LEGAL IMPERATIVES OF COMBINATION OF ACCOUNTS IN THE BANKING SECTOR: A CRITICAL APPRAISAL

Dr. Cali C. Ojimba

Abstract
The Banking Sector is the most critical aspect of any economy, its growth and operations, vis-à-vis its challenges and short-comings resonates on the direction the economy should go loans and overdrafts are critical elements in banking business, default in repayment of these facilities are equally experienced in making these advances and in anticipation of these short comings, banks do put in place legal/administrative measures to recover these debts. Combinations of accounts becomes one of such measures. This paper will therefore do an assessment of the bankers right to combine two or more accounts for the purpose of extinguishing a customers liability. It will also examiner further regulatory framework that condones or justifies such action. Finally it shall recommend measures that should be taken to strengthen these concepts with a view to fine tuning its operations to go in line with global best practices.

Introduction

Several Judicial ink has been spilled in expression of thoughts as to the relationship between a banker and her customer as it relatives to combination of accounts. The law of banking is not only concerned with legal framework of banking business but also with legal relationship that exist between the banker and her customer one of such extended relationship is that of combination of accounts. It shares major characteristics with most contractual transactions that exists between a principal and his agent, bailor and bailee, buyer and seller, hirer and hiree, debtors and creditor[1]

To the ordinary Nigerian Customer who is an account holder, his relationship with the bank starts with accounts opening and ends with withdrawal from the account he opened[2]. But in actual fact, the relationship is more complex.

What constitutes a Banker-Customer Relationship?

It is a contractual relationship which the legal environment determines. They include:

1. An agreement to enter into the relationship
2. Considerations
3. Parties must have capacity to contract
4. The relationship must be legal[3]

In *Balogun v. National Bank of Nigeria*[4] Idigbe, J. argued that:

Cali C. Ojimba, *B.Sc.(Hons) Pol. Sc., LLB, LLM, (BL) is a lecturer in the faculty of Law Chukwuemeka Odumegu Ojukwu University, Igbariam Campus.*

[1] Igweike, Law of Banking and Negotiable instrument, Enugu African Publishers (1991) P. 74.
[2] *Ibid. P. 64*
[3] Nwosu A: Law of Banking for Tertiary Institution Abuja-Cargo Publisher Int'l Ltd (1981)83

> The receipt of money for an account by a banker constitutes the debtor of the former and the banker undertakes to pay any part of the money due to his customer.

Also in *Official Receiver & Liquidators v. Moor*[5.] Dickson, J. appeared to have accepted the prescription emaciated in the above stated case where he stated that:

> It is quite clear that the relationship between the bankers and her customer is peculiar and that of necessity that must be super-added with obligations…

These super added obligations includes combination of accounts, opening of accounts, closing of accounts etc. But essentially combination of accounts are permissible lee-way that empowers the bank to combine a customer's account to recover debt but this must be done with caution since banks cannot combine a customer's account where it is evident that a customer is not a beneficiary of that account in question, Igweike on his own has argued that the view has sometimes been expressed on the part of a banker to combine or consolidate a customer account for the purpose of paying his debt. A corollary of this is whether there exists such a right or obligation to keep the account separate[6]

In his opinion, combination of account is usually based on the principle of equity which comes in form of crown claims for a liquidated accounts which can be placed only in respect of a liquidated claim[7].

In *National Westminister Bank v. Halsow Press Work and Assemblies Ltd*[8]. The court held that the combination of account to an accounting situation in which the existence of an account of one party tallies with the liability of same which can only be ascertained by discovering the ultimate balance of the mutual dealings between the two. In his remarks on a celebrated court judgment, Lord Kilbradon[9] had this to say:
In ordinary case and in the absence of an agreement expressing or necessarily implying the contrary, where a customer has two account the bank is entitled to utilize the credit of the other account. The bank cannot combine account where one of the account is a loan account and the other a current account.

In the same place, Lord Cross[10] conclude on the issue as follows:

> If a banker permit his customer to have two accounts sometimes called a loan account which records the indebtedness of the customer to the bank and when the bank makes it clear to the customer that it is resorting to any moment to apply the credit balance on the correct account in reduction of the debt on the loan account. It will be an implied term of arrangement.

