

# **NIGERIAN BANKING LAW REPORTS**

[1933 – 1989]

**COMPREHENSIVE**

**INDEX**

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# **THE NIGERIAN BANKING SYSTEM**

## **1. The Development of Banking in Nigeria**

The historical development of the financial system in Nigeria dates back to 1892 when modern banking business commenced and a formal and institutional channel of saving mobilization was introduced into the economy with the establishment of the African Banking Corporation (ABC). The operation of ABC was later taken over in 1894 by the British Bank of West Africa (which later became Standard Bank) and subsequently, First Bank of Nigeria. Owing to the colonial heritage, the pioneer commercial banks in Nigeria were of foreign origin and their operations favoured the finance of foreign trade and commerce.

Thereafter, several other foreign and a host of indigenous banks were established. The establishment of indigenous banks was initially propelled largely by nationalistic consciousness rather than the existence of relevant resources, including basic skilled manpower, for running such institutions. Consequently, most of the early indigenous banks collapsed in rapid succession, Banks that failed during the early stage of the evolution of the Nigerian financial system were largely those with problems of inadequate capital, poor management, and fraudulent practices, among other factors.

An important feature of the Nigerian financial system, especially before the establishment of the Central Bank of Nigeria (CBN), was the small scope of operations of participating foreign institutions and the complete absence of any form of institutional regulatory framework which would provide the necessary guide for both the operations and orderly development of the financial system during the pre-CBN era.

The situation however changed from 1958 when the CBN was established. Since then series of efforts had been made by the CBN and other relevant authorities to promote the growth and development of the Nigerian financial system. For example, the need to develop the system and create an avenue for investment of short term funds informed the issue by the CBN in 1960 of Treasury Bills as a supplement to Commercial Papers that were already in the market. Other money market instruments after the establishment of the CBN but prior to the introduction of the Structural Adjustment Programme (SAP) in 1986 included Treasury Certificates in 1968, Certificates of Deposit in 1975 and the Bankers' Unit Fund as well as Stabilization Securities in 1976. The establishment of the CBN also aided the development of the capital market. This was achieved by ensuring the emergence of the securities markets and instruments (primary and secondary) and by promoting the establishment of development banks.

Following the adoption of the SAP in 1986, and the subsequent deregulation of the financial system, the banking system witnessed radical changes. Apart from the introduction of measures and instruments to deregulate the financial services industry, the techniques and the range of products offered by the industry, changed significantly. The major objective of the deregulation was to enhance economic efficiency and effective resource allocation through service-driven competition and improvement in quality and spread of financial services delivery.

On July 6th 2004, the Governor of CBN announced a banking reform programme aimed at strengthening and consolidating the banking system. The reform is expected to address the safety of depositors' funds, enable the banking sector play an active developmental role in the economy and transform Nigerian banks into competitive players in the African and Global financial system.

## **2. The Nigeria Deposit Insurance Corporation**

One of the key measures introduced during the era of deregulation of the banking sector was the establishment of the Nigeria Deposit Insurance Corporation (NDIC), with the promulgation of Decree No. 22 of 1988 now Cap. N102 Laws of the Federation 2004. The NDIC was established to insure all the deposit liabilities of licensed banks, promote banking stability and a sound financial system. Although the NDIC enabling Act was promulgated in 1988, the Corporation only commenced operations in March 1989. The Nigerian Deposit Insurance scheme was introduced to provide a further layer of protection to depositors and complement the role of prudent bank management as well as the CBN's supervisory activities in ensuring a safe and sound banking system. It was also considered as an additional framework to serve as a vehicle for addressing some of the challenges that followed the deregulation of the financial system under the SAP. Prior to the establishment of the NDIC, the Government had played the role of what in industry parlance is referred to as an implicit insurer, by bailing out troubled banks in its bid to protect depositors. With deregulation, an explicit Deposit Insurance Scheme (DIS) became imperative. The establishment of NDIC was also informed by the change in government bank support policy, the bitter experiences of prior bank failures in Nigeria and the lessons of other countries with bank deposit insurance schemes. The scheme aims at increasing the competitive efficiency of the banking system as well as reducing the system's vulnerability to destructive runs, panic-induced shocks by reinforcing depositors' confidence in the nation's financial system.

The mission of the Corporation is to protect depositors through effective supervision of insured institutions, provision of financial and technical assistance to eligible insured institutions, prompt payment of guaranteed sums and the orderly resolution of failed financial institutions.

The Corporation currently acts as the Liquidator of thirty-four (34) banks out of a total of thirty six (36) banks whose operating licenses were revoked by the Governor of the CBN. All depositors of the banks in liquidation who have come forward to file their claims have been paid their insured deposits while liquidation dividends making up 100% of total uninsured deposits have been declared and paid to depositors of ten (10) banks in Liquidation.

