

SUPREME COURT OF NIGERIA  
FRIDAY 2ND OF MAY, 2003. SC. 186/2000  
CORAM:- I. L. KUTIGI, U. MOHAMMED,  
A. I. KATSINA-ALU, N. TOBI, D. O. EDOZIE, JJSC

TRADE BANK PLC ..... APPELLANT  
AND  
BANILUK (NIG.) LTD ..... RESPONDENT

---

BANKING - Cheques - Illegal payment - Liability - Bankers who collect cheques and pay to those not entitled to the proceeds - Are guilty of the tort of conversion (H1)

ACTIONS - Torts - Jurisdiction - Since respondent's case is tort of conversion - The action it filed against appellant - Can be entertained by any State High Court (H2)

FACTS

Plaintiff/respondent sued defendant/appellant in the High Court of Lagos State, claiming the sum of N1m (one million naira) being the value of a cheque drawn on appellant and made payable to respondent which cheque was wrongfully paid over to a stranger by appellant. Respondent also claimed interests on the said sum. Upon instituting this action, respondent applied ex parte for mareva injunction to restrain appellant from removing its assets from jurisdiction or removing its balance with the Central Bank of Nigeria until the determination of the action. The application was granted and the order served accordingly. Appellant reacted by filing a motion on notice praying that the suit be struck out for want of jurisdiction or, in the alternative, vacation of the Mareva injunction. But trial judge declined both prayers.

Dissatisfied, appellant appealed to Court of Appeal, Lagos. However, before the hearing of the appeal, appellant filed a motion praying for an order substituting the Mareva injunction with a bank guarantee from Afribank Plc in the sum of N2m (Two million naira) which application was granted. Consequently what was left to be decided by the appeal was the issue of jurisdiction. The court even-

tually dismissed appellant's appeal on this issue as it held that trial court had jurisdiction. Aggrieved further, appellant filed appeal at Supreme Court, still contesting the issue of jurisdiction of the State High Court over the matter.

#### ISSUE FOR DETERMINATION

“(i) Whether the High Court of Lagos State is vested with jurisdiction to hear and determine the Plaintiff's claim.”

**HELD** (Unanimously allowing the appeal while dismissing the cross-appeal per MOHAMMED JSC)

BANKING - Cheques - Illegal payment - Liability

1. It is settled law by a long string of authorities that bankers who collect cheques and pay them to those not entitled to the proceeds in the cheques are guilty of the tort of conversion.

I have no doubt that the respondent, in the case in hand, can sue the appellant in conversion for the proceeds of the cheque which the appellant paid to a stranger who is not the Payee of the cheque. (p. 1610 C/1611 B)

Torts - Jurisdiction

2. The plaintiff/respondent's case is simply a tort of conversion and the action filed by the plaintiff/respondent against the appellant can be entertained by any State High Court.

Having failed to have this issue resolved in its favour this appeal has accordingly failed and it is dismissed.

The judgment of the Court of Appeal is hereby affirmed. (p. 1611 B)

## NOTABLE POINTS OF INTEREST

### TOBI JSC

#### ***1. Federal High Court - Exclusive jurisdiction does not extend to tort of conversion***

For the purposes of determining the exclusive jurisdiction of the Federal High Court in respect of Section 230 (1) (d), the court must carefully examine the facts of the case to see whether they justify the application of the subsection. In the instant appeal, although the

appellant was mandated to pay the cheque valued at N1,000,000.00 to the respondent, it paid it to a third party who is entirely a stranger to the transaction. That does not qualify as a bank transaction in which Section 230 (1) (d) applies. It is clearly a tort of conversion which has nothing to do with the exclusive jurisdiction of the Federal High Court. (p. 1612 D)

EDOZIE JSC

**2. Banking matters – No jurisdiction in state High court without Banker/Customer relationship**

It Is not disputed that there was no relationship of banker and customer between the Appellant Bank and the Respondent company to bring the matter under the proviso of Section 230(1)(d) of Decree No. 107 of 1993 so as to confer jurisdiction to a State High Court. (p. 1613 G)

