

THE SUPREME COURT OF NIGERIA

FEDERAL MORTGAGE BANK OF NIGERIA

V.

**NIGERIA DEPOSIT INSURANCE CORPORATION
(Liquidator of United Commercial Bank Limited)**

SC.66/1999

BEFORE THEIR LORDSHIPS

Salihu Modibbo Alfa Belgore, J.S.C. (Presided)

Abubakar Bashir Wali, J.S.C.

Michael Ekundayo Ogundare J.S.C. (Read the Lead Judgment)

Emmanuel Obioma Ogwuegbu J.S.C.

Uthman Mohammed, J.S.C.

Sylvester Umaru Onu, J.S.C.

Anthony Ikechukwu Iguh, J.S.C.

FACTS

The appellant placed the sum of ₦5,000,000.00 (Five Million Naira) on a short-term deposit with the United Commercial Bank on 08/12/92 at an interest of 40% per annum. There were roll-overs and the deposit eventually matured on 06/03/94. The United Commercial Bank defaulted in paying back the said deposit and interest and the appellant sued the bank claiming as follows:

- (a) The sum of ₦5,000,000.00 (Five Million Naira) being the principal amount paid on the short-term deposit/placement made on the effective date of 08/12/92 by the Plaintiff with and in favor of the Defendant and which said sum finally matured on 06/03/94 after four roll-overs which the Defendants had refused and failed to repay despite demands by the Plaintiff;
- (b) Interest on the above mentioned sum at the agreed rate of 40% per annum from 06/12/93 to 06/03/94 being the effective and maturity dates respectively on the 4th roll-over;

(c) Interest on the said sum at agreed rate of 40% per annum from 06/03/94 (being the agreed maturity date of the 4th roll-over) until judgment is given and thereafter at the rate of 15% per annum until full repayment

The United Commercial Bank did not enter appearance or file any defence. Judgment was therefore entered in favor of the appellant on 12/07/94. The United Commercial Bank did not appeal against the judgment. The appellant took steps and levied execution and attached the goods and chattels of the United Commercial Bank on 05/09/94. The goods and chattels were attached down within the judgment-debtor's premises by the deputy sheriff.

On the 09/09/94, the Central Bank of Nigeria revoked the banking license of United Commercial Bank and appointed the respondent herein to liquidate the bank. Acting on the appointment, the respondent proceeded to remove the goods and chattels of the United Commercial Bank which had been attached and put same in its possession and control which act prevented the deputy sheriff from going ahead to effect a sale of same to realize the judgment. As a result of this development, the appellant on 15/09/94 applied to the High Court by motion praying the court to compel the respondent to produce the attached goods and chattels of United Commercial Bank and to direct the deputy sheriff to effect sale of same. This motion was argued on 23/09/94 and ruling was reserved to 14/10/94. On 05/10/94, the respondent herein applied by motion on notice to the court for an order to arrest the ruling fixed for 14/10/94 and to stay proceedings pending the outcome of the appeal upon the ground that the High Court had no jurisdiction to adjudicate on the matter. The application was predicated on an appeal filed by the respondent on 04/10/94 against the judgment of 12/07/94. However, that appeal was not pursued by the respondent.

The respondent's motion was argued on 14/10/94 and dismissed. Thereupon, the High Court delivered its ruling on the appellant's motion of 15/10/94 and granted the prayers sought therein. Dissatisfied, the respondent appealed against the ruling to the Court of Appeal. The Court of Appeal, sitting as a full court, allowed the respondent's appeal. It set aside the judgment of 12/07/94 and the ruling of 14/10/94 on the ground that the High Court had no

jurisdiction. The Appellant was dissatisfied and it appealed to the Supreme Court. The Respondent was also dissatisfied with some parts of the judgment and it cross-appealed.

The Supreme Court unanimously Dismissed the Appeal and the Cross Appeal and HELD:

On the Definition of the Word “Bank”

The word “bank” is not defined in the Constitution or in the Interpretation Act. However, in its ordinary grammatical meaning, it means an organization or place that provides financial service.

On the Status of the Federal Mortgage Bank as a Bank

Having regard to the provisions of the law setting it up, particularly sections 5(1)(a) and 6(1)(a) & (b) of the Federal Mortgage Bank Decree No. 82 of 1993, the Federal Mortgage Bank qualifies as a bank.

On Competence of Court to Try Action Between one Bank and Another over a Debt

The proviso to section 230(1)(d) of Decree No. 107 of 1993 would also apply where in a customer/banker relationship the customer is a bank. Consequently, in such a situation, the exclusive jurisdiction of the Federal High Court would be exempted.

On the Scope of Section 417 of the Companies and Allied Matters Act, 1990

What is prohibited by sections 417 of the Companies and Allied Matters Act, 1990 where a provisional liquidator is appointed for a company except with the leave of the court, is an action or proceeding pending or instituted in the Federal High Court. In this case, since the

appellant's motion at the High Court cannot be described as an action or proceeded with or commenced against the respondent, the Court of Appeal was wrong when it held that leave was required before the appellant could proceed with its motion against the respondent in the High Court of Lagos State.

On Whether Execution can be Carried out Against a Company in Liquidation

Where execution and attachment of a company's goods and chattels have been carried out, but before the lapse of the time permitted by law for the sale thereof and before the sale, a liquidator is appointed for the company, the execution will be deemed as having not been completed and the judgment creditor cannot retain the benefits of the execution, unless the rights conferred on the company/debtor are set aside by the Federal High Court in favor of the Plaintiff, and the goods and chattels must be returned to the company by the deputy sheriff.