality*' in Towards Functional Justices: Seminar Papers of Justice Chirkwudifu A. Oputa, ed by Okeke Chris (Ibadan: Gold press Ltd, 2007) 368

³⁰ Etefia E. Ekanom (n3)37

³¹ Money Felicia , *Law of consumer protection* (Ibadan: Spectrum books Ltd 2003) 1

³² Joseph Nwobikef (n.1)29

³³ The Constitution of the Federal Republic of Nigeria 1999, s 249 established the Federal High Court while s. 270 established the State High Court. The High Court of the Federal Capital Territory Abuja is established by CFRN 1999, s 255.

³⁴ See for instance the Magistrate Court law of Anambra State.

The common laws of England are applicable in Nigeria especially in the banking industry and has dominated the present day traditions and usages in the banking subsector especially in relationship between the banker and customer. In *B.J Export & Chemical Co. Ltd v Kaduna Refining & Petro-Chemical Co Ltd*³⁵ the Court of Appeal held:

I am consequently of the opinion that where our laws are silent, the common law principle can be resorted to especially in transaction that are peculiar to that System and alien to our system or way of life e.g. arbitration, banking and petroleum contract as in the present case.

An aggrieved e-banking customer whose banker breached any of the common law duties owed to the customer may institute an action for breach of the duty. The customer may be entitled to damages upon the proof of his case. The customer need not rely on breach of contract.

Enforcement of Consumer Rights under the Law of Negligence

An electronic banking customer may enforce his consumer rights by an action in tort for negligence. The term "negligence" was defined by Lord Alderson B in *Blyth v Birmingham Watenvorks Ltd*³⁶ as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do."³⁷

In effect negligence can be defined as a breach of a legal duty of care which results in damages to the claimant.³⁸ In *Donoghue v Stevenson*³⁹ the *locus classicus* on negligence, the house of Lords invented three ingredients of negligence, which a plaintiff must establish thus; that the defendant owed him a duty of care, that there was a breach of the duty of care and that the breach caused him injury or damage. These three ingredients have since been assimilated in the corpus of Nigeria Jurisprudence.⁴⁰ Therefore an aggrieved e-bank customer whose right as a customer has been infringed upon may successfully institute an action for negligence upon the proof of the above stated ingredients for negligence. The ingredients for the tort of negligence shall be discussed hereunder.

(a) Duty of Care

The first and paramount task before an aggrieved consumer is to establish that the defendant owed him/her a duty of care. A duty of care will be owed whenever in the circumstance it is foreseeable if the defendant does not exercise duty of care, the plaintiff will be harmed.⁴¹ This foreseeability test was laid down by Lord Atkin in *Donoghue v Stevenson*⁴² and is known as the neighbor principle. The existence of a duty of care is a question of fact not law and each case must be decided in the light of its own facts.⁴³ The categories of duty of care is not restricted, it depends on the

³⁵ (2002) LPELR- 12175 (CA)

³⁶ (1856) II Exch. 781

³⁷ *ibid* at 784

³⁸ Felicia Monye (n.40) 155

³⁹ (1932) AC 562, [2002] 12 WRN 10

⁴⁰ See *Polaris Bank Ltd v Atogun* (2020) LPELR -50353 (CA); *Mothercat Nig Ltd & Anor v Akpan* (2019) LPELR47158(CA)

⁴¹ Kodilnye and Aluko, *The Nigeria Law of Torts* (Ibadan: Spectrum Books Ltd 1982) 39

⁴² (1932) AC 562

⁴³ *Ngitari v Mothercat* [1999] 13 NWLR (pt 636)

circumstances which gives rise to the duty to take care.⁴⁴ An electronic bank customer who takes an action in negligence must prove the existence of a legal duty owed to him.