But Banks do not open accounts for any customer. Before doing so, they usually require format and proper identification of the prospective customer as well as obtain reference in respect of such customer. This is done in order to secure adequate protection not only for the banker but also the general public members which might deal with such customer on the basis of such account. In such circumstances, the banker is lawfully obliged to ensure that

[4] (1978) NWLR 63
[5] (1959) LLR 46
[6] *Ibid* P. 110
[7] *Ibid.* P. 117
[8] (1972) A.C 785
[9] *Ibid* P. 85
[10] *Ibid.* P. 87

the necessary banking rules and procedures are strictly compiled with. In *Lloyds Bank. V. Savory and C*[111]
Lords White had this to say:

> It is now recognized to be the usual practice of bankers not to open an account for a customer without obtaining of reference. And without enquiring as to the customer's standing.

The decision was affirmed by the Supreme Court in United Insurance Co.v. Muslin Bank[12] In that case the defendant bank had failed to make an initial enquiry about a prospective customer before opening a savings account for him. The court held that the defendant bank was negligent and failed to observe the standard of a reasonable banker.

Opening of Account

To open an account with a bank, a prospective customer of the bank must take the following practical steps.

1. Write a formal application to the banker requesting that he should be allowed to open an account.
2. Reference the application by the required number of existing customers of the bank or those of other banks.
3. The application should bear the full name, address and present occupation of the prospective customer.

On its part, the banker opens the account upon the certification that the would be customer has fulfilled all the banks requirements. The customer's name should therefore be boldly written above his or her account in the appropriate ledger. Also, particulars of other accounts held by the same customer in other branches of the bank as well as other persons with authority to operate them are recorded. Therefore, specimen of the customer's signature is also obtained and kept in the banks signature book after which an account is formally opened for the would be customer as the case may be.

Combination of Accounts

Banks provide finance to their customers resulting to the customers becoming debtors to the providing banker on the accounts through which the provision was made. Provision of finance may give rise to a loan account being opened. This implies the pre-existence of an account with credit balance. In the same vein, in some other instances, provision of finance can come through an existing account in which case the providing banker allows the customer to overdraw the account. In this circumstance, the customer may be operating another account in which there is a credit balance. In situations of indebtedness of a customer to his banker, the banker can combine two or more accounts of the customer to enable it recover its money owed by the customer. This principle was established in British and French Bank Ltd v. R.A.B. Opaleye[13]. The respondent had two accounts with the appellant. One of the accounts was kept in the respondent's name (private account) while the other was in the name of Fekemo Brothers (the firm's account). The respondent was the sole signatory to both accounts. The firm's account was overdrawn to the extent of £500 while the private account was in credit. When a cheque of £350 was paid into the private account, the appellant banker combined the two accounts in order to use the money from the private account to reduce the overdraft in the firm's account. This was upheld by the Court. Also in Allied Bank of Nigeria

[11] (1933), A.C 201 82
[12] (1972) 4.1 Law/SC. 193/1969
[13] (1962) 1 ANLR. 126

Ltd v. Jonas Akubueze[14], the appellant moved to apply the credit balance in account No 126. The Court held that the action was right as it granted to combination of account. The same combination of account of a customer was the issue in the case of *Ganett v. Mchewan*[15] where a customer drew cheques against his credit balance at one branch of a bank. At another branch, he was indebted to an amount almost as huge as the credit balance at the other branch. The banker combined the balance and dishonored his cheques. It was held that the bank's action was right.

The Governing principles on combination of Accounts

It is noteworthy at this juncture to state that bankers do not just combine accounts belonging to same customer. Their right to do so is backed up by certain principles of law which have been developed over the years. The principles of law governing the banker's right to combine two or more accounts belonging to same customer and to undertake a set off has been clearly stated in the Halsbury laws of England as follows:

> Unless precluded by agreement, express or implied from the course of business, the banker is entitled to combine different accounts kept by the customer in his own right, even though at different branches of the same bank and to treat the balance, if any, as the only amount really standing to his credit[16.]

Generally, the above statement of law presupposes that:

1. A banker has the right to combine the various accounts kept with him by same customer even if they are kept at different branches of the bank. This right is subject to certain qualifications namely:
   a. that accounts to be combined must have been kept by the customer in his own rights.
   b. that there is no agreement, express or implied from the ordinary course of business between the banker and the customer precluding the former from the combination of accounts.
   c. that if, upon the combination, a credit balance is recorded, that balance should be treated as the only amount standing to the customer's credit.