In September 1997, the Corporation commenced publication of the Failed Banks Tribunal Law Reports (FBTLR) which contained only reported decisions of the Tribunal established under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 1994 and decisions of the Special Appeal Tribunal established under the Recovery of Public Property (Special Military Tribunal) Decree No 3 of 1984. In 1999, with the return to civil rule, the Corporation restructured the publication into a compendium of decisions of all banking-related matters given by our superior courts of record from 1933 to date. This gave rise to the birth of the Nigerian Banking Law Reports (NBLR).

**Nigeria Deposit Insurance Corporation**

November, 2005

## FOREWORD

The doctrine of judicial precedent as a unique feature of the common law relies heavily on availability of law reports. In Nigeria, law reporting has played very important role in the development of the body of law. Over the years, law reporting has become specialized with Law Reports focusing on specific areas of the law such as Criminal Law, Constitutional Law, Banking Law and so on. The Law of Banking indeed occupies a position of pre-eminence in the economic development of a country and this underscores the importance of a law report on the subject.

The efforts of the *Nigeria Deposit Insurance Corporation* in the development of the Law of Banking through the publication of a banking law report started with the launching of the *Failed Banks Tribunal Law Reports* (FBTLR) in 1997. This law report was however short-lived following the advent of civil rule in 1999. It is in cognizance of this that when the Corporation decided to expand the scope of the publication to include the decisions of the Supreme Court of Nigeria and the Court of Appeal on banking matters and renamed the law report as *Nigerian Banking Law Reports* (NBLR); I did not hesitate in giving my consent.

The *Nigeria Banking Law Reports* (NBLR) is a compendium of case law on Nigerian banking from 1933 to date. The first batch of the compendium contains cases decided between 1933 and 2002 which I understand would soon be updated to 2004. Thereafter, the reports would be published quarterly. This initiative, I believe will prove invaluable to members of the Bench, the Bar and the academia who cannot but conduct research on the Nigerian banking case law.

I congratulate the Management and Staff of the *Nigeria Deposit Insurance Corporation* for this worthy effort. It is my pleasure to recommend this law reports to all and sundry.

**Muhammadu Lawal Uwais, GCON**  
The Chief Justice of Nigeria,  
Chief Justice's Chambers,  
Supreme Court of Nigeria, Abuja



## **PREFACE TO THE NIGERIAN BANKING LAW REPORTS**

An Explicit Deposit Insurance Scheme (DIS) was introduced in Nigeria in 1988 with the establishment of the Nigeria Deposit Insurance Corporation (NDIC). The core functions of the NDIC are the insurance of bank deposits, supervision of insured banks, resolution of distress in the banking system and the liquidation of failed banks whose licences have been revoked by the Central Bank of Nigeria.

In 1994, when the Corporation was appointed as the Liquidator to carry out the liquidation of some failed banks, it was observed that there were hardly any records relating to the winding up of banks that had failed in the past. There was also no sufficient data on the causes of the past bank failures. The Corporation therefore, took the initiative, in September, 1997 to report and publish decisions of the Failed Banks Tribunal that was established under the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994. This effort culminated into the publication of the Failed Banks Tribunal Law Reports (FBTLR). Thus, the Corporation was motivated by the need to place on permanent record the lessons from the new wave of bank failures/distress, particularly with regard to the causes of such failures/ distress and efforts made to resolve such failures.

Hitherto, the absence of proper documentation relating to the bank failures experienced in the early fifties had made it exceedingly difficult for practitioners and researchers to make references to such failures. The decision to publish the FBTLR was to ensure that the mistakes of the past were not repeated through elaborate documentation of the recent failures, the essence of which were captured in the decisions of the Failed Banks' Tribunal.

However, with the return to democratic rule in May, 1999, the Failed Banks Decree No. 18 of 1994 which established the Tribunal was consequently amended by the Tribunals (Certain Consequential Amendment, etc) Decree No. 62 of 1999, which abrogated the Tribunal. The civil and criminal jurisdictions of the Tribunal were accordingly transferred to the Federal High Court. Consequently, the title of the Publication was changed to **Nigerian Banking Law Reports**.

Furthermore, in response to the new democratic dispensation, the Corporation decided to expand the scope of the publication into a compendium containing decisions of the Supreme Court, Court of Appeal as well as Federal and State High Courts on banking matters from 1933 to date in order to provide a comprehensive database for all banking related cases decided by the superior courts of record. Also, in order not to miss the tremendous achievements recorded by the Failed Banks Tribunals during their relatively short tenure, their decisions have been included in the compendium thereby making NBLR very comprehensive. In addition, there is an index for the compendium to ease research and to aid quick referencing. The printers have been able to deliver the initial volumes of the compendium up to 2002, which would soon be updated to 2004 and thereafter, it would be published on quarterly basis.