(b) Breach of Duty of Care

A person seeking redress in negligence must show that the person sued is in breach of a duty of care owed to him. This he can do by showing that the defendant did not exercise care in the matter that is called to question.⁴⁵ Until a plaintiff can prove by evidence the actual breach of the legal duty of care against the defendant, the action must fail.⁴⁶ In deciding whether there is a breach of duty of care, the court considers whether or not a reasonable man, placed in the defendant's position would have acted as the defendant did.⁴⁷ An electronic banking customer who initiates an action in negligence must in addition to the proof of duty of care and breach of duty of care by the defendant, also prove that he suffered damages as a result of the breach of the duty owed to him by the defendant.

(c) Consequential Damage

Having established that the defendant owed a duty of care to him and that the defendant was in breach of that duty, the plaintiff must then prove that he has suffered damage for which the defendant is liable in law. The first question to be answered is 'Did the defendant's breach of duty in fact cause the damages?'⁴⁸ It is only where the question can be answered in the affirmative that the defendant may be liable to the plaintiff.⁴⁹ A useful test which is often employed is the "but for" test, that is to say, the damage would not have happened but for the defendant's negligent act, then that act would have caused the damage.

Enforcement of Consumer Rights under the Law of Contract.

The banker customer relationship is contractual in nature.⁵⁰ In *D Stephens Industries Ltd v Bank of Credit and Commerce (Nig) Ltd*.⁵¹ the Supreme Court of Nigeria held that the relationship between the banker and its customer depends basically on the ordinary principle of contract and it could at least in theory be brought to an end in any of the ways a contract may be determined. The relationship between the banker and its customer being contractual in nature consists of general and special contract arising from the particular requirements of the banking business.⁵² In *Owena Mass Transportation Co. Ltd v Enterprise Bank*⁵³ the Court of Appeal held:

A contractual transaction of a banker/ customer relationship is not distinct from the general contract governed by laws of contract among other regulations. There must be offer and acknowledgment of the acceptance of the terms specifically set out in the contract document for ease of reference. This is commonly because parties are bound by their agreement.

⁴⁴ *Olam (Nig) Ltd v Intercontinental Bank* (2009) LPELR-8275(CA)

⁴⁵ Felicia Monye(n 40) 163

⁴⁶ *Anyah v mo Concord Hotels Lid* (2002) LPHLR-5 12

⁴⁷ Kodilinye and Aluko (n56)41

⁴⁸ Kodilinye and Aluko (n 56) 52.

⁴⁹ See *Sanyaoin v Farinbe* [1978] L.R.N 327.

⁵⁰ *Bahgun v National Bank of Nig Ltd* [1978] 11 NSCC 35: *Afribank Nig PLC v A. I Investment Ltd*[2002] 7 NWLR(pt765)40

⁵¹ [1999] 11 NWLR(pl625)29

⁵² *GTB v (9^o/7* (2019) LPELR -47642(CA)

⁵³ (2014) LPELR - 221 OO(CA)

For an electronic banking consumer to enforce his right under the law of contract he/she must therefore satisfy the general requirements under the law of contract, that is to say that there is a valid contract between the parties, and that there is a privity of contract. Therefore, an e-banking consumer who uses the POS of another bank may not succeed in an action for breach of contract as there is no privity of contact between the, the other option open to the consumer will be to maintain an action under the law of negligence.

Criminal Enforcement

Some of the laws safeguarding the consumers of financial services contain criminal sanctions. The punishment is either in the form of fine, imprisonment or both.⁵⁴ For instance computer related fraud, unlawful diversion of banking and financial electronic mails with intent to defraud, insider collusion to perpetrate fraud on bank customers, theft of payment terminals or electronic devices such as ATM and POS terminal, obtaining the identity of a bank/financial institution with intent to defraud, phishing scams and electronic card fraud e.t.c are all crimes under the Cybercrimes Act⁵⁵ with different punishments provided.

