**ADEJUWON**

**v.**

**CO OPERATIVE BANK LIMITED**

COURT OF APPEAL, BENIN DIVISION

FRIDAY, 17TH JANUARY, 1992

CA/B/39/90

**LEX (1992) - CA/B/39/90**

OTHER CITATIONS

2PLR/1992/4 (CA)

(1992) 3 NWLR (Pt. 228) 251

**BEFORE THEIR LORDSHIPS**

OWOLABI KOLAWOLE, J.C.A.

YEK1NT OLAY1WOLA ADIO, J.C.A.

AK1NTOLA OLUFEMI EJIWUNMI, J.C.A.

**BETWEEN**

1. OLOYEDE ADEJUWON

2. OSITU BROTHERS LIMITED, AKURE

AND

COOPERATIVE BANK LIMITED

**ORIGINATING COURT(S)**

HIGH COURT

**REPRESENTATION**

ADEDEJI ADEGOROYE, ESQ. for the Appellants

BOLA AKINGBADE, ESQ. for the Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

BANKING AND FINANCE: Combination of accounts Right of Banker to combine customer’s accounts Limitation thereto.

BANKING AND FINANCE: Combination of accounts Transfer of money from one customer’s account to another’s account Failure to obtain customer’s consent Whether vitiates transfer

**MAIN JUDGEMENT**

EJIWUNMI, J.C.A. (DELIVERING THE LEADING JUDGMENT):

In the court below, in suit No AK/122/87, the plaintiffs commenced this action against the defendant asking for the following reliefs:

(a) Declaration that the purported transfer of the sum of N60,000.00 belonging to the 1st plaintiff from his savings Account No. 21242 with the defendant into the current account of Ositu Brothers (Nig) Ltd, Akure without the knowledge and consent of the 1st plaintiff is ultra vires, null, void and of no effect.

(b) An order for the payment of the sum of N60,000.00 plus interests due thereon from 19/5/82 until judgment is delivered be made payable to the 1st plaintiff by the defendant.

The parties following the order for pleadings, duly filed and exchanged same. At the trial, the 1st plaintiff gave evidence in his behalf and that of the 2nd plaintiff, and called no further witnesses. Similarly the defendant called only one Witness, and at the close of the hearing of evidence, following addresses by learned counsel for the parties the learned trial judge delivered a considered judgment at the end of which the reliefs sought by the plaintiffs were refused.

The facts leading to the judgment on appeal, are fairly .simple and straightforward and may be stated basically as follows: The 1st plaintiff is a businessman and an industrialist, while the 2nd plaintiff is a registered company with the 1st plaintiff as its Managing Director. The defendant is a commercial Bank and has a branch in Akure where the transactions that led to the present action took place. The two plaintiffs are customers of the Bank, and the 1st plaintiff had been such a customer since 1977. It is an admitted fact that on the 18th of May, 1982, the 2nd plaintiff acting through the Managing Director the 1st plaintiff applied to the defendant for a Bank Guarantee to enable the company to execute a contract with the International Breweries Limited Ilesha. And to this end, the 1st plaintiff asked that a sum of N60,000.00 be transferred from the 2nd plaintiff’s current account No. 346 into a Savings Account in the name of the 1st plaintiff. But afterwards it transpired that the defendant refused to approve the guarantee as the Akure Branch of the defendant did not have the requisite power to grant the said guarantee. In any event, the 1st plaintiff claimed that he no longer needed the guarantee of the defendant as the International Breweries paid the mobilisation fee of N 100,000.00 to the 1st plaintiffs to execute the contract between them. That sum was paid to the defendant on the 24th May, 1982, See Exhibit B. Now, as far as the Plaintiffs were concerned the transaction with the defendant remained as agreed. The 1st plaintiff claimed that he did not authorise the defendant to pay any part of the sum of N60,000.00 transferred from the current account of the 2nd plaintiff into the savings account opened in his name. And as far as he is concerned the 2nd plaintiff was always in credit, and was not aware of any debit in it’s accounts with the defendant. In any event, the 1st plaintiff claimed that the defendant never informed them of their accounts as no statement of accounts were forwarded to them by the defendant. The defendant on the other hand while admitting that the 1st plaintiff caused the sum of N 60,000.00 to be transferred into a savings account made out in his name from the current account standing in the name of 2nd plaintiff, it claimed that that sum stood as a guarantee against the loan guarantee sought by the 1st plaintiff. That when the 1st plaintiff wrote to the defendant that the loan was no longer required the defendant caused the said sum of N60,000.00 to be transferred back into the current account standing in the 2nd plaintiff’s name.

