

**CIVIL ACTION FOR THE REVOCATION OF BANKING LICENCE IN NIGERIA AND
THE RELIEFS TO BE SOUGHT/GRANTED: A CONSIDERATION OF THE BANKS
AND OTHER FINANCIAL INSTITUTIONS ACT (REPEAL AND RE-ENACTMENT),
2020**

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ABSTRACT

Obtaining a banking licence in Nigeria is not a walk-in-the-park activity. The Banks and Financial Institutions Act (Repeal and Re-enactment), 2020 in section 3 enumerated the requirements to be fulfilled by those who desire to be licensed to offer banking services and these requirements are laced with enormous difficulty and hardship. What is more? The Banks and Other Financial Institutions Act, in section 3(3), bestowed on the Central Bank of Nigeria and her governor the unfettered and unquestioned discretion to grant or not to grant this licence, without giving reasons, even after the conditions stipulated for its grant has been satisfied. So, even a rumor of the revocation of this hard-to-get banking licence sinks the heart of interested stakeholders in fear. The interested stakeholders include the ocean of depositors and customers of the bank who maintains financial relationship with the bank and who are at the risk of not having access to their monies for a long time or forever; shareholders and investors who must have invested heavily in the banking business; and the numerous employees who are at the verge of being sent back to the overflowing and unfavorable labour market. Thus, it is reasonably expected that a bank whose licence has been revoked should engage all those involved—ranging from the Central Bank of Nigeria who revoked the licence, to the Nigeria Deposit Insurance Corporation who are appointed as liquidators of the revoked bank, to even the Inspector General of Police who was assigned the duty of ensuring the continued closure of all the branches of the bank across the country— in a legal battle. When two elephants fight, the grasses suffer. In the process of this extended legal war, depositors, customers, former employees, among others, bear the brunt of this battle. Putting all these into consideration, there are necessary questions which the researcher will attempt to answer. First, is the CBN governor restricted from pressing the revocation button arbitrarily? Can revocation of banking licence be used as a tool of get-back and retaliation? In 2002, when the licence of Savannah Bank PLC was revoked, it was rumored

that underlying the revocation is the desire of then president of Nigeria, Chief Olusegun Obasanjo to get back at a major shareholder in the bank, Senator Jim Nwobodo. Even after a licence has been revoked, can an aggrieved bank run to the temple of justice unrestricted, without meeting any obstacle barricading the entrance to the temple? Even when the temple has been entered successfully and the ministers of the temple submits the aggrieved bank's petitions to the goddess of justice, what remedies will the impartial and unbiased goddess grant? If by mercy, the goddess orders for the restoration of the banking licence, would life remain the same and would the world still be standing at the pre-injury position?

1.0 INTRODUCTION

The Banks and Other Financial Institutions Act has consistently vests on the Central Bank of Nigeria (hereinafter referred to as CBN) and her Governor the power of revoking, among others, a banking licence. The Banks and Other Financial Institutions Act (Repeal and Reenactment), 2020 (hereinafter referred to as the new Act) also followed laid down precedence by providing for this very important function of the CBN.¹ Section 130² of the new Act did almost no attempt at providing a definition of the term "licence"³. Nonetheless, considering the importance placed on the issuance of a licence and the conditions attached to same being granted⁴, it is submitted that banking licence is pre-required of any corporation that wants to engage in banking business. "[A] banking licence is a legal pre-requisite for any financial institution interested in carrying out banking business. Without a banking licence, a corporate body cannot carry out banking business in Nigeria."⁵

"*Ubi Jus Ibi Remedium.*"⁶ The Nigeria judicial system provides for any person; natural or artificial, aggrieved with the act of another and prima facie, has a cause of action⁷ on his originating process to approach the temple of justice for the ventilation of their grievances. This

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¹Banks and Other Financial Institutions Act (Repeal and Re-enactment) 2020, Section 5(1); Section 12

²Which is the Interpretation section of the Act

³The new Act defined licence as "a licence issued under this Act"

⁴Banking and Financial Institutions Act (Repeal and Re-enactment) 2020, Section 3

⁵A. Ifedayo, 'An Examination of the Doctrine of Natural Justice and the Power of the Central Bank of Nigeria to Revoke a Banking Licence' (2018)

<<https://www.researchgate.net/publication/333224360_An_Examination_Of_The_Doctrine_of_Natural_Justice_And_The_Power_Of_The_Central_Bank_Of_Nigeria_To_Revoke_A_Banking_Licence>> accessed on 6th day of December, 2020.

