



The Legal Luminary

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From the Editor!

Welcome to yet another edition of the pioneer e-newsletter of the NDIC.

In this edition we report on the Judgment of the Court of Appeal in the case of Savannah Bank Plc vs CBN, NDIC and the Inspector General of Police and examine its implications for the Corporation and the Banking Sector on the whole.

Please be sure to exercise your civic duty by voting for your candidate of choice. Remember if you do not vote then you have no moral right to complain about your leaders.

Chioma N. Momah

Q & A Is Mens Rea relevant in the proof of attempted murder?

Actus reus and *mens rea* are terms developed under the Received English Law. They were derived from the principle enunciated by Edward Coke that is - *actus non facit reum nisi mens sit rea* which denotes; "an act does not make a person guilty unless (their) mind is also guilty"; therefore, the general test of guilt is one which requires proof of fault in both behavior and mind.

The Courts will pay meticulous attention to counts of attempted murder and justifiably will be highly critical of any such count unless there is clear evidence of an intention to kill. It should be borne in mind that the actions of the Defendant must be more than preparatory and although words and threats may provide prima facie evidence of an intention to kill, proof of an intention to do something or cause grievous bodily harm is sufficient mens rea for murder or attempted murder.

The relevance of mens rea can be seen in the famous Nigerian case of Major Hamza Al-Mustapha and 3 others who stood trial for attempted murder of the Guardian publisher Mr. Alex Ibru and former Delta State Director of Sports Mr. Seigha Porbeni. Delivering his verdict on the no-case submission, Justice Olokoba declared that the evidence on all counts preferred against the accused persons were baseless because the Prosecution failed to make a prima facie case against the Defendants as to the conspiracy to kill Ibru and Porbeni as alleged. The Prosecution was not able to show that the Defendant actually had the intention to kill Mr. Alex Ibru.

U.C. Ikegbule, Counsel to the 3rd accused person had argued that where an essential element has not been proved his client had no case to answer. The accused persons were subsequently discharged and acquitted.

Inside this issue:

From the Editor:
Chioma Momah

Q & A:
Aisha Isa Ahmed

Social Diary:
Amina P. Kwon

Impact of the Court of
Appeal Judgement in
Savannah bank vs
CBN,NDIC &IGP
By Sam G. Waklek &
Maryam Buba

Reply Brief

“Quotes”

“There is no art to find the
minds construction on the
face”
William Shakespeare

News Update

Nigeria elects President Goodluck Jonathan as President in an election considered to be the most transparent, freest and fairest election ever conducted in the country. However, riots and carnages in some cities in Northern Nigeria results in imposition of dusk to dawn curfew in those areas.

Governorship and State House of Assembly Elections to hold after the Easter break

IMPACT OF THE COURT OF APPEAL JUDGEMENT IN SAVANNAH BANK OF NIGERIA PLC VS. CBN, NDIC & IGP

The Court of Appeal Judgement in the above suit delivered on 5th of February 2009 raised more questions than provided solutions to contemporary legal challenges in the banking industry. This paper examines in brief the impact of the judgement on the Regulators of Banks, the legal framework for failed bank resolution, the depositors of Savannah Bank of Nigeria PLC (SBN) and other stakeholders in the banking sector.

In summary, the facts of the case are that, the Central Bank Nigeria (CBN) on the 15th of February, 2002 revoked the banking licence of SBN on grounds of insufficiency of assets to meet its liabilities and failure to comply with the obligations imposed on it by the CBN. Aggrieved by the action, SBN challenged revocation of its licence at the Federal High Court, Abuja where it sought a declaration, inter alia, that the CBN was not entitled to revoke or suspend its banking licence in any manner whatsoever as same was done in bad faith. The trial court in the judgement delivered on 20th October 2006 held that the said revocation was lawful and valid and in line with the provisions of the Banks and Other Financial Institutions Act 1991 (BOFIA).

Dissatisfied with the decision of the Federal High Court, SBN appealed against the decision citing principally among other things, that the trial judge erred in law when he held that Section 53(1) BOFIA was not unconstitutional and that error occasioned a miscarriage of justice to the bank and that the Central Bank of Nigeria acted in bad faith in revoking its banking licence. The Court of Appeal allowed the appeal on the ground that the CBN acted in bad faith in the revocation of SBN banking licence.

The judgement of the Court of Appeal in this case has far reaching implications for bank Regulators, the legal framework for failed bank resolution and depositors and other stakeholders in the banking industry.

From the legal or regulatory point of view, the judgement raises the question of to what extent can the courts curb the statutory powers conferred on the Governor of the CBN to revoke banking licences. Section 12 of BOFIA gives

unfettered powers to the Governor of the Central Bank of Nigeria to revoke banking licences under stipulated conditions. Once those conditions are met, can the Governor exercise his power to revoke? There was no question in the Judgement that SBN qualified for revocation as the court did not dispute the Regulators findings that the bank was insolvent; one of the conditions stipulated. The issue was that the Governor nonetheless, acted in bad faith. It appears from the judgement that even where such conditions have been met the Governor must exercise his powers in good faith.

With regards to the legal framework for failed bank resolution, the judgement of the court serves as an additional structure in the resolution of failed banks. Thus, the issue of acting in good faith when exercising the power of the CBN to revoke failed bank licences must be taken into consideration when implementing any failed bank resolution.

For the depositors and stakeholders in the banking industry, it is to be noted that since revocation of SBN's banking licence in 2002, the depositors have not been paid any insured deposit by the NDIC. This is attributable to the fact that the matter dragged on in court from 2002 till 2009 when SBN's licence was restored. This has caused untold hardship to the depositors of the bank who have become the victims in this matter. Since restoration of its license, SBN has not been able to resume business. Thus, the sorry plight of the depositors continue exacerbated by a judgement that did not take into consideration the fiduciary nature of banking business as well as the interest of thousands of depositors whose funds were lost in the imbroglio. The implication of this development is that it erodes public confidence in the Governments ability to protect depositors and guarantee payment in the event of suspension of bank deposit payments thereby endangering public confidence in the banking sector.

It therefore becomes necessary to at this juncture, ask the question whether justice has been served in the above case by virtue of the Appeal Court Judgement restoring SBNs banking licence. In this case the plight of thousands of

depositors who have been denied access to their funds for 9 (nine) years due to no fault of theirs certainly does not speak well for justice.

In conclusion we opine that while the Regulatory authorities should be more circumspect in exercising the power to revoke banking licences by ensuring good faith thereto, the courts should be hesitant in entering into the arena of bank supervisory functions and consider the public policy implications and socio-economic impact of their judgements.

SOCIAL DIARY

Embugushiki Joseph celebrated his birthday on the 1st of April, 2011.

Ruth Damak also celebrated her birthday on the 6th of April, 2011. The department is wishing them both many fruitful years. Amina Musa in Lagos Office tied the knot on the 12th of March 2011 we wish her marital bliss. Panshak Haggai celebrated his 1st year wedding anniversary on the 3rd of April, 2011. Congratulations!

We commiserate with our colleagues, Ramatu Abdullahi over the loss of her step mother, and Mr. Godwin Egwurube of the Finance Department who lost his lovely wife and child in a car accident in March, 2011. We commiserate with them and pray that their souls rest in peace with the Lord.

REPLY BRIEF

Interesting and informative. Please keep it up.

Liana A. Zik (Legal Department)
Legal Department