In cases of this nature, the consumer/bank customer is procedurally not a party to the proceedings. The matter is between the state and the defendant. The consumer/bank customer is merely the nominal complainant. Proof in criminal cases has a high burden and the burden of proof is beyond reasonable doubt.⁵⁶ It is therefore usually difficult to establish criminal liability in most cases. The fines paid by the defendants upon conviction belong to the state therefore leaving the complainant with little incentive to pursue the complaint. However the courts are empowered to make restitutions in criminal cases.⁵⁷

3. Remedies for Breach of E-banking Customers/Consumer Rights

An electronic banking customer of a bank who explored the option of judicial enforcement of his/her rights may be entitled to a remedy if he succeeds. The remedies available to him/her includes damages which maybe special, general, exemplary or punitive in nature, the remedy may also come inform of an injunction, specific performance or an order for restitution.

Damages

An aggrieved electronic banking customer whose rights have been infringed upon may recover damages from the banker. The object of an award of damages is to give compensation to the plaintiff for the damages, loss or injury which he has suffered.⁵⁸ However before damages can be recovered by a claimant, there must be a wrong committed. In other word, recoverable damages by a plaintiff must be attributable to the breach of some duty by the defendant.⁵⁹ Damages awarded to an electronic banking customer may be general or special damages, nominal damages or exemplarily/ punitive damages.

⁵⁴ Joseph Nwobike (n. 1)27

⁵⁵ See Cybercrime (Prohibition and Prevention) AcL 2015, ss 14(4)(a). 14(5), 15,20,22(1) and 32(1)

⁵⁶ Evidence Act 2011,s 134

⁵⁷ See Advance Fee Fraud and Other Related Offences Act, s 11

⁵⁸ *NEPA v Ali* (1992) LPELR - 1955(SC)

⁵⁹ *Bourhif v Young* [1943] AC 92; *UBNPLC v Chimaeze* (2014) LPELR - 22699(SC)

Injunction

Injunction is an order of a court of competent jurisdiction which commands or forbids the performance of an action. It is an order of court ordering a person to do some positive act to end a wrongful state of things. Injunction is particularly useful as it can be used to restrain a person from committing a breach. The Courts can thus, by a decree of injunction direct a party to refrain from a particular conduct or action that might constitute a breach.⁶⁰

There are different types of injunctions which may be available to an electronic bank customer whose rights have been infringed upon by the banker. These types of injunction are *interim/ex-parte* injunction, interlocutory injunction, *mareva* injunction and perpetual injunction.

Specific Performance

A specific performance is a remedy contrived in England by courts of equity in a system of law administered by the courts of chancery as against that administered by common law courts. Its exceptional nature is dictated by English history. Where a proceeding could be a subject of jurisdiction in common law, equity courts exercised concurrent jurisdiction only when procedures in equity afforded advantages which were not attainable at law. Hence equity exercise jurisdiction where money payment did not afford adequate remedy.⁶¹ The order of specific performance, is one by which the court directs the defendant to perform the contract according to its terms. Specific performance is a court ordered remedy that requires precise fulfillment of a legal or contractual obligation when monetary damages are in appropriate or inadequate.⁶²

Restitution

An electronic banking customer may enjoy the order of restitution by the court. Restitution denotes the return or restoration of a specific thing or condition. Restitution order is usually made in criminal cases to return the proceeds of crime to the complaints. For instance, an electronic banking customer, whose account is hacked by fraudsters and the account emptied, may obtain the redress of restitution upon the conviction of the fraudsters. The court may order for the return of the money removed from the account. An order on a bank to return excess bank charges into an account may also in some circumstance be viewed as an order of restitution. Additionally, a bank whose ATM Machine swallows a customer's ATM Card and upon the fulfillment of all conditions necessary for the return of the card, failed to do so, may be sued for the tort of detinue and the court may order for restitution.