As I have said above, the learned trial judge found against the Plaintiffs, hence this appeal. In pursuance thereof, the plaintiffs filed three grounds of appeal. And in accordance with the Rules of this Court, briefs of arguments were filed and exchanged for and on behalf of the parties by their respective counsel. The plaintiffs from hencewith shall be referred to as appellants and the defendant/Respondent.

The appellants in their brief, their learned counsel set down two issues for the determination of this appeal. They read:

(1) That the Lower Court having rejected the respondent’s plea of 1st appellant’s authority to exercise right of lien over the 1st appellant’s deposit which he said he did as per paragraphs 4 and 5 of the Statement of Defence. Is it right to have dismissed the appellant’s case on the basis of Exhibits ‘A’ and ‘C’ which did not in any way affect the appellants’ case unfavorably’? and

(2) Since the respondent had in his Statement of Defence paragraph I admitted the salient facts in issue, have the appellants any further need to prove admitted facts by evidence?

For the respondent. the following are the issues identified in the respondent’ brief for the determination of this appeal:

(1) Whether the defendant/respondent’s admission in paragraph 1 of his Statement of Defence relieved the plaintiff of proving that the transfer of the sum of N60,000.00 from 1st appellant saving account No. 21242 by the Defendant/Respondent is ultra vires, null and void and of no effect.

(2) Whether the plaintiff/appellant discharged the burden of proof placed on them as plaintiff at the Court below as to be entitled to Judgment.

(3) Whether on grounds of public policy, equity and good conscience having regard to the circumstances of this case the appellants are entitled to judgment for recovery of a further sum of N60,000.00.

After a careful perusal of the pleadings, the evidence led at the trial, the judgment of the lower Court, and the grounds of appeal filed against that judgment, it seems to me that the main issue for consideration in this appeal is whether the respondent as Bankers of the appellants is entitled to transfer funds from the account of the 1st appellant to that of the 2nd appellant without obtaining the prior consent of the 1st appellant.

It is common ground from all the facts revealed in this case that the 1st appellant caused the respondent to open a savings account in his name with the transfer of the sum of N60,000.00 from the current account that was in operation by the 2nd appellant with the respondent Bank. It is also common ground that after some time, the respondent caused the said sum of N60,000.00 to be transferred back from the savings account of the 1st appellant into the current account that was being operated by the 2nd appellant.

It is also not disputed that the 1st appellant was the Managing Director of the 2nd appellant and was therefore at least a signatory if not the sole signatory of the cheques of the 2nd appellant. However, be that as it may, the contention of the 1st appellant is that he did not authorise the respondent to transfer the sum of N60,000.00, deposited in his savings account with the respondent into the account of the 2nd appellant. But for the respondent, on the other hand, it is argued that the respondent has every right to effect the transfer in order to bring the account of the 2nd appellant into credit. It is further argued for the respondent that such a transfer is justified because the two accounts are operated by the same person.

Now, though learned counsel for the parties did not cite any decided case to justify their submissions, I will refer to the case of *British and French Bank Ltd v. R.A. Opaleye (1962) 1 All NLR. 26, (1962) 1 SCNLR 60* where upon facts similar to these that have arisen in this case, the learned counsel for the appellant in that case advanced arguments of the kind now urged upon us in this appeal.

