

**EMPLOYERS OBLIGATION TO PROVIDE ACCURATE CREDIT
REPORT: A LIMITLESS OBLIGATION?**

INTRODUCTION



Mr. John Okoro (*“Mr. John”*) was employed in the marketing department of a top tier insurance company, Hope Systems Insurance Limited (*“Hope Systems/ the Company”*) in 2017. Two years into his employment, Mr. John was posted from Benue State to the company’s branch office in the Federal Capital Territory, Abuja. To effectively navigate the city and for convenience, he applied for a staff loan of ₦15,000,000.00, to purchase a car. The loan was tenured for a period of one year, and the repayment was to be made through monthly deductions from his salary. Six

months after the approval of the loan and subsequent purchase of the car, Mr. John was suspended on allegations of receiving payments from Hope Systems customers, using his personal account, which was contrary to the Company’s policy. During Mr. John’s suspension, which lasted for over 4 months, Hope Systems ceased the payment of his salaries, making it difficult for him to repay the loan.

Upon conclusion of the investigation, and recommendation of the Company’s disciplinary committee, Mr. John’s employment was terminated. Consequently, he was compelled to sell his car, enabling him to fully repay the loan owed to Hope Systems. However, due to his inability to meet his family needs, Mr. John applied to First Bank Limited for a loan facility to enable him to venture into fish farming. To his consternation, his loan application was refused based on a credit report from Hope Systems to the credit bureau, indicating that he was indebted to them to the sum of ₦15,000,000.00. Aware that his loan was fully paid, Mr. John believed that this inaccurate credit report was masterminded by his branch manager who had been indicted during the disciplinary hearing by Hope System’s panel. Consequently, Mr. John instituted an action against Hope Systems at the National Industrial Court of Nigeria, claiming damages resulting from the inaccurate credit report submitted to the credit bureau by Hope Systems.

The above scenario is analogous to the facts in *Mrs. Theodora Ifeoma Onubogu v. Polaris Bank Limited*, **NICN/LA/202/2021**, judgment delivered by Hon. Justice S. A. Yelwa on January 29, 2025, where the National Industrial Court of Nigeria, considered among other issues, the duty of the Defendant to provide accurate credit report of the claimant.

FACTS AND FINDINGS

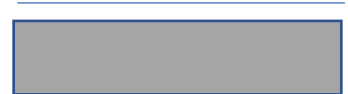
Mrs. Theodora Ifeoma Onubogu (the “*Claimant*”) was employed by Afri-Bank Plc (“*Afri-Bank*”) in 2007, and her employment continued until its termination in July 2010. Following the termination of her employment, Afri-Bank underwent a series of changes, transforming into Mainstreet Bank, then Skye Bank, and currently Polaris Bank Limited (the “*Defendant*”). Prior to the initiation of this current suit, the Claimant challenged the termination of her employment by Afri-Bank Plc, as being improper. She had filed the case at the National Industrial Court of Nigeria (“*NICN*”) in *Suit No: NICN.ABJ/60/2012*.



In its judgement delivered on June 17, 2019, the court held that the suspension and subsequent termination of the Claimant's employment were improper. Despite the decision of the court, the Claimant was unable to secure alternative employment. As a result, the Claimant ventured into private business. In 2020, the Claimant attempted to secure loan facilities but was denied due to her name being listed at the Credit Bureau as a bad debtor, based on the information provided by the Defendant. The Claimant viewed the Defendant's action of listing her as a bad debtor with the credit bureau as malicious and asserted that it was a direct consequence of her challenging the termination of her employment. Despite several requests to the Defendant to provide justification for the erroneous record submitted to the credit bureau, the Defendant failed to do so. As a result of the Defendant's actions, the Claimant faced significant difficulties in securing both employment and loan facilities.

The Defendant contended that the Claimant owed a debt arising from a staff loan she collected while employed by the now-defunct Afri-Bank Plc. To solidify its position, the Defendant claimed that it purchased the loan from Afri-Bank under a Purchase and Assumption Agreement, and that the Claimant had provided the original title documents of her property as a security for the loan, which were still in the Defendant's possession. Further to this, the Defendant counterclaimed for the sum of **₦81,012,221.44**, asserting that this amount was owed by the Claimant under her loan obligation to Afri-Bank.

In response, the Claimant denied owing any debt to the Defendant. She maintained that the loan was an employee loan, which was repaid through salary deductions during her



employment at Afri-Bank. The Claimant however, contended that, had there been any outstanding balance on the loan, the Defendant would have raised a claim for set-off in ***Suit No. NICN/ABJ/60/2012*** or deducted it from the judgment debt in that case. The Claimant asserted that she was never served any notice of indebtedness before her name was published as a bad debtor, and emphasized that she only became aware of the negative report upon approaching one of the commercial banks for a loan facility.

The Defendant contended that the NICN lacked the jurisdiction to hear and determine the matter, as the Claimant did not present any evidence that demonstrated an ongoing employee-employer relationship between them, and by extension any privity of contract. Additionally, the Defendant submitted that the liabilities of Afri-Bank, which were excluded in the Purchase and Assumption Agreement, were not transferred to Mainstreet Bank. Therefore, Mainstreet Bank did not assume the role of the Claimant's employer, nor did it inherit any obligations related to her employment or debts. The Defendant further argued that the loan granted to the Claimant by Afri-Bank, along with the resulting debt, was transferred to **Skye Bank** and subsequently passed to the Defendant (Polaris Bank).