4. Challenges to Enforcement of Electronic Banking Customer's Rights

E-banking customers face a number of challenges in the enforcement of their consumer rights. Some of these challenges are legal in nature while some are not. The challenges to the enforcement of electronic banking customer rights in Nigeria include the difficulty in proving of electronic signature, loss of audit trails, admissibility of electronically generated evidence, jurisdictional issues, lack of expert witness, delay in adjudication, ignorance and illiteracy.

⁶⁰ *ibid*

⁶¹ Halsbruy's Laws of England (4th edn. Reissue) Vol 16 para 658, Vol 44(1) Para 813

⁶² Blacks Law Dictionary 8th Ed. P. 1435

Difficulty in Proof of Electronic Signature

An electronic signature or e-signature refers to data in electronic form, which is logically associated with other data in electronic form and which is used by the signatory to sign.⁶³ The proof of electronic signature is usually a major issue in enforcement of e-banking customer rights. For instance, it is usually difficult for a customer to prove that he did impute his electronic signature i.e PIN (personal Identification Number) to a particular transaction.

Although, the law in Nigeria recognizes electronic signature which includes "symbol or security procedures" it has however been very difficult for consumers to prove the use of a non-use of electronic signature. Most consumers are unable to prove their case in court due to the technical nature of the transaction involved. The courts equally have also consistently held that the knowledge of a personal identification number (PIN) is known only to the customer and therefore the burden is on him/her to prove that his electronic signature i.e PIN was either used or not used for the transaction in question.

Loss of Audit Trail

An audit trail is a step by step record by which accounting, trade details or other financial data can be traced to their source. Audit trails are used to verify and track many types of transactions including accounting transactions and trades in brokerage account. Loss of audit trail is one of the major challenges to the enforcement of e-banking customer rights in Nigeria. This is because most times it is usually difficult to trace electronic transactions especially when same has gone through several transaction channels and passed through multiple channels and jurisdictions. For instance, an e-banking fund fraud may be transferred using internet banking to a different account in different countries before same will be finally used to purchase an article online, in which case the audit trails may have been lost or it may be extremely difficult to trace. This in turn leads to another challenge of e-banking customer redress/enforcement which is jurisdictional issues.

Jurisdictional Issues

An electronic banking transaction can be performed from virtually anywhere. A person who resides in the United State of America but has an account in a Nigerian bank can operate the account from anywhere in the world using internet banking. ATM cards of some banks linked to an account can even be operated outside the country.

The issues of jurisdiction and choice of law is a very important one in e-banking. The problem is which court assumes jurisdiction in a dispute between parties arising from e-banking transaction. Further which law to be applied by that court? This is due to the fact that the parties may reside at different locations with different legal systems.

Lack of Expert Witnesses

There is a drought of ex-part witnesses on e-banking related transaction. This has led to loss of many court cases by e-banking customers against their financial institutions as the courts are more inclined to believe that e-banking fraud cannot be perpetrated without the customer compromising his e-signature. Many cases before the trial courts in Nigeria are lost as a result of the inability of the e-banking customer to provide ex-parte witnesses to assist them in proving these cases before the court.

⁶³ Wikipedia <<https://en.wikipedia.org/wiki/electronic.signature>> 'accessed 2nd October 2022

Ignorance and Illiteracy

Most bank consumers in Nigeria are illiterates in English Language especially in the Northern part of the country. Some that are not illiterate are equally ignorant of their rights as electronic banking customers. Most Nigerians do not know how to enforce their rights. For instance, most people do not know of their right of escalation to Central bank of Nigeria Consumer Protection Department when a bank fails to resolve a consumer complaint within a specified time frame. The CBN Consumer Protection Department should organize sensitization programs for e-banking customers of Nigeria banks to educate them on procedures of making complaints to banks and the CBN as the case may be.