REPRESENTATION

Layi Babatunde, Esq., for the Appellant

Professor S. A. Adesanya, SAN with Waheed Kasali, for the Respondent

CASES REFERRED TO

Uwaifo v. A.G. Bendel State (1982) 7 S.C. 124

Ojini v. Ogo Oluwa Motors (1996) 1 NWLR (Pt. 534) 353

Fine Art Society v. Union Bank of London (1886-87) 17 QBD 705

Kleinwort v. Comptoir National d'Escompte de Paris (1984) 2 QB 167

Karimu Adisa v. Emmanuel Oyinwola (2000) 6 S.C. (Pt. II) 47

A.L. Underwood Ltd v. Bank of Liverpool & Martins (1924) 1 KB 775

7Up Bottling Co. Ltd v. Abiola & Sons Bottling Co. Ltd (2001) 6 S.C. 73

NDIC v. Fed. Mortgage Bank of Nig (1997) 2 NWLR (Pt. 496) 735

STATUTES REFERRED TO

Constitution (Suspension and Modification) Decree 107 of 1993, s.230 (1)(d)

Bills of Exchange Act Cap 35 LFN 1990, s.73

Constitution of the Federal Republic of Nigeria 1979, s.236(1)

LEAD JUDGMENT BY MOHAMMED JSC

Banilux (Nigeria) Limited, who hereinafter shall be referred to as the respondent, had business transaction with Messrs. Accountable Finance and Investment Company. As a result of the business transaction, Messrs. Accountable Finance and Investment Company  
B Limited issued cheque No. 03370-031150013 A/C No. 102-372015 1-01-95, dated 27th January, 1993, in the sum of N1,000,000.00 (One Million Naira) payable to the respondent. The cheque was marked “A/C Payee only” and “Not Negotiable”. It was to be drawn  
C on the account of the company at Martins Street Branch of the Trade Bank Plc. Trade Bank Plc is the appellant in this appeal. In the cheque, the appellant was mandated to pay the sum of N1,000,000.00 to the respondent. Instead of paying the amount to the respondent, the appellant paid the one million naira to a stranger.

When the respondent found out what had happened, it  
D challenged the appellant on the wrongful payment. The appellant accepted responsibility, but pleaded for time to enable it rectify the situation and make payment properly to the respondent. When the waiting was too long and the payment was not forthcoming, the respondent went to the Lagos High Court and filed the following  
E claim:

“(i) A declaration that the defendant acted unlawfully and improperly in paying cheque No. 03370-031150013 A/C Payee only” “Not Negotiable” drawn on the defendants, by Accountable  
F Finance and Investment Co. Ltd. in favour of the Plaintiffs to a person or persons other than the Plaintiffs at the Defendants’ Martins Street Branch, and otherwise than through a collecting banker acting for the Plaintiffs.

(ii) A declaration that the Plaintiffs are entitled to be credited with the value of the cheque (i.e. N1,000,000.00) referred to  
G in paragraph 1 hereof on the expiration of 5 working days from the presentation of the same to the Defendants on the 28th January, 1993, and that the Defendants have wrongfully and improperly deprived the Plaintiffs of the use and enjoyment of the said sum of N1,000,000.00 from the 3rd February, 1993.

(iii) An order that the Defendants shall pay the Plaintiffs the  
H said sum of N1,000,000.00 with interest at 50% per annum from 3rd February, 1993, to 31st December, 1993, and further interest at 15%

per annum from 1st January, 1994, until judgment and thereafter at 15% per annum until the judgment shall have been satisfied.”

Soon after the action had been filed, Learned Counsel for the respondent, Professor Adesanya, SAN, filed and argued an ex-parte motion with the following prayer:

“An order of interim injunction (Mareva) restraining the Defendants, their servants and/or agents from removing from the jurisdiction, disposing of and/or dealing with their assets within the jurisdiction in so far as the same do not exceed the sum of N2,000,000.00 and in particular its bank balance with the Central Bank of Nigeria or their claims thereto until the determination of the Motion on Notice”.

The application was granted. The order was served on the Central Bank which attached the sum of N2 million in the account of the appellant kept with the Central Bank. In response to this order, the appellant by way of motion on notice, dated 14/12/94, prayed for striking out the suit for lack of jurisdiction of the trial court. Alternatively, the appellant prayed for the vacation of the Mareva injunction. In a considered ruling, the trial High Court Judge held that the State High Court had jurisdiction to hear the suit. Secondly, he declined to vacate the Mareva injunction which he granted earlier.