It is therefore, my hope that Legal Practitioners, my Lords the Honourable Justices and Judges, distinguished scholars and Law Professors, fellow Bankers, students and the general public would find this initiative helpful in the course of their activities.

I would like to express my profound appreciation to the Editorial board of the Nigeria Banking Law Reports and the Legal Department of the Corporation that co-ordinated the project. They left no stone unturned in bringing the Corporation's dream to reality. Their commitment in ensuring the completion of the project is highly commendable.

Management will on its part do everything possible to ensure that publication of the NBLR is sustained.

**G. A. Ogunleye, OFR**  
Managing Director/Chief Executive  
November, 2005.



## **ABBREVIATIONS**

A.C.	Appeal Cases
All E.R.	All England Law Reports
A.L.R. (Com)	African Law Reports, Commercial Series
All FWLR	All Federation Weekly Law Reports
All NLR	All Nigerian Law Reports
B. and C.	Barnewall and Cresswell's Reports
Bing.	Bingham
Burr	Burrow's Reports
C. and P.	Carrington and Payne's Reports
Camp	Campbell's Reports 1808-1816
C.B. (N.S.)	Common Bench Reports NS 1856-1865
C.B.N.S.	Common Bench, New Series
Ch./Ch.D.	Law Reports, Chancery Division
C.L.R.	Criminal Law Review
Cr. App. R.	Criminal Appeal Reports
Cr. App.	Criminal Appeal
Cr. Rev	Criminal Revision
Den	Denison's Crown Cases 1844-1852
E. and B.	Ellis and Blackburn's QB Reports 1852-1858
E.A.C.A.	Court of Appeal for Eastern Africa
E.A.L.R.	East Africa Law Reports

## Abbreviations

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E.R.	English Reports
F. and F.	Foster and Finlason's Reports
FBTLR	Failed Banks Tribunal Law Reports
FWLR	Federation Weekly Law Reports
FHCLR	Federal High Court Law Reports
H. and C.	Hurlston and Coltman's Exchange Reports 1862-1866
H.L. Cas	Clark's Reports, House of Lords
I.R.L.R.	Industrial Relations Law Reports
L.J. Ch.	Law Journal Chancery
L.J. K.B.	Law Journal, King's Bench 1831-1946
L.J.C.P.	Law Journal Reports, Common Pleas
Lloyd's Rep	Lloyd's Law Reports
L.R. Exch	Law Reports Exchequer
L.R. H.L.	Law Reports House of Lords
L.R. K.B.	Law Reports, King's Bench Division
L.R. Q.B.	Law Reports Queens Bench
L.R. H.L.	Law Reports, House of Lords
L.R. P.C.	Law Reports, Privy Council
L.T.	Law Times Reports
M. and S.	Maule and Selwyn's King's Bench Reports
M. and W.	Meeson and Welsby's Exchequer Reports 1836-1847
Moo P.C.C.	Moore's Privy Council Cases
Mood and R.	Moody and Robinson's Reports

Abbreviations

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N.B.L.R.	Nigerian Banking Law Reports
N.C.L.R.	Nigerian Commercial Law Reports
N.M.L.R.	Nigerian Monthly Law Reports
N.N.L.R.	Northern Nigerian Law Reports
N.R.L.R.	Northern Region of Nigeria Law Reports
N.W.L.R.	Nigerian Weekly Law Reports
Y.	President
P.	Probate
P./P.D.	Law Reports, Probate and Admiralty Division
Q.B. (D.)	Queen's Bench Division
Russ	Russell on Crime
S.A.	South African Reports
Salk	Salkeld's King's Bench Reports
S.C.C.R.	Scottish Criminal Case Reports
S.J.	Solicitors' Journal
S.R. (N.S.W.)	State Reports, New South Wales
T.L.R.	Times Law Reports
T.R.	Term Reports (Durnford and East)
U.S.	United States Reports
V.R.	Victorian Reports
W.A.C.A.	West African Court of Appeal Reports
W.L.R.	Weekly Law Reports
W.N.	Weekly Notes
W.N.L.R.	Western Nigerian Law Reports
W.R.L.R.	Western Region of Nigeria Law Reports

Abbreviations

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W.R.	Weekly Reporter
W.R.N.	Weekly Reports of Nigeria
Z.L.R.	Zimbabwe Law Reports
Z.R.	Zambia Law Reports



