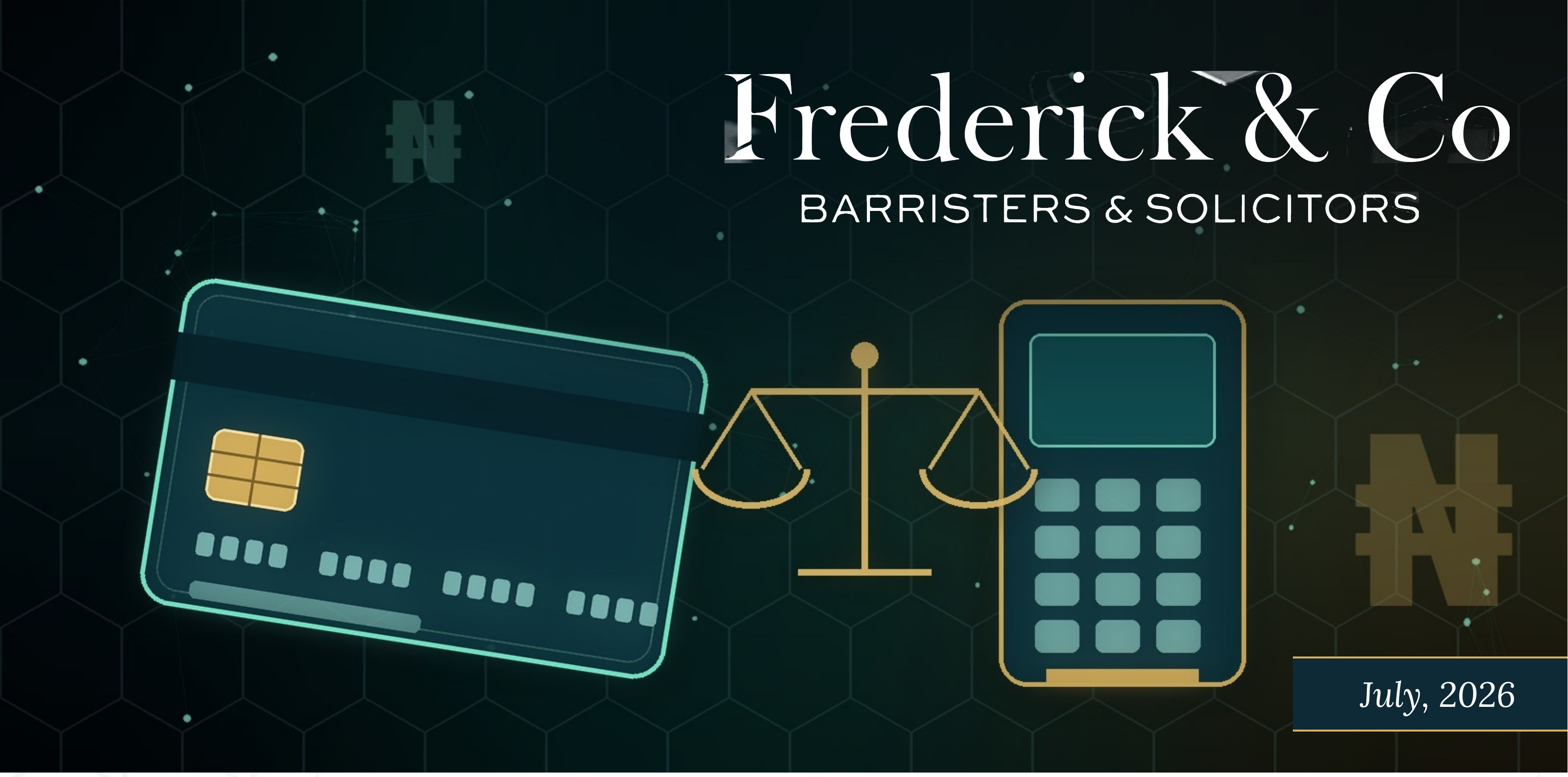

Key contact

Nnamdi Ekwem
Managing Partner
nekwem@frederickandcolaw.com

FC LEGAL NOTES

A Wrongful Debit Is Not Answered by Procedure: The Court of Appeal Restates the Banker's Duty

Nnamdi Ekwem v. Guaranty Trust Bank Plc — Appeal No. CA/ABJ/CV/1549/2024
Court of Appeal, Abuja Judicial Division | *Ojo, Gafai and Oyewumi, JJCA* | *Judgment delivered 10 June 2026*
Lead judgment: Hon. Justice Isah Bature Gafai, JCA

On 10 June 2026 the Court of Appeal, Abuja Division, unanimously allowed the appeal in *Nnamdi Ekwem v. Guaranty Trust Bank Plc*,[1] set aside the judgment of the High Court of the Federal Capital Territory delivered on 24 January 2024 in Suit No. FCT/HC/CV/290/2022, restored the Appellant's suit, and entered judgment in his favour. The Court of Appeal awarded ₦5,000,000 in general damages, interest at 10% per annum, and ₦100,000 in costs.