Dissatisfied with the said ruling, the appellant filed an appeal to the Court of Appeal. Before the hearing of the appeal, at the Court of Appeal, the appellant filed a motion and prayed for an order substituting the order granted by the High Court attaching the appellant’s N2,000,000.00 with the Central Bank of Nigeria with a bank guarantee from any reputable bank in Nigeria. The application was granted. The Court of Appeal ordered the appellant to provide a bank guarantee in the sum of N2,000,000.00 from Afribank Plc. The bank guarantee was lodged in Afribank Plc on 26th November, 1996. The Court of Appeal thereafter heard the appeal and delivered its judgment on 29th May, 2000. The appeal filed by the appellant was dismissed. It is against the said judgment that the appellant has filed this appeal.

The appellant identified the following two issues for the determination of the appeal:

“(i) Whether the High Court of Lagos State is vested with jurisdiction to hear and determine the Plaintiff’s claim and

(ii) Whether the ex-parte order of Mareva injunction ought not to have been discharged in the circumstances.”

The respondent adopts the issues as formulated by the appellant. The only issue pertinent for the determination of this appeal, in my view, is the issue questioning the jurisdiction of Lagos State High Court to decide the suit filed by the respondent. The issue about the ex-parte order of Mareva injunction has been overtaken by events before the hearing of the appeal at the Court below. The application to substitute the Mareva Injunction with a Bank Guarantee which the court granted had removed the Mareva Injunction from being an issue in dispute between the parties. An issue in dispute is the subject of litigation. It is a matter for which a suit is brought and parties join issues for the determination of the dispute. Courts will only consider a justifiable controversy upon existing state of facts and not upon hypothetical dispute or academic moot. The issue of Mareva Injunction is no more pertinent as a dispute between the parties. I therefore strike out issue II being an incompetent issue.

On jurisdiction, learned counsel for the appellant, Layi Babatunde, maintained the submission he made both at the High Court and the Court of Appeal that a State High Court has no jurisdiction to determine the respondent's claims as endorsed on the Writ of Summons. Learned Counsel submitted that there is no doubt that the respondent's claim had arisen because of a banking transaction which the company alleged had occasioned a loss to it. But, counsel further argued that the Federal High Court has exclusive jurisdiction to the exclusion of any other court in civil causes and matters arising from banking, save those transactions between banker and customer. He referred to Section 230 (1) (d) Constitution (Suspension and Modification) Decree 107 of 1993 which was the law applicable at the time the cause of action arose. To buttress his argument, the learned counsel referred to the case of *Uwaifo v. A.G. Bendel State* (1982) 7 S.C. 124. Let me refer to the provision of Section 230(1) (d) of Constitution (Suspension and Modification) Decree 107 of 1993. It provides as follows:

“230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the

exclusion of any other court in civil causes and matters arising from -

(d) Banking, banks, other financial institutions, including any action between one bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures. B

Provided that this paragraph shall not apply to any dispute between an individual customer and his bank in respect of transaction between the individual customer and the bank.”

Mr. Layi Babatunde argued that the dispute between the respondent and the appellant would not fit in the proviso to Section 230(1) (d) of Decree 107, because the respondent had no account with the appellant and there is no banker/customer relationship between them. In *Karimu Adisa v. Emmanuel Oyinwola* (2000) 6 S.C. (Pt. II) page 47 at 65, this court held that the unlimited jurisdiction of the High Court of a State may be limited as provided for by the Constitution. The State High Court has no jurisdiction in matters provided under Section 230 (1) (d) of Decree 107 except disputes between an individual customer and his bank in respect of a transaction between the individual customer and the bank. In other words, Section 230(1) (d) of Decree 107 provides a limitation to the general and all embracing jurisdiction of a State High Court. Items listed under Section 230 (1) (d) of Decree 107 can be determined, exclusively only by the Federal High Court. C D E F

Mr. Layi Babatunde further submitted that under Section 73 of the Bills of Exchange Act, Cap 35, Laws of the Federation of Nigeria, 1990, a cheque is defined as “a bill of Exchange” and as such a cheque cannot therefore be a chattel for it to be converted to the use of someone else. G

Since the respondent is not a customer of the appellant’s bank the case of the appellant falls within the exclusive jurisdiction of the Federal High Court.

