

WHEN UGANDAN BANKS FAIL IN THEIR CORE DUTIES: INSTITUTIONAL LIABILITY AND CLIENT RECOURSE IN THE BANKER-CUSTOMER RELATIONSHIP

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The relationship between a bank and its customer is fundamentally one of contract, imposing mutual rights and duties. However, under Ugandan law, this relationship is super-added with a profound duty of care and skill.

Recent landmark decisions by the High Court and the Supreme Court emphasize that when banks fail in their most fundamental obligations, they will be held liable for negligence and breach of contract, often resulting in substantial damages.

Drawing lessons from prominent Ugandan cases, this article explores the scenarios where banks have been found liable, reinforces the critical need for institutional compliance, and outlines the remedies available to aggrieved clients.



1. THE CORE DUTIES AND THE PRICE OF BREACH

A bank's primary duty is to safeguard the customer's money and honor their payment mandate, provided the account has sufficient funds. Failure in these areas constitutes a fundamental breach, leading to liability for the bank. These breaches generally fall into key global categories of operational failures and security lapses.

1.1. OPERATIONAL ERRORS AND BREACH OF MANDATE

These claims focus on the bank's core function of handling deposits and honoring instructions correctly, often resulting in damages for loss of reputation or access to funds.

01 Wrongful Dishonour and Account Closure: A bank commits a serious breach by refusing to pay a valid check or transaction instruction despite the customer having sufficient funds (wrongful dishonour), or by wrongfully closing or suspending an account. This action significantly damages the customer's credit and reputation, especially for commercial entities, a principle established in cases such as *Kayanja Eriya v. Stanbic Bank (U) Ltd.*

02 Unauthorized Debits: The bank is under a strict duty to justify every debit made to a customer's account. This includes proper handling of transactions and avoiding improper debits or overcharging fees. In *Excellent Assorted Manufacturers Ltd v DFCU Bank Limited*, the court ruled against the bank for making unauthorized and irregular debits, underscoring the necessity for clear contractual adherence and meticulous record-keeping.

03 Operational Negligence and Access Restriction: Arbitrarily restricting a customer's access to their legally owned funds without a clear statutory mandate (Failure to Release Funds) is considered a punishable breach. This was clearly demonstrated in *Kinyera Rodney Jordan v. Bank of Africa Uganda Limited*, where the bank was found negligent for unilaterally revoking the customer's ATM/VISA card. Crucially, the court's finding hinged on the bank's failure to communicate the card revocation, thereby denying the customer the ability to make alternative arrangements. The court awarded General Damages for the distress caused by the unlawful restriction.



1.2. SECURITY FAILURES AND UNAUTHORIZED TRANSACTIONS

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01 Systemic failure to detect and prevent Fraud: Banks must implement robust security and fraud detection systems that go beyond mere compliance. Failure to implement adequate digital security measures (like multi-factor authentication) or processing suspicious payments constitutes a breach. In *Abacus Parenteral Drugs Ltd v. Stanbic Bank (U) Ltd*, the bank was held 20% liable for negligence for processing payments with mismatched beneficiary details, which indicated a systemic failure in their security and due diligence protocols.

02 Employee Misconduct and Supervision: Banks can be held vicariously liable for the negligent actions of their staff. This covers losses due to embezzlement, theft, or poor supervision that allowed an employee to engage in internal fraud, as well as the unauthorized or careless disclosure of private account information (Breach of Confidentiality).

1.3. PROFESSIONAL NEGLIGENCE (MISADVICE AND FIDUCIARY DUTY)

In scenarios where the bank acts as an advisor or trustee, a higher standard of care often applies.

Professional negligence claims involve providing false or misleading information regarding loans or financial products, or selling a product that is clearly unsuitable for the customer's financial position and risk tolerance. While less common in public domain Ugandan judgments, this duty is implied under common law principles where a bank is positioned as a trusted financial advisor.



2. HOW BANKS CAN ESCAPE OR MITIGATE LIABILITY

While the duty of care is high, the courts have provided banks with clear mechanisms to defend against claims, particularly when the customer's own conduct contributes to the loss.

2.1. PROOF OF CUSTOMER NEGLIGENCE (THE "BEST PLACED" RULE)

A bank can often escape liability if it successfully proves that the loss occurred due to the customer's negligence, establishing that the customer was "best placed to prevent the fraudulent activity." The ruling in *Aida Atiku v. Centenary Rural Development Bank Limited* is pivotal here: the loss was borne by the customer because they had negligently allowed a third-party access to their account details (e.g., by sharing a PIN or failing to secure a device), thereby vitiating the bank's liability.

2.2. ADHERENCE TO CONTRACTUAL TERMS

If the bank can demonstrate that its action (such as freezing an account or limiting transactions) was expressly permitted by a clear and reasonable term in the contract signed by the customer, it can often avoid a finding of breach. The core duty remains executing the customer's clear instructions, provided they comply with the underlying contract.

2.3. STATUTORY AND REGULATORY COMPLIANCE

Banks must act under lawful directives. Where a bank can show it acted under a lawful order from a statutory body such as the Financial Intelligence Authority (FIA) or the Bank of Uganda to freeze an account due to suspected criminal activity (e.g., money laundering), this can serve as a robust defense against claims of wrongful suspension or dishonor of mandate.