The Federal Supreme Court in the British and French Bank case (supra) refused to accept the contention of the appellant that a Bank can transfer funds from two separate accounts of a customer without the consent of a customer, and dismissed the appeal of the Bank. The main facts in the British and French Bank case (supra) that led to the appeal in that case as stated at page 27 of the judgment reads thus:

“Mr Opaleye, the customer, had two accounts at the Bank, one in his own name, and another in the name of Fekemo Brothers, of which he was the sole account holder, and which will be referred to as the firm’s account. The firm’s account was overdrawn to the extent of £500.00, and when a cheque of £350.00 was paid into the private account, the Bank decided to utilise money from the private account in order to reduce the overdraft in the firm’s account, and told the customer that he could not draw on his private account. Then the customer told Bank that the £350.00, less his commission, belonged to a stranger whose property he had sold, but this aspect of it does not seem to make any difference in the case. The point in the case is whether the Bank was entitled to combine the two. accounts without notice and without the consent of the customer. The learned Acting Chief Magistrate thought not, and the learned Chief Justice thought not also. The Bank has argued that was mistake in law”

Bairamian, F.J., who delivered the lead judgment considered the following cases: *Garnett v. M’kewan (1872) 2 L.R. 8 Ex. 10, Greenhalgh (W.P) & Sons v. Union Bank of Manchester (1924) K.B. 253, Biwkingham & Co. v. London & Midland Bank, (1895) 12 T.L.R. 70*, and referred to the statement of law given in volume 2 of Halsbury’s Laws of England (Third Edition) at p.172 in paragraph 322, which read: .

“Combination of different accounts. 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.”

Bairamian F.J., commenting upon this statement of the law then said at page 28 thus:

“The point about the customer having different accounts ‘in his own right’ is probably this, namely, that he has both accounts in his name, and that neither account is a trust account.”

His Lordship then considered in depth *Garnett v. M’Kewan and Greenhaigh’ s case* (supra), before quoting with approval the dictum of Swife J., in the Greenhaigh’s case (supra) by saying at page 29 of His Lordship’s judgment thus:

“Here we are concerned with the question of moving money from one account to another. Swift, J said in the Greenhaigh case, at p. 164:

‘If a banker agrees with his customer to open two or more accounts, he has not, in my opinion, without the assent of the customer, any right to move either assets or liabilities from the one account to the other; the very basis of his agreement with his customer is that the two accounts shall be kept separate, and if the customer pays bills drawn upon him not into his general account, where they will be discounted and he will receive the benefit of being able to draw against them, but into an account in which they will only be used either to pay bills accepted by the bank or bills drawn by the customer which they are specifically to meet, I do not think a banker, any more than any, other individual, can change them from the one account into the other without the customer’s assent. On this point it seems to me that the only question to be decided is, what is the agreement between the banker and the customer? And, if that. agreement is, as I find it to be in this case, that there shall be a general account into which bills are paid as cash and that there shall be an account into which bills shall be paid for some other purpose, bills or their proceeds cannot be moved from one account to the other at the whim of the banker without the consent, express or implied, of the customer.

It turns out to be a question of the agreement between the customer and the bank. Apparently, as one may infer from the opening part of that passage, the agreement to keep the two accounts distinct and separate is inherent in the fact that the banker has agreed with his customer to open two or more accounts.”

His Lordship Bairamian F.J. continuing, illustrated the principle further by saying as follows at p. 30:

“If the bank may merge them without notice, one can see that it may do him great harm. Suppose, for example that the customer has a private account and a business account; that the business account is in funds, but the other is in debit, the customer, not knowing what the bank has done or will do, gives out cheque on his business account to pay trade debts, say for goods bought; if the bank, does not honour them on presentation, it will do him harm. That is illustrated in *Buckingham & Co. v. London & Midland Bank, Ltd* (supra) There the customer had a loan account relating to a secured advance, and a current account; the bank thought that the security was inadequate and transferred the loan account to the current account, with the result that cheques given on the current account were not honoured by the bank. The bank called evidence of managers of banks for the custom entitling a bank to close an account without any obligation to give notice. The learned trial judge, Matthew, J., left these questions to the jury:

(1) Was it the course of dealing between the plaintiff and defendants that plaintiff was to be allowed to draw upon his open account without reference to his loan account?

(2) If yes, then was the plaintiff entitled to a reasonable notice that course of business would be discontinued?