In his reply to the above submission, learned counsel for the respondent pointed out that the Respondent’s statement of claim stated that the appellant unlawfully and improperly paid over to a person other than the plaintiff/respondent a crossed cheque, marked “A/C Payee only” and “not Negotiable”. And it is the act of paying such cheque to a person other than the plaintiff/respondent that H

brought about the claim of the plaintiff in the first relief. The relief of the plaintiff/respondent is founded in the tort of conversion. This is clear, because the appellant dealt with the respondent's cheque in a manner inconsistent with the respondent's rights whereby the respondent has been deprived of the use and possession of the same.

- B The tort of conversion is committed when the person entitled to the possession of a chattel is permanently deprived of that possession and the chattel is converted to the use of someone else: See Clerk and Lindsell on Torts 15th Edition, page 1020 paragraph 21 -05 and  
C *Ojini v. Ogo Oluwa Motors* (1996) (1 NWLR) (Pt.534) 353.

- Now, it is settled law by a long string of authorities that bankers who collect cheques and pay them to those not entitled to the proceeds in the cheques are guilty of the tort of conversion. See *Kleinwort v. Comptoir National d'Escompte de Paris* (1984) 2 QB 167 and *Fine Art Society v. Union Bank of London* (1886 - 87) 17  
D QBD 705. In *A.L. Underwood Limited v. Bank of Liverpool and Martins* (1924) 1 KB 775 Banks L J., opened his judgment with the following statement:

- "The facts in this case are not seriously in dispute. The real issue between the parties is as to the true inference to be drawn from those facts, and the fate of this appeal depends, in my opinion, upon what the true inference are. The material facts are as follows: (His Lordship then stated the facts as above set out, and proceeded as follows:) One defence relied on by the appellants was that on those  
E facts there was no evidence of any conversion of the cheque. Unless  
F the appellants can justify their action upon one or other of the defences upon which they rely, they appear to me quite clearly to have been guilty of a conversion of all the cheques."

- In *Bute (Marquess) v. Barclays Bank* (1955) 1 QB 202 one McGaw was appointed manager of three farms in Scotland belonging  
G to the plaintiff. His duties included the making of applications to the Department of Agriculture for Scotland for Hill Sheep subsidies in respect of the farms. In January 1949, he forwarded three such applications. Before the subsidies were paid, McGaw left the plaintiff's employment. In September, 1949, the Department, in accordance  
H with their usual practice, sent to McGaw, in satisfaction of the applications three warrants crossed "Not Negotiable" and stated that if the warrants were presented within one month through a bank,



Mr. McGaw should be paid £133. 10s (in one case) in respect of Hill Sheep subsidy, 1949. Mr. McGaw opened a personal account with the warrants. He was later permitted by the Bank to withdraw the proceeds of the warrants. The Bank (Barclays Bank) was sued for conversion and it was held that the plaintiff was entitled to recover the amount payable under the warrants. B

I have no doubt that the respondent, in the case in hand, can sue the appellant in conversion for the proceeds of the cheque which the appellant paid to a stranger who is not the Payee of the cheque. The plaintiff/ respondent's case is simply a tort of conversion and the action filed by the plaintiff/respondent against the appellant can be entertained by any State High Court. See 7Up Bottling Company Limited & Ors. v. Abiola and Sons Bottling Company Limited (2001) 6 S.C. 73 (2001) FWLR (Pt.70) at page 1650. Having failed to have this issue resolved in its favour this appeal has accordingly failed and it is dismissed. C D

The judgment of the Court of Appeal is hereby affirmed. I award N10,000.00 costs in favour of the respondent.

---

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Mohammed, JSC. I agree with him that there is no merit in the appeal. The Plaintiff's action is clearly founded on the tort of conversion audit is not caught by the provisions of Section 230(1) (d) of Decree No.107 of 1993. The appeal therefore fails and it is dismissed with N 10,000.00 costs in favour of the Respondent against the Appellant. The judgments of the lower Courts are affirmed. F G

---

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Mohammed, JSC I agree with it and, for the reasons which he has given, I too dismiss the appeal. I also abide by the order for costs. H

TOBI JSC

I have read the judgment of my learned brother, Mohammed, JSC., and I agree that this appeal should be dismissed.

