

## **STERLING BANK PLC v FIRST CITY MONUMENT BANK LIMITED & ORS – SUIT NO.: FHC/L/CS/1110/2023**

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### **1. INTRODUCTION**

As technology advances, one question that lingers in different areas of technological progression is the enforcement of rights and duties in situations totally within the control of technology, and out of human control. In the banking sector, the question may be framed as “who has a duty to provide or account for sums transferred due to system glitches?”

In Suit No.: *FHC/C/L/CS/1110/2023 – Sterling Bank Plc v First City Monument Bank & Ors*, where Esher & Makarios represented the plaintiff, the court concurred with the argument of our Dr Oladapo Olanipekun SAN FCI Arb that the plaintiff is under a bounden legal duty to ensure the reversal of funds of its customers moved without due authorisation which the plaintiff has traced to be in possession of the defendants. The court also aligned itself with the argument of the learned silk that the sums traced to the defendant banks ought to be returned to the plaintiff.

### **2. Background of the case**

On 2 June 2023, a glitch occurred on the plaintiff’s online banking platform while the plaintiff was in the process of rectifying and reconciling failed transactions on the said platform. The system glitch triggered a duplication of transactions which had been previously concluded by various account holders of the plaintiff, which resulted in unauthorised transfers of funds from accounts held with the plaintiff to accounts held with the respective defendants. The system glitch also triggered a reprocessing of previously failed transactions which resulted in the transfers of funds from accounts held with the plaintiffs to accounts held with the respective defendants. None of the transfers was authorised by the account holders of the respective accounts affected. However, as a result of the system glitch, the respective accounts were debited without due authorisation. The plaintiff successfully traced the funds to accounts held by the customers of the defendant banks totalling the sum of ₦1,110,674,577.42 (one billion, one hundred and ten million, six hundred and seventy-four thousand, five hundred and seventy-seven naira, forty-two Naira)

### 3. Our Position

We approached the court to provide answers to the following questions (summarised):

1. Whether the sums of money traced by the plaintiff to the respective defendants ought not to be returned to the plaintiff;
2. Upon a proper construction of the relevant provision of sections 23, 30, 68 and 69 of the Banks and Other Financial Institutions Act 2020 when read together with the Central Bank Nigeria Framework Risk Based Security Framework and Guidelines for Deposit Money Banks and Payment service Providers, and the Central Bank of Nigeria Banking Clearing System Rules, whether the plaintiff is not under a bounden legal duty to ensure the reversal/retrieval/return of funds moved without due authorisation from account held with the plaintiff to accounts held with the defendant.
3. Whether the plaintiff is not entitled to all the reliefs sought in its Originating Summons.

We averred that the relationship between the plaintiff and its customers is contractual. Specifically, the relationship takes the form of a debtor/creditor contract. See: *Linton Industrial Trading (Nig.) Ltd v Central Bank of Nigeria & Anor. (2014) 1 BFLR 231, 233; Yesufu v African Continental Bank (2012) 1 BFLR 757, 770* The implications of this relationship are twofold. First, it is a debt owed by the plaintiff to its customers. Second, once these individual customers have placed their funds with the plaintiff, the said funds belong to the plaintiff and the plaintiff is entitled to retain and or make use of the said funds as it deems fit. See: *ITPP v Union Bank PLC (2012) 1 BFLR 351, 364-365*. Thus, the funds that have been moved without authorisation to the respective defendants belong to the plaintiff. As such, the plaintiff is entitled to the return of these funds, more so as they have been traced to the respective defendants. This entitlement is underscored by the fact that the plaintiff is under an obligation to return the said funds to its customers as soon as a demand is made by the said customers. In this wise, the continued deprivation of these funds would occasion double jeopardy to the plaintiff. The learned senior advocate explained that the plaintiff would be denied use of the funds, and it would be placed in the precarious position of having to source funds

from alternative means if the said customers demand for the funds. The learned silk brought to the attention of the court the fact that the plaintiff is saddled with the duty of ensuring the reversal/return/retrieval of sums of money which were moved without authorisation from accounts held with the plaintiff as provided by Section 30 of the Banks and Other Financial Institutions Act 2020, as well as relevant provisions of Central Bank of Nigeria Framework Risk Based Cyber Security Framework and Guidelines for Deposit Money Banks and Payment service Providers, Central Bank of Nigeria Consumer Protection Framework, and the Central Bank of Nigeria Banking Clearing System Rules.

#### **4. Decision of the Court**

The court found reason in the argument of the learned silk, answering in favour of the plaintiff, all the questions posed by the plaintiff in its Written address, and granting all the seventy-three prayers on the face of the Originating Summons.

#### **5. Implications of the Judgement for the Nigerian Banking Sector**

This judgment carries significant weight for Nigeria's banking sector. It affirms that a bank bears a statutory duty to retrieve its customer's funds transferred without authorisation. This position will increase investor/customer confidence in the Nigerian banking sector, it will act as an additional guarantee that a customer's fund is always safe with the bank.

By granting all seventy-three reliefs sought, the court confirmed that funds transferred without authorisation due to a system glitch remain the property of the originating bank and must be returned without delay. For deposit money banks, this decision sets a clear precedent, system glitches do not extinguish accountability.