5. Enforcement of Cross Border e- Banking Customer Rights

Cross boarder e-banking is defined as the provision of transnational on-line banking products or services by a bank in one country to residents of another country. With the evolution of electronic banking products, banks now offer a wide range of banking products that may be accessed internationally and this gave rise to issues concerning cross border enforcement of consumer e-banking rights. Most countries regulate the entry and licensing of banks and banking products with their domestic laws and regulations. In Nigeria, it is only a bank licensed to operate in Nigeria that can carry out banking business⁶⁴. However, banks in Nigeria do carry out international money transfer services. The Central Bank of Nigeria pursuant to the CBN Act 2007 and the Banks and Other Financial Institutions Act issued the Guidelines on International Money Transfer Services in Nigeria 2007. The Guidelines contains provisions for disputes resolution enforcement of customer/consumer rights.

6. Conclusion and Recommendations

6.1 Conclusion

This paper examined and, analyzed the legal framework for the protection of electronic banking consumers/customers in Nigeria, which equally covered all the existing laws and regulations in Nigeria relating to the subject. The mechanism for consumer complaints resolution and redress as well as the challenges to consumer redress was also examined. The legal framework for protection of e-banking consumer in Nigeria was also analyzed and put side by side with international best practices.

There is however need for a synergy between the CBN and the National orientation Agency to educate e-banking consumers on their rights and remedies in law. The work also recommended that an independent body be established for the resolution of e-banking consumer disputes and complaints. The independent body should be supervised by the CBN consumer protection department. The work further recommended the establishment of a special court to handle e-banking consumer complaints that is not resolved by the internal dispute resolution of the banks or independent e-banking dispute resolution/complaint handling institution.

Electronic banking is the conduct of banking services and process through electronic delivery channels. For a bank to provide e-banking services in Nigeria, it must first be registered as a company with a valid banking license. E-banking has raised a number of consumer issues and

⁶⁴ Banks and other financial Institutions Act. 2020. S.2.1

complaints which includes unrealistic and hidden charges, unjustifiable deductions, ATM deductions without dispensing cash, slow complaint handling and redress mechanism e.t.c.

There are however, a number of legislations in Nigeria that are meant to protect the electronic banking consumer/customers. These legislations include the Central Bank of Nigerian Act 2007, the Banks and Other Financial Institutions Act 2020, the Nigeria Deposit Insurance Corporation Act 2006, the Federal Competition and Consumer Protection Act 2018, and the Cybercrime (Prohibition and Prevention Act 2015. However, the bulk of the legal framework aimed at the protection of electronic banking consumers in Nigeria are subsidiary legislations made by the Central Bank of Nigeria either as a Regulation or Guideline. The CBN subsidiary legislations protecting the electronic banking consumers/customers include the Central Bank Consumer Protection Framework 2016, the Central Bank of Nigeria Consumer Protection Regulation 2019, the Central Bank of Nigeria Guidelines on Mobile Money Services in Nigeria 2021, the Central Bank of Nigeria Regulation on Instant (Inter-bank) Electronic Funds Transfer Services in Nigeria ,2018, the Central Bank of Nigeria Guidelines on Operations of Electronic Payment Channels in Nigeria 2020 e.t.c.

The CBN Consumer Protection Regulation 2019 is the major legal instrument in Nigeria for the protection of electronic banking consumers. The objectives of the regulation include to protect consumers from unfair and exploitative practices by institutions in their dealings with bank customers/consumers and to ensure access to compliant redress mechanisms that are free, fair, timely, transparent, accessible and independent. The Regulation contains elaborate provisions on fair treatment of consumers, disclosure and transparency, responsible business conducts and dispute resolution mechanisms.

The CBN Consumer Protection Regulations 2019 made provisions for the establishment of an Internal Dispute Resolution (IDR) structures and processes for complaint handling and resolution by banks. Banks licensed by the Central Bank of Nigeria are to designate a unit for complaint handling and resolution, independent of other products or business functions. Banks are expected to resolve complaints reported to it within the time frame contained in Annexure D to the Regulation.