The Court, in its decision, decided the preliminary issue of jurisdiction raised by the Defendant. On this issue, the court held that the subject matter of the suit was the blacklisting of the Claimant's name in the credit bureau due to a staff loan given to the Claimant when she was employed at Afri-Bank. Thus, the court held that it had jurisdiction. On the issue of privity off contract, the Court relying on the definition of contract of employment in ***Section 91 of the Labour Act*** and case law, held that there is no privity of contract between the Claimant and the Defendant.

On the substantive issue of the Defendant's action in blacklisting the Claimant, the Court reiterated in its holding, that there was no existence of an employment contract or privity of contract between the Claimant and the Defendant. Thus, the listing of the Claimant as a debtor as shown in Exhibit C3- being a report from the Credit bureau showing that the Claimant was in debt to the tune of **₦81,012,101.44**, and subsequent sending of the Claimant's details to the Credit bureau as a debtor was unlawful, unjustifiable and made in bad faith. The Court further held that the Defendant's conversion of a low-interest rate staff loan to commercial loan with higher interest rate was unjustifiable and an attempt to benefit from its wrongdoing. Further to this, the Court held that the Defendant was not entitled to anything beyond the outstanding sum on the loan extended to the Claimant, in the course of her employment, and consequently ordered the Defendant to withdraw any bad credit report made against the Claimant to any credit bureau's register. The Court further awarded the sum of **₦3,000,000** as general damages in favour of the Claimant.

On the Defendant's Counterclaim, the Court held that there was no evidence placed before it to show that the Claimant collected a bank/customer loan, neither was there any evidence on the basis for the calculation of the supposed loan amount. Hence, the counterclaim failed.



COMMENTARY



It is common for employees to take out employee loans from their employers. The primary responsibility of the employee is to ensure that these loans are fully repaid. The employer, on the other hand, has a significant obligation to ensure that the information relating to any of its staff or any person regarding the loan is accurate, including when providing credit report services to credit bureau. The ***Credit Reporting Act, 2017*** regulates credit reporting activities in Nigeria, designating banks, insurance companies, leasing companies, asset management companies, utility companies and other entities as **credit providers**. These credit

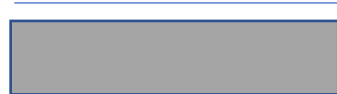
providers are entities that supply credit information to the credit bureau.

Whether or not an employment relationship exists, the company providing credit report is not required to obtain the consent of the person to whom the credit report relates, when providing credit information to the credit bureau¹. Notwithstanding the non-requirement of consent, credit providers are legally required to ensure that the information they supply is accurate. In this case, the Defendant argued that the Claimant was not its employee, and thus no privity of contract between them. On this assumption and notwithstanding the statutory regulation on credit reporting, the Defendant sent a bad credit report to the credit bureau.

It is instructive to note that provision of inaccurate reports or information relating to any individual, whether an employment relationship exists or not has far reaching consequences. In ***Akwara v. I.B.W.A Ltd (2001) 7 NWLR (Pt. 711) 133***, the Court held that where a bank as an agent of a customer is required to give a report that is important for the effectuation of a business transaction, the bank owes the customer a duty to exercise utmost due care in making such report, especially since any adverse report could be fatal or jeopardize the interest of the customer. The court further held that where there is manifest evidence of negligence in making the report, the duty of care has been broken. This points out clearly that an entity or employer that provides inaccurate information may be liable for negligence.

Section 20(1)(b) of the Credit Reporting Act, 2017 (“***CRA***”) makes it a criminal offence for any credit provider to provide or share inaccurate, incomplete, misleading, or false information to a credit bureau. By ***section 21(2) of the CRA***, if a credit provider is found guilty of providing inaccurate, incomplete, misleading or false information to a credit bureau,

¹ Section 9(2)(a) of the Credit Reporting Act, 2017



it can face a fine of not less than **₦10,000,000**. Providing inaccurate credit reports exposes the credit provider to significant liabilities, including court actions, as in the present case. Furthermore, by **section 13 (8) of the CRA**, a credit bureau that incurs liability for any inaccurate, incomplete, or outdated information provided by a credit provider may also bring claims against the credit provider.

Significantly, the obligations of employers and non-employers in ensuring the accuracy of personal data processed by them has been strengthened with the enactment of the ***Nigeria Data Protection Act, 2023 (“NDPA”)***. Companies are now under increased obligations to maintain accurate records of personal data, especially as data controllers or data processors. One of the key principles of data protection is ensuring the accuracy of personal data. *Under section 24(1)(e) of the NDPA*, data controllers or data processors must ensure that personal data is accurate, complete, not misleading, and, where necessary, kept up to date, based on the purpose for which the data is collected or further processed.

To curtail breach of the provisions of the Act, penalties and fines were included for non-compliance with the provisions of the ***NDPA***. By **sections 48 and 49 of the NDPA**, any entity that fails to adhere to the provisions of the ***NDPA*** may be liable to a fine of **₦10,000,000** (Ten Million Naira) or **2%** of its annual gross revenue in the preceding financial year (whichever is greater), if the entity is a data controller or processor of major importance. If the entity is not considered a data controller or processor of major importance, the fine may be **₦2,000,000** (Two Million Naira) or **2%** of its annual gross revenue in the preceding financial year (whichever is greater).

Our analysis of this case highlights the importance of providing accurate information relating to individuals, including when such information is lawfully requested, or permitted by law to be shared. In today’s evolving jurisprudence where personal data has taken significant recognition, entities, including employers must ensure that their practices are in line with legal requirements, to avoid liabilities. Put more simply, it is important for employers to be cautious in handling employees’ data especially for purposes of credit reporting.



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