⁶Where there is a right, there is a remedy.

⁷Tonique Oil Services Ltd & anor v UBA PLC (2017) All FWLR (pt 905) p. 1357. See also Ayinde & ors v Adigun (1993) NWLR (pt. 313) p. 516

is the case with any bank⁸ that wants to challenge the revocation of its licence. Notwithstanding, there are some condition precedents put in place by statutes and procedural laws in Nigeria that must be complied with before the voice of an aggrieved party can be heard in the temple of justice.

The purpose of this research is to examine the condition precedent put in place by the Banks and Other Financial Institutions Act and its effect, the limitation period provided for in the Act, the limitation on the type of relief that can be granted and the effect it will generally have on banks.

2.0 THE CONDITION PRECEDENT PUT IN PLACE BY THE BANKS AND OTHER FINANCIAL INSTITUTIONS ACT (BOFIA) BEFORE AN ACTION CHALLENGING REVOCATION CAN BE ENTERTAINED.

Before a law suit can begin in a court, there are some procedural preconditions that an aggrieved litigant has to put into consideration⁹ like ripeness of action, locus standi, pre-action notice, etc. While these procedural matters are largely governed by procedural rules of various courts, some statutes creating and governing activities of some corporate bodies provide for some of the conditions¹⁰ to be fulfilled in order for a matter to be properly brought before a court. Before an action of a bank can be entertained and determined by the Federal High Court against the CBN or any of its officials for acts done in pursuance to any power conferred by BOFIA, bad faith must be expressly shown on the face of the pleadings. The Act provides as follows:

“Neither the Federal Government nor the Bank or any officer of the Federal Government or the shall be subject to any action, claim or demand by or liability to any person in respect of anything done or omitted to be done in good faith in pursuance or in execution of, or in connection with the execution or intended execution of any power conferred upon that Government, the Bank or such officer, by or under this Act or the CBN Act or any rules, regulations, guidelines or directives issued there under or pursuant to any other relevant laws.”¹¹

⁸Considering it is an artificial person

⁹Various procedural matters are governed by the various procedural rules of courts.

¹⁰For example, section 12 of the Nigerian National Petroleum Corporation Act, Cap N123, LFN 2004.

¹¹Banks and Other Financial Institutions Act (Repeal and Re-enactment), 2020, section 51; The Central Bank of Nigeria (CBN) Act, 2007, section 52(1).

The qualification of ‘faith’ in the above cited provision with ‘good’ shows that before an action can be brought against the bodies and persons covered by the above provision, the opposite of the qualifier i.e. ‘bad’ must be shown in relation to how the action was carried out.¹² Thus, for a court to assume jurisdiction over such claims, bad faith must be the foundation on which such a case is built. BOFIA, in all her enactment, amendment and re-enactment, has not provided a definition of what good faith or rather bad faith should mean. Bad Faith¹³ is defined as the dishonesty of belief or purpose.¹⁴ On an appeal to the apex court against an interlocutory ruling of the court of appeal, the Supreme Court defined bad faith in *NDIC v CBN & anor*¹⁵ as:

*“The conscious doing of a wrong because of a dishonest purpose or moral obliquity. It contemplates a state of mind affirmatively operating with further design or ill will.”*¹⁶