Where a complainant is dissatisfied with the outcome of the internal resolution of his complaint to the bank, the customer may within 30 days' request for a second level internal review. The bank shall thereupon review and resolve the complaint within the timeline stipulated for the 2nd level internal review by Annexure D to the Regulation. The Regulation however failed to state the composition of the panel/ bank staff to undertake the 2nd level review in view of the fact that a consumer may not be comfortable to apply for a 2nd level review if the review panel is same or is composed of some people who had already participated in the first level dispute resolution. The Central Bank of Nigeria in furtherance of its core mandate to promote a sound financial system, in April 2012 created the Consumer Protection Department which has the duties of resolution of bank consumer/customer complaints and consumer education/financial literacy. An e-banking consumer/customer can escalate his complaint to the Department after exhaustion of the institution (bank) internal dispute resolution process. The consumer/customer has the right of escalation after the decision of his bank. The right of escalation to CBN Consumer Protection Department is not available if an alternative dispute resolution process or litigation in respect of the same matter is

ongoing. The CBN Consumer Protection Regulation does not provide a timeline within which the Consumer Protection Department must conclude its resolution of a dispute.

An e-banking customer/consumer whose rights have been infringed may seek redress. The customer/customer has the discretion as to how to enforce his rights. He may even choose not to do so especially where the monetary value involved is small. The e-banking consumer/customer redress may be administrative or judicial. Administrative redress includes internal complaints to the bank, escalation to the Consumer Protection Department of the Central Bank of Nigeria, and dispute resolution by the Federal Competition and Consumer Protection Tribunal. It is however to be noted that from the commencement of the Competition and Consumer Protection Act on the 30th day of January 2019, the Act applied to complaint by e-banking customers up till the 12th day of December 2020 when the Banks and Other Financial Institutions Act 2020 came into effect and limited the jurisdiction of tribunal to banks and banking products and services.

The Judiciary provides the primary avenue for obtaining redress in consumer protection matters especially in e-banking consumer complaints. Judicial enforcement may take the form of civil or criminal enforcement of consumer rights. The civil enforcement of consumer rights may take the form of an action of an action for breach of common law duties owed to a customer by a banker. A bank customer may also sue the banker for breach of contract.

Some of the laws safeguarding the e-banking consumers/customers in Nigeria contain criminal offences and sanctions. The punishment is either in the form of fine, imprisonment or both. Computer related fraud, unlawful diversion of banking and financial electronic mail with intent to defraud, insider collusion to perpetuate fraud on bank customer, theft of payment terminals or electronic devices such as ATM and POS terminals, obtaining the identify of a bank or financial institutions with intent to defraud, phishing scams and electronic card fraud e.t.c are all crimes under the Cybercrimes Act 2015, with different punishment provided for.

An electronic banking customer, who explored the option of judicial enforcement of his civil rights may upon his success in court, may be entitled to a remedy or remedies. The remedies available to him may include damages, the object of which is to give compensation to the plaintiff/e-banking customer. The damages may be in form of special, general, exemplary or punitive damages. The e-banking customer/consumer may also be entitled to an order of injunction, specific performance or an order for restitution.

E-Banking customers face a number of challenges in the enforcement of their consumer rights in Nigeria. Prominent among the challenges is the difficulty in proof of electronic signature. Most times it is very difficult for a customer to prove that he either did or did not input his electronic signature i.e PIN (Personal Identification Number) to a particular transaction. The courts most often believe that since the personal identification number is only known to the customer and not known to the banker, therefore once it is used the burden is on the customer to prove that he did not use it. This burden is usually difficult to discharge by the customer. Other challenges include jurisdictional issues, lack of expert witness, ignorance and illiteracy.