(3) Was such a reasonable notice given?

The jury answered (1) and (2) in the affirmative and (3) in the negative,, and awarded damages. The dominant point in the case is the importance attached to the course of business between the customer and the bank.

In effect, the course of business between them implies a contract by which the relation of banker and customer is regulated. In the case in hand, before the £350.00 was paid into the private account, that account had a credit of under £2.00, and the firms’ account had a debit of50O.00. Such being the case, the Bank could not say that they kept an eye on the private account, but the customer could say that he was being allowed to overdraw on the firm’s account without reference to the state of his private account, and could in my view rightly, argue that the case fell within the exception in the statement of the law given in *Halsbury*, which was quoted earlier in this judgment.”

The appeal of the Bank was dismissed in the British and French Banks case (supra) as their Lordships of the Federal Supreme Court concluded that in that case one account is in the name of Apollo Opaleye, Rafiu Afolabi Bello’, and the other account is in the name of Fekemo Brothers, and said” I think it can be said with justice that very strongly implied an agreement to keep them separate and distinct, 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”.

In the case in hand, and as I have said previously there are in existence two separate accounts in operation by the appellants with the respondent bank. The first account is in the name of the 2nd appellant, Ositu Brothers Limited, Akure, and the other in the name of Oloyede Adejuwon the 1st appellant. Having regard to the decision in the case of *British and French Bank* (supra), to which I have made copious reference it is quite clear that the defendant has no right to have transferred the assets in the savings account standing in the name of Oloyede Adejuwon the 1St appellant to the current account of the 2nd appellant Ositu Brothers Limited, Akure, without the consent of the 1st appellant, as the two accounts are plainly separate accounts and held by different persons.

Before concluding this judgment. I deem it proper to observe that the learned trial judge in the course of her judgment noted that the 1st appellant had due notice of the transfer by reason of the statement of account, Exhibit ‘C’. After a careful perusal of this document, it does not seem to me that the observation of the learned trial judge is borne out by the transactions entered into that account as nowhere was it recorded that a sum of N60,000.00 was transferred into that account from the savings account of the 1st appellant. Be that as it may, it is clear that the 1ST appellant was not notified by the respondent of its intention to transfer the sum of N60,000.00 from the savings account of the 1ST appellant to the current account of the 2nd appellant, nor was his consent obtained before the money was transferred, and for the reasons already give, the respondent ought to have been held liable for its conduct by the lower Court.

In the result, this appeal must succeed, and it is hereby upheld by me. The judgment and orders of the lower Court are hereby set aside. In its place, it is hereby ordered that the 1st appellant shall be paid the sum of N60,000.0O with interest fixed at the rate of 10% from 19/5/82 until the date of this judgment.

As the appellants are entitled to their costs, they are hereby awarded the sum of N500.O0 only to be paid by the respondent.

**KOLAWOLE, J.C.A**: I agree.

**AIMO, J.C.A**:

I have had the advantage of reading; in draft, the judgment just read by my learned brother, Ejiwunmi, J.C.A., and I agree with it. I also abide by the orders made in the lead judgment of my learned brother, including the order for costs.

I, however, want to make some comments by way of emphasis. The facts have been fully set out in the lead judgment. No evidence was produced to show that any of the appellants at the time of opening any of the accounts or at any time thereafter agreed that the respondent could do what the respondent did without the consent of the appellants.

In the absence of any agreement or of circumstances from which such an agreement could reasonably be implied, the respondent had no power t transfer money from the account of one customer to the account of another customer. In the present case, the appellants knew that the sum of N60,000 had been transferred to the savings account and they knew that the guarantee which they thought was needed was no longer necessary. They, however, refrained from requesting that the said sum of N60,00 be retransferred to the current account. The reasonable inference was that they wanted the said sum of N60,000 to remain in the savings account so as to earn interest like any other money deposited in a savings account. Such intention or wish, which was perfectly legitimate and lawful could not be frustrated by the unilateral act of the respondent.

It is for the foregoing reasons, and the fuller reasons given by my learned brother in the lead judgment that I agree with it.

Appeal allowed.