The fact in 1(a) above was explained in *British and French Bank Ltd v. R.A.B. Opaleye*[17] where the court held that the issue about the customer having different accounts in his own right means that both accounts are in his own name and that neither accounts is a trust account. With reference to issue (1)(b) above, it was held in the *Burkingham* v. *London and Midland Bank Ltd*[18] that there was an implied agreement between the banker and the customer precluding the banker from combining the various account of the customer. In that case, the plaintiff had a current account and also a loan account secured against house property. The branch manager had the property resurveyed and decided that the advance was too high, therefore, told the plaintiff that his account has been closed. The plaintiff protested that he had cheques outstanding, but the manager duly combined the accounts and dishonored the cheques. The plaintiff sued for damages. The court held that the plaintiff was entitled to reasonable notice of the combination of the accounts. Also, in *Allied Bank of*

[14] (1997) 6 SCNJ 116
[15] (1872) LR EX 10
[16] P.n. Ocha, Banking Law and Practice in Nigeria (Jimmy Litho Press 2004) P. 157
[17] *Ibid* P. 49
[18] (1895) 12 TLR 70

Nigeria Ltd v.Jonas Akubueze[19] the court considered the factual circumstances of the matter and held as per Iguj J.S.C. (as he then was) in the following:

> I think in these circumstances, it may borrow the words of Bairamian, F.J, that it can be said with justice that there exists a strong implied agreement between the parties to keep the two accounts separate and distinct, and without any right on the part of the bank to combine them or to transfer assets from one account to the other, at any rate, not without reasonable notice of the intention so to do.

Be that as it may, combination of accounts of a customer is not in anyway hindered by difference in branches. This was made clear in the case of *Barclays Bank Ltd v. Okeharhe*[20] where it was held that

> As regards the case in which the customer has separate running current accounts at each of two branches of a bank, it is plain that the general principle is that the bank is entitled to combine the two accounts. So depending upon circumstances, combination is allowed and implied to meet the peculiarities of a particular issues as may be required by law.

Limitations of Banker's right to combine Customer's Accounts

A banker's right to combine two or more accounts belonging to same customer is limited by the following:

a. where the debt balance is not yet due. *Jafferys v. Agra master man's Bank.*
b. Where there is an implied agreement to keep accounts separately. *Bradford Old Bank v. Sutcliffe*[21].
c. An express agreement not to combine accounts will negate the bank's right to do so.
d. A trust fund cannot be combined with personal fund.
e. In case of a joint account, a debt due from one of the joint account holders in his individual capacity cannot be combined with an account due to him by the bank in the joint account except if the joint account is payable and debt is due from the former/later.
f. In the case of a partnership firm, the partnership account cannot be combined with the individual partners account except partners have under taken to be jointly and severally liable for the firm's debt due to the banker.
g. An account in the name of a person in his capacity as a guardian for a minor is not to be treated in the same right as his own account with the banker.
h. The right can be exercised in respect of debts due and not in respect of future debts or contingent debt.
i. The amount of debts must be certain.
j. All branches of the bank constitute one entity for exercising right of combination of accounts.

Combination of Accounts distinguished from other doctrines like set-off, lien and closure of Accounts

Combination of accounts of a customer is often confused with such other banking doctrines as set off, lien and closure of accounts. For a clearer understanding of the operations of combination of accounts, it is pertinent at this juncture to make a distinction between them.

[19] *Ibid.* P. 49
[20] (1966) 2 NWLR 176
[21] (1918) 2 KB 833

Set off

Set off is a right that exists between two parties each of whom under an independent contract owes an ascertained amount to the other. They have the right to set-off their respective debts by way of mutual deduction. The aim of setoff is to avoid circuit of action so that defendants can resist judgment on claims for goods when it appears that they have legitimate cross claims. The above facts on set-off is affirmed in the famous case of *British and French Bank v. Owodumi trading company*[22], where it was held that the banker's action of set-off was proper. In that case, the respondent and Obasuyi Brothers operated separate current accounts with the appellant banks. Obasuyi Brothers obtained a business which it could not finance - and the bank's manager approached the respondent to advance 2000 pounds to Obasuyi Brothers to execute the business. The respondent compiled immediately the sum was credited to the account of Obasuyi Brothers, the appellant bank in exercise of right of set-off withdrew the sum of, 1,400 pounds which represented the indebtedness of Obasuyi Brothers to the bank. This reduced Obasuyi Brother's ability to exercise the agreement and repay the respondent the 2,000 pounds on the date. The respondent sued the bank for inducing the breach of Obasuyi Brother's contract. Commenting, foster- Sutton[23], FCJ had this to say

> The authorities were referred to establish the proposition that, in an action for the sort of procuring a breach of contact if a person acting lawfully and in all respect within his rights, causes, as a result of what he does, loss to another, that other has no remedy, though the loss he suffers is the necessary and inevitable consequences of the acts of the first person.