Section 230 (1) (d) of the 1979 Constitution (Suspension  
B and Modification) Decree No. 107 of 1993 vests exclusive original  
jurisdiction on the Federal High Court “in respect of banking, banks,  
other financial institutions including any action between one bank  
and other, any action by or against the Central Bank of Nigeria  
C arising from banking, foreign exchange, coinage, legal tender, bills  
of exchange, letter of credit, promissory note and other fiscal mea-  
sures”. The provision can only be invoked on banking transactions in  
respect of banks inter se including the Central Bank. By the proviso,  
the subsection will not apply to any dispute between an individual  
customer and a bank in respect of transaction between an individual  
D customer and a bank.

For the purposes of determining the exclusive jurisdiction of  
the Federal High Court in respect of Section 230 (1) (d), the court  
must carefully examine the facts of the case to see whether they justify  
the application of the subsection. In the instant appeal, although the  
E appellant was mandated to pay the cheque valued at N1,000,000.00  
to the respondent, it paid it to a third party who is entirely a stranger  
to the transaction. That does not qualify as a bank transaction in  
which Section 230 (1) (d) applies. It is clearly a tort of conversion  
F which has nothing to do with the exclusive jurisdiction of the Federal  
High Court.

Conversion is a tort which is actionable in the State High  
Court. That is exactly what the plaintiff/respondent did and I cannot  
fault the commencement of the action in that court.

The Court of Appeal was right in dismissing the appeal.  
G I too will dismiss the appeal and I hereby dismiss it. I also award  
N10,000.00 costs in favour of the respondent.

---

EDOZIE JSC

H I had a preview of the judgment just delivered by my learned  
brother, Mohammed, JSC., and I agree with him that the appeal

should be dismissed.

The short facts of the case that gave rise to this appeal are undisputed and have been admirably recounted in the lead judgment. Shortly put, they are that the Appellant paying bank wrongly paid to a stranger the sum of one million naira being the sum or proceeds of a cussed cheque marked “A/C Payee only and not negotiable” drawn on the Appellant Bank in favour of the Respondent company. In banking parlance, the mandate of the drawer of the cheque was that the paying Bank should pay the cheque to the person whose name appears upon it and nobody else; see: Law of Banking 5th Edition p. 50 by Lord Chorley. It is on the foregoing premises that the Respondent sued the Appellant in the Lagos State High Court for the reliefs set out in the lead judgment.

In this court as in the two lower courts, the main issue in controversy is a jurisdictional one. The contention of the Appellant is that the matter falls within the exclusive jurisdiction of the Federal High Court by virtue of Section 230(1)(d) of Decree No. 107 of 1993 which enacts thus:-

“230(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly or a Decree, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil cases and matters arising from :-

(d) Banking, Banks, other financial institutions, including any action between one bank and other, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letter of credit, promissory note and other fiscal measures.

Provided that this paragraph shall not apply to any dispute between an individual customer and the bank.”

It Is not disputed that there was no relationship of banker and customer between the Appellant Bank and the Respondent company to bring the matter under the proviso of Section 230(1)(d) of Decree No. 107 of 1993 so as to confer jurisdiction to a State High Court; see Nigerian Deposit Insurance Corporation v. Federal Mortgage Bank of Nigeria (1997) 2 NWLR (Pt. 496) 735.

Be that as it may, for the exclusive jurisdiction of the Federal High Court to be sustained under the aforesaid section, the civil cause

or matter must arise from “banking, banks, other financial institutions.” In the instant case the Respondent’s grouse was simply that his cheque was dealt with by the Appellant in a manner inconsistent with his right. In my humble view, it can hardly be said that the Respondent’s cause of action falls within the exclusive jurisdiction of the Federal High Court. On the contrary, the action is grounded on the tort of conversion, an action well within the jurisdiction of the State High Court pursuant to Section 236(1) of the 1979 Constitution.

The appeal is groundless and is accordingly dismissed with the consequential orders made in the lead judgment.

D

E

F

G

H