3. REMEDIES AND RECOURSE FOR THE AGGRIEVED CLIENT

A client who believes their bank has breached its contractual duty or acted negligently has several avenues for recourse:

INTERNAL COMPLAINT RESOLUTION

The most expedient route is usually the bank's internal complaints procedure. A formal, written complaint detailing the breach, the resulting quantified losses (special damages), and the distress suffered (general damages) must be submitted to the bank management. This provides the bank with a formal opportunity to investigate and rectify the error before escalating the matter.

REPORTING TO THE REGULATOR

For unresolved disputes or concerns about systemic non-compliance, a client can report the bank to the financial regulator, the Bank of Uganda. While the Bank of Uganda cannot award damages like a court, it can compel the bank to take corrective action, reverse irregular charges, or face regulatory penalties.

In conclusion, Ugandan jurisprudence clearly reinforces the principle that while customers must be diligent, banks are held to stringent standards of care and skill. The decisions from the courts ensure that the stability and trustworthiness of the financial system remain paramount, with legal recourse available to hold institutions accountable for their failures.

FORMAL LEGAL ACTION (LITIGATION)

If the internal process fails, the client may initiate a civil suit, seeking specific remedies.

- **Special Damages:** This involves the recovery of specific, quantifiable monetary losses that can be precisely proven (e.g., unauthorized debits, transaction fees, or provable loss of income).
- **General Damages:** This provides compensation for intangible losses, such as distress, inconvenience, reputational damage, and the loss of the right to access and use one's money. The amount for General Damages is determined solely by the court based on the severity of the bank's negligence.
- **Declaratory Orders:** The client can seek a court declaration confirming that the bank's specific action (e.g., card deactivation or charging of a fee) was illegal or a breach of contract.
- **Interest:** The successful litigant is often awarded interest on the damages.

4. PROACTIVE RISK MITIGATION: STRENGTHENING THE BANK'S DEFENSE

To effectively counter the liability arising from negligence claims, banks must adopt a holistic Enterprise Risk Management (ERM) approach focused on prevention, detection, and culture.

4.1. HUMAN CAPITAL AND CULTURE (ADDRESSING EMPLOYEE NEGLIGENCE)

Employee error and misconduct remain significant sources of operational risk. Mitigation strategies focus on training, accountability, and ethical governance:

- **Mandatory Risk Management Training:** This goes beyond initial onboarding. Regular, mandatory training must be provided to all staff, from tellers to senior management, on specific risks like fraud detection,

money laundering, and data privacy. Crucially, this training must cover the banker's fundamental duties of care and confidentiality, reinforcing the legal weight of the customer relationship.

- **Know Your Employee (KYE) and Rotation:** Implementing rigorous background checks and continuous monitoring (KYE) for staff, particularly those in sensitive roles. Regular, scheduled staff rotation is essential to prevent single individuals from having prolonged, unchallenged access to critical processes, reducing the risk of internal fraud and complacency.
- **Strong Governance and "Tone at the Top":** The Board and senior management must establish and consistently communicate a zero-tolerance policy toward fraud and negligence. This "tone at the top" fosters a risk-aware culture where employees are incentivized to report issues without fear of reprisal.

4.2. SYSTEMS, PROCESSES, AND TECHNOLOGY (ADDRESSING OPERATIONAL AND SECURITY FAILURES)

Modern technology, while a source of risk, is the most powerful tool for mitigation.

- **Automation and Segregation of Duties:** Automating repetitive, high-risk tasks (like compliance checks and transaction monitoring) minimizes the margin for human error. Where manual intervention is necessary, the principle of dual controls and strict segregation of duties must be enforced, meaning no single employee controls an end-to-end process that could result in unmitigated loss.
- **Enhanced Fraud Detection Systems:** Banks must invest in sophisticated, real-time transaction monitoring and predictive analytics tools that can flag suspicious activity, velocity limits, and mismatched beneficiary data, thereby mitigating the risk seen in cases like Abacus Parenteral Drugs Ltd.
- **Digital Security Frameworks:** Implementing and continuously updating robust digital security measures, including multi-factor authentication (MFA) for internal systems and customer access, strong encryption, and regular penetration testing to identify systemic vulnerabilities before they are exploited.

4.3. DOCUMENTATION AND INCIDENT RESPONSE

Maintaining impeccable records and having a clear recovery plan strengthens a bank's defensive position in litigation.

- **Meticulous Process Documentation:** All internal procedures (e.g., account opening, debit authorization, card issuance) must be fully documented, regularly audited, and strictly adhered to. This allows the bank to demonstrate in court that it followed established protocols, which is a key element in defending a negligence claim.
- **Proactive and Timely Customer Communication:** To avoid the specific finding in the Kinyera Jordan case, the bank must establish and enforce mandatory protocols for immediate and documented communication with customers regarding any service interruption, account restriction, or change in access (e.g., card revocation or service downtime). Failure to notify is failure in the duty of care.
- **Effective Incident Response:** The bank must have a tested Business Continuity Plan and an Incident Response Team capable of immediate, systematic reaction to major events (e.g., a system failure or a large-scale fraud attempt). A swift and effective response minimizes total financial loss and reputational damage.

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