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- Banker's books – Credit entry in customer's account – Whether transfers property to the customer in any particular notes – When property is actually transferred to customer *R v. Logun and others [1933 – 1966] 1 N.B.L.R. 53 (High Court of Lagos State)*
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- Banker's liability for wrongful dishonour of cheques – Assessment of damages by the court – Customer who is a trader whether he need plead and prove actual damages – Principles governing *Ashubiojo v. African Continental Bank Limited [1933 – 1966] 1 N.B.L.R. 469 (High Court of Lagos State)*
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- Cheques – Wrongful dishonour of – Whether payee of a dishonoured cheque who has returned same to drawer qualifies as a “holder” so as to recover damages for same – Section 38(a) of Bills of Exchange Act (Cap 21) *Esso Standard (Nigeria) Limited v. Akanbi [1967 – 1975] 2 N.B.L.R. 248 (High Court of Western State of Nigeria)*
- Cheques – Wrongful dishonour of cheque – Measure of damages where customer not a trader *Chukwuedo v. First Bank Nigeria Limited [1985 – 1989] 4 N.B.L.R. 40 (High Court of Bendel State)*

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- Collecting bank – Cheques – Banker’s duty of care – Paying an uncleared effect to a customer hardly ever in credit – Negligence – Protection afforded by sections 2 and 9, Bills of Exchange Act – When it will avail – Relevant time to determine if banker complied with duty of care to true owner *Central Bank of Nigeria and another v. National Bank of Nigeria Limited [1976 – 1984] 3 N.B.L.R. 153 (High Court of Lagos State)*
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- Fraud – Committed by branch manager of a bank – Liability of bank thereto *African Continental Bank Limited v. Agbanyim [1933 – 1966] 1 N.B.L.R. 69 (Federal Supreme Court of Nigeria)*
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Loan – Interest therein – Right to interest – Whether bank not in operation can claim interest ***British and French Bank Limited v. El-Assad [1967 – 1975] 2 N.B.L.R. 28 (High Court of Lagos State)***

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Mortgage – Sale of mortgage property to third party – Privity of estate between mortgagee and purchaser – Whether exists *Barclays Bank DCO v. Olofintuyi and another [1933 – 1966] 1 N.B.L.R. 107 (High Court (West))*

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- Overdraft – Interest on overdraft is added to principal and becomes part of principal due *National Bank of Nigeria Limited and another v. Peters and another* [1967 – 1975] 2 N.B.L.R. 348 (High Court of Western State)
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- Overdraft – Limit a customer can draw when granted overdraft *African Continental Bank Limited v. Adewuyi and others* [1967 – 1975] 2 N.B.L.R. 57 (High Court of Western Nigeria)
- Overdraft – Mortgage of customer’s property in respect thereof – Customer writing and appealing to bank not to exercise power of sale after same had arisen – Customer requesting for more time to pay – Whether bank bound to suspend sale *Ojikutu v. Agbonmagbe Bank Limited, Mbadike and another* [1967 – 1975] 2 N.B.L.R. 187 (High Court of Lagos State)
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- Overdraft – Rate of interest chargeable on overdraft by bank in the absence of express agreement between customer and bank thereof *Barclays Bank of Nigeria Limited v. Abubakar* [1976 – 1984] 3 N.B.L.R. 337 (Supreme Court of Nigeria)
- Overdraft – Repayment – No cause of action without demand for repayment or notice *Johnson v. Sobaki* [1967 – 1975] 2 N.B.L.R. 143 (High Court of Lagos State)



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- Overdraft – Right of action – When does it accrue to bank  
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- Overdraft – *Ultra vires* lending by bank manager – Effect  
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- Overdraft – Unauthorised grant by bank manager does not amount to stealing in the absence of fraud – Section 324(2)(f) and section 329 of the Criminal Code Cap 28 Laws of Western Nigeria (1959) – Customer who receives same not liable for stealing in the absence of fraud  
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- Overdraft – What amount to – No application for overdraft – Application implied  
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- Overdraft – Whether bank has right to third parties securities deposited by customer  
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- Overdraft and guarantee, nature thereof *Ikpeazu v. African Continental Bank Limited [1933 – 1966] 1 N.B.L.R. 395 (Supreme Court of Nigeria)*
- Overdraft facility – Absence of a formal agreement – Effect *Bank of the North Limited v. Obi [1985 – 1989] 4 N.B.L.R. 59 (High Court of Kwara State)*
- Overdraft facility – Facility given to partnership – Managing director of partnership signatory to account – No evidence that he is a partner or held himself out as such – Whether can be held personally liable *Balogun v. African Continental Bank Limited and others [1967 – 1975] 2 N.B.L.R. 375 (Supreme Court of Nigeria)*
- Overdraft facility – Failure of debtor to repay – Bank filing winding-up petition – Failure of debtor to file affidavit in opposition within time – Court extending time *suo motu* – Propriety of – Rule 36(1) Companies Winding-up Rules, 1949 *National Bank of Nigeria Limited v. Are Brothers (Nigeria) Limited [1976 – 1984] 3 N.B.L.R. 278 (Supreme Court of Nigeria)*
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