Analyzing the legal issues involved in the case, Emeka Chianu[24] said as follows:

> We are not in the case concerned with the property upon ethical grounds of anything that the appellants did. Questionable as their conduct appears to me, to have been., the question with which he were concerned is whether there has been shown to be such unlawful act on the part of the appellants as entities the respondents to relief in the present action[25].

He added that:

> If strict legal rules were applied, as between the bank and Obasuyi Brother, the bank rightly exercised its right of set-off. However, it is doubtful if the bank's action can be upheld in the whole circumstances of the case. The right of set-off is a creature of equity and is founded on equitable principles. Courts of equity have recognized that equitable remedies would not be awarded in favour of a plaintiff where the effect would occasion hardship on a third party. The bank manager's obscurantism was too crafty and selfish that it ought to have brought a sour taste in the mouth of an equity judge to pronounce an equitable relief in favour of the bank[26]

Lien

A lien is a right to retain the goods of a debtor until he discharges his indebtedness to the retainer of the goods. The law recognizes two types of lien: particular and general.

[22] (1987) 2 NWLR (Pt. 57) 366
[23] *Ibid.*
[24] E. Chianuu, Law of Banking (new System Press Ltd. 1995) P. 345-346
[25] *Ibid* (1995) P. 340
[26] *Ibid* P. 340

Particular Lien

1. A particular lien enables the retainer to keep the chattel until payment only of the particular debt which has been incurred in relation to it. A general lien entities the lien holder to retain chattel for payment of the full indebtedness of the debtor no matter on what account the same may be due.

General Lien

1. The lien enjoyed by banks is a general one. In *Davis v. Bowsher*[27], Lord Kenyon opined that bankers have a general lien on all securities in their hands, for their general balance unless there is evidence to show that any particular security was received under special circumstances which would take it out of the common rule.

Generally speaking, it can be deduced from the above that there is no basis for any doctrinal dispute in respect of operations of combination of accounts, set-off, lien and closure of accounts. Whether a banker has any right to combine two or more accounts belonging to same customer has to be a question of law and fact. Deducing from above, two schools of thought abound in respect of that. The first one has it that once there is the existence of banker and customer relationship through customer's opening of account, there flows an implied right or obligation on the part of the banker to combine or consolidate a customer's account to enable him exercise right to set-off. This opinion is affirmed in the case of Garnett v. Mckewan[28]. Secondly, another judicial decision has it that if a banker agrees with his customer to open two or more accounts, he has not, without the assent of the customer, any right to combine the customer's accounts. The very basis of his agreement with his customer is that the accounts shall be kept separate. This decision was taken in the case of *Greenhalgs v. Union Bank of Manchester*[29]. Following from above, in the case of *Halesowen Press Work v. Westminister Bank Ltd*[30] the English court of Appeal affirmed that a banker has a right to combine a customer's account whenever he pleases and so set-off one against the other unless he has made some agreement, express or implied to keep them separate.

Termination of Banker and Customer Relationship

As regards closure of accounts. It was stated that although the relationship of banker and customer is in theory terminable in any of the ways by which contract may be determined, in practice, it comes to an end in any of the following wats:

a. Death of the customer
b. Mutual agreement
c. Proper notice by one party to the other
d. Mental disorder of the customer
e. Bankrupt or winding up of either party etc.

[27] (1913) 2 KB 47
[28] (1872) Ir. Ex 10
[29] (1924) 2 KB 153
[30] (1971) 1 RBDI

Be that as it may, these judicial decisions have also recognized some exceptions and limitations of the banker's right to combine customer's two or more accounts are enumerated.

Conclusion

The import of all these submission is that while one school agreed that the practice is good to guide against a customer short charging the bank, others disagree and argue that such practice will amount to unnecessary interference of the bank with the activities of her customer which in the circumstances may not be authorized. Be that as it may, the writers opinion is that the practice of combination of account should be encouraged to ensure that a customer who came to the bank like equity must come with clean hands and where he acts in bad faith and willingly acts towards short charging the bank based on his liability to meet up with his financial obligations to the bank, combination of account should be invoked to check mate such excesses.

But again caution should be the watchword to guide against abuses as such abuse could lead to a customer closing his account with the bank and in some cases resorting to seeking legal redress against the bank which may not argue with the reputation and influence of the bank. The portion must have been what influenced the Supreme Court in *Ogundeji v. IBWA Ltd*[31] into stating that a bank has no right to transfer money be it assets or liabilities from one account to another without prior notice or assault of his customer. This position remain our final submission.

[31] Igweike K.I. P. 118