The need for global financial stability led the World Bank in 2006 to develop the World Bank Good Practices for Financial Consumer Protection, the latest edition of which is the World Bank Good

Practices for Financial Consumer Protection 2017. Annexure A of the 2017 edition contained the World Bank Good Practices for Retail Payment Services. Retail payment was defined in the document as a 'payment instrument that uses electronic means for initiation, authentication and authorization of a payment transaction. Even though a transaction might be initiated electronically, the subsequent processes of clearing and settlement might involve a combination of manual and electronic procedures, A payment may also be initiated on paper but subsequently processed electronically.' A comparative appraisal of the Good Practice for Retail Payment Services contained in the World Bank Good Practices for Financial Consumer Protection with the legal framework for electronic banking consumer protection in Nigeria shows that Nigeria is in substantial compliance with the provisions of the Good practices.

In Nigeria, the major organ for the protection of e-banking customers/consumers is the Central Bank of Nigeria through its regulations and its Consumers Protection Department. In Canada it is the Federal Consumer Agency of Canada (FCAC) created in 2001 to strengthen oversight of consumer protection measures and to expand consumer financial education in the financial sector. The FCAC mandate does not allow it to resolve individual consumer complaints. Consequently, the agency investigates all potential breaches of the law, codes of conducts or public commitment. Banks in Canada, under the Canadian Banking Act are required to have complaints handling procedures put in place to respond to consumer complaints. In addition, every bank is required to be a member of an approved ECB (External Complaint Body). The procedures put in place in Canada for settlement of electronic banking disputes usually consist of three steps. The first step is that consumers are asked to communicate their problems or concerns branch customer representatives. In the event that the issue is not resolved to the customer's satisfaction at step one, the consumer is referred to a more senior level employee, such as a regional manager, complaint resolution department or internal ombudsman services. If the issue remains unresolved to the customers' satisfaction despite having gone through steps one and two, or if the bank takes longer than 90 days to respond, the consumer may request that the complaint be reviewed by a third party or the banks ECB (External compliant body). Consumer in Canada may contract FCAC with the complaints at any time, however the FCAC mandate does not allow it to resolve individual consumer complaints, however, complaints received by FCAC that are related to legislative provisions, voluntary codes of conduct or public commitments are sent to FCAC's supervision and promotion branch for triage.

6.2. Recommendations

From the above examination of the legal framework for e-banking consumer protection in Nigeria, the following recommendations are hereby made.

1. The Consumer Protection Regulation 2019 made by the Central Bank should be amended to include a timeline for handling of e-banking consumer complaints escalated to the consumer protection department of the Central Bank of Nigeria.
2. Amendment of the CBN Consumer Protection Regulation 2019 by removing the Second Level Internal Review of consumer complaints by banks as same amounts to a waste of time and delay injustice delivery.
3. The Consumer Protection Department of the Central Bank of Nigeria should liaise with the National Orientation Agency to enlighten Nigerians on the area of financial literacy as most Nigeria are ignorant of the mechanisms provided by the CBN Consumer Protection

Regulation 2019 for the protection of e-banking consumers and indeed all the consumers of banking products in Nigeria.

4. Establishment of an independent body, which is regulated by law and administered by representatives of banks as done in some jurisdictions so as to ensure that banks comply with the objective of both the CBN Consumer Protection Framework and the Consumer Protection Regulation 2019 and also handle consumer complaints and redress. This will separate the CBN duty as a prudential regulator, of banks from its duty of consumer protection and thereby reduce the overlap that may occur in situations where the CBN as the regulator may be reluctant to impose punitive punishment on banks for violation of consumer rights for fear that it may affect the stability of the bank. The independent body should be supervised by the CBN consumer protection Department in view of the multiple channels of electronic banking products in existence in Nigeria and the millions of e-banking transaction done on daily basis in Nigeria.
5. Amendment of the Banks and Other Financial Institutions Act 2020, by specifically removing Section 65 of the Act which barred the Federal Competition and Consumer Protection Tribunal from entertaining consumer complaints emanating from banking products and services.
6. Establishment of special court to handle electronic banking customer complaints. This will ensure easy access to justice and speedy trial. The court if established should be of co-ordinate jurisdiction with the High court.