Frederick & Co acted in the matter, and the firm's Managing Partner, **Nnamdi Ekwem**, settled the appellate briefs and appeared as lead counsel for himself as Claimant at trial and as Appellant on appeal.

The Dispute

On 28 August 2022 the Appellant's Point of Sale (POS) transaction attempted with a debit card issued by the Bank was declined as unsuccessful, obliging the Appellant to pay his vendor by alternative means. The sum was nevertheless debited from his account, and the vendor never received it. He reported the error on 29 August 2022 and twice again, on 7 September and 13 October 2022. On each occasion, he was assured that his complaint had been escalated and would be resolved within a stated period. It was not. The refund was made only after the Bank was served with his suit.

1. *Nnamdi Ekwem v. Guaranty Trust Bank Plc*, Appeal No. CA/ABJ/CV/1549/2024 (Court of Appeal, Abuja Judicial Division, judgment delivered 10 June 2026), certified true copy on file.

At trial the Bank attributed the failure to a glitch on the Nigeria Inter-Bank Settlement System (NIBSS) platform, and contended that the delay was the Appellant's own doing because he had not completed an "Escalation Form" said to be reachable through a link in its acknowledgement emails. The High Court accepted that case, treated the Appellant's evidence that the link was unresponsive as an afterthought because it had not been pleaded in his Statement of Claim, and dismissed the suit.

Key Pronouncements of the Court of Appeal

1. A Reply is the proper answer to new facts raised in a defence and cannot be dismissed as an afterthought.

The Escalation Form was introduced for the first time in the Statement of Defence. Gafai JCA held that a Reply exists precisely to answer new, material facts raised in a defence which, if left unanswered, may be deemed admitted, and that the Appellant's Statement of Claim had neither hinted at nor pleaded any knowledge of the form. The lower court's characterisation of the Reply as an afterthought was a misconception of the Appellant's facts and was set aside. Ojo JCA reinforced the point by reference to *Unity Bank v. Bouari*,[2] per Niki Tobi, JSC: a Reply is necessary where a defence raises a fresh issue not anticipated by the claim.

2. Unstable internet connectivity in Nigeria is a notorious fact of which a court must take judicial notice.

Rejecting the trial court's insistence that the Appellant prove the link was unresponsive, Gafai JCA held that "the epileptic, unstable state of our internet connectivity, just like electricity, is a notorious fact that cannot be reasonably disputed." Critically, His Lordship widened the category: notorious facts "extend beyond static facts to prevailing situations or conditions", invoking section 124(1)(a) of the Evidence Act 2011,[3] under which proof is not required of matters of common knowledge in the locality. This is the pronouncement of broadest application beyond banking, as it recognises the digital realities of the Nigerian litigant as a matter a court may notice without evidence.

3. Evidence must be weighed even-handedly between institution and individual.

The Court observed that it was surprising that the lower court readily believed the Bank's assertion of a technical glitch on the NIBSS platform without any proof, yet rejected the Appellant's comparable assertion that the Bank's own web link was unresponsive as an afterthought. Gafai JCA held that the lower court failed to evaluate the evidence, particularly the Appellant's, and that, had it done so, its decision would have been in the Appellant's favour.

2. *Unity Bank v. Bouari* (2008) LPELR-3411(SC) at p. 43, paras. B–C.
3. Evidence Act 2011, s. 124(1)(a).

4. The banker-customer relationship is founded on trust, and the burden of justifying a disputed debit lies on the bank.

In a concurrence of particular force, Oyewumi JCA restated the foundation of the relationship:

> *"A bank-customer relationship is founded on trust and confidence. A customer who deposits money with a bank is not merely for safekeeping, but with the legitimate expectation that his funds will not be wrongly withheld and that any error occasioned by the bank's system or its operational processes will be corrected promptly. Where a customer's account is debited for value not received, the burden lies on the bank to justify its conduct and not to place needless procedural hurdles in the path of the customer."*

5. A bank cannot hold out an assurance and then benefit from its own omission.

Having repeatedly assured the Appellant that his complaint was already escalated, the Bank could not afterwards shift the blame to him for failing to pursue a process it had represented as activated. Oyewumi JCA held that the law does not permit a party to benefit from his own omission, applying the maxim *ex turpi causa non oritur actio* as expressed in *Fidelity Bank Plc v. Sagecom Concepts Ltd & Anor*.[4]

6. The duty is discharged by reversal, not by correspondence or procedure.

Her Lordship's closing formulation is the sharpest statement of the standard: the duty owed "was not discharged by the mere issuance of automated emails or procedural formalities; it was discharged only when the wrongful debit was reversed." Nor does the law approve a customer wrongly debited being compelled to embark on "an endless cycle of complaints" to recover what was rightfully his.

The Decision

The Court of Appeal unanimously allowed the appeal, reinforcing the very essence of the banker-customer relationship, which is founded on trust and confidence. The Court reaffirmed that banks owe their customers a continuing contractual and common law duty to promptly rectify wrongful debits. Once a customer reports an unsuccessful transaction and the bank acknowledges the complaint, it cannot subsequently rely on internal administrative requirements to avoid liability, particularly where the customer has been assured that appropriate steps have already been taken to resolve the complaint. Customers should not be subjected to unnecessary procedural hurdles before recovering funds wrongfully debited from their accounts.

4. *Fidelity Bank Plc v. Sagecom Concepts Ltd & Anor* (2025) LPELR-81172(SC) at pp. 65–66, para. D.

Exercising its powers under section 15 of the Court of Appeal Act 1976 (as amended),[5] the Court restored the suit and granted the following:

- The three declaratory reliefs sought; that the Bank's failure to refund was negligent, that it constituted a breach of its contractual duty as banker, and that its refusal fell below the standard expected of a company operating in the banking industry;
- **₦5,000,000** in general damages (of the ₦20,000,000 claimed);
- Interest at **10% per annum** until the judgment sum is fully liquidated; and
- **₦100,000** in costs.

Why the Decision Matters

The Bank's defence was substantially that its own process had absorbed the customer's complaint and that its failure to act on that process was the customer's fault. The Court of Appeal rejected that inversion. Where value is taken and not delivered, the institution, and not the individual, carries the burden of justification. Assurances given by a bank's officers bind the bank, and an internal form cannot be erected as a precondition to a refund the customer was already owed.

This judgment serves as an important reminder that technological challenges and internal administrative processes cannot become shields against legal accountability. Financial institutions are expected to act diligently, transparently, and expeditiously in resolving customer complaints arising from failed electronic transactions. More importantly, the decision reflects the courts' enduring commitment to ensuring that substantive justice prevails over procedural technicalities. In an era where electronic banking has become an integral part of everyday life, customers are entitled not merely to access financial services, but also to the confidence that their rights will be protected when those services fail.

For financial institutions, the judgment establishes that automated acknowledgements and complaint workflows are not, in themselves, performance of a legal duty. For the banking public, in an economy where electronic payment failure is a daily occurrence, it confirms that the law measures a bank's compliance by the reversal of the debit, and not by the volume of correspondence generated along the way.

5. Court of Appeal Act 1976 (as amended), s. 15.

Conclusion

The judgment settles, in clear terms, the standard by which a bank's response to a wrongful debit is to be measured. A complaint process is not a substitute for performance: a ticket number, an acknowledgement email and an internal escalation form are steps towards a remedy, not the remedy itself. The duty is discharged only when the customer's money is returned.

Equally significant is the Court's treatment of proof. By holding that unstable internet connectivity is a notorious fact requiring no evidence, and by insisting that the assertions of a financial institution and those of an individual customer be weighed by the same standard, the Court has removed an evidential asymmetry that has long operated to the disadvantage of the banking public.

For financial institutions, the message is one of prompt and demonstrable remediation. For customers, it is the assurance that the law does not ask them to be persistent; it asks their banks to be prompt.

Frederick & Co is an Abuja-based law firm practising in litigation, banking and finance disputes, and commercial advisory work. The firm's Managing Partner, Nnamdi Ekwem, led this matter from trial through to judgment at the Court of Appeal.