Thus, it is submitted that acts done in bad faith are not done negligently but consciously. Having said these, it is now necessary to point out that in challenging revocation of banking licence, just like in other matters, the aggrieved party, mostly banks, must show clearly on the face of the pleadings that the said revocation was done in bad faith. So, there is a rebuttable presumption that the revocation of a banking licence was done in good faith until the contrary is shown. Thus, a party who alleges that the revocation was done in bad faith, must prove same.¹⁷ Therefore, the courts will not entertain any action challenging revocation of banking licence, which is presumably done in good faith, until bad faith is shown. In *NDIC v CBN & anor*¹⁸, the court reiterated this point by holding thus:

“In order that the court may have jurisdiction to entertain the type of action now in question (revocation of banking licence), the plaintiff/respondent has to show or allege bad faith in the way the revocation was done and indicate the elements that constitute the bad faith. This must be done preferably at the threshold of the suit being placed before the court because the court is to presume that the act complained off was done in good faith which naturally will deprive it of jurisdiction unless bad faith is positively alleged by way of its elements.”

¹²Applying the *ExpressioUniusestExclusioAlterius* rule

¹³Also called *malafide*

¹⁴Black's Law Dictionary, 7th Ed. 134

¹⁵SC. 55/1999

¹⁶Per Uwaifo JSC

¹⁷Evidence Act 2011, section 131

¹⁸Ibid at 15

Continuing, the court went further to explain what a trial court is to do when faced with such actions and that is, they are “[t]o peruse the section 12.¹⁹ By so doing, it will be possible to examine the basis of the bad faith from the point of view of the alleged ‘capricious and illegal’²⁰ manner the licence was revoked and to see whether the cause of revocation does not fall within any of the provisions of that section. If it does not, then, there would be reason, perhaps, to doubt the good faith of the first defendant²¹ in revoking the licence and consequently enable the court to assume jurisdiction to entertain the suit.”²² Thus, it is clear that showing bad faith is a jurisdiction activator. In *Aribisala & anor v Tiabi Ogunyemi & ors*²³, the Supreme Court held that “*Jurisdiction is (the) blood that gives life to the survival of an action in a court of law, and without jurisdiction, the action will be like an animal that has been drained of its blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be (an) abortive exercise.*”²⁴ So, showing that revocation of banking licence has been done in bad faith is a legal apparatus to be used in infusing blood into this proverbial animal. The issue of showing bad faith and how it affects jurisdiction can be likened to the biblical story of creation of man²⁵ where God the creator is said to have breathed into the first man the breath of life and man became a living soul. So, showing bad faith in revocation can be likened to the breath of life upon the litigation of the aggrieved party which otherwise would have been without merit.

It is submitted that the discussion of the court not assuming jurisdiction until bad faith is shown here is distinct from the ousting of jurisdiction during military era.²⁶ Unlike the latter, in the former, courts can validly make enforcement pronouncements on revocation of licence once this precondition, which is showing bad faith, is abided by. In *NDIC v CBN*²⁷, the court stated that “*the provisions of section 49 of the Decree (an equivalent of section 51 of the new Act) is not an outright ouster of the court’s jurisdiction where the court can on the face of the writ of summons decline jurisdiction. Under this section of the law, what a plaintiff needs to do is to plead and prove bad faith if the action is to be sustained.*”

¹⁹The section that enumerates the grounds on which revocation of licence can be done by the CBN governor.

²⁰The terms used in the case to describe the bad faith with which the revocation was done in that case.

²¹The CBN

²²*Ibid* at 15

²³(2005) 6 NWLR (pt 921)212

²⁴Per Oguntade, JSC

²⁵Genesis

²⁶*Abacha & ors v Fawehinmi* (2000)6 NWLR (pt 668) p 228; *Okeke v A.G Anambra state* (2002)12 NWLR (pt 782) p 575

²⁷*Ibid* at 15

It is pertinent at this point to submit that the general purpose of section 51 of the new Act is to prevent parties who have suffered damages without any legal injury from bringing frivolous and baseless claims against the persons protected for acts done in pursuance to or in connected with the carrying out of their functions under the Act. As the court stated in *Savannah Bank of Nigeria PLC v CBN & ors*²⁸, “[t]he purpose of section 53(1) of BOFIA (an equivalent of section 51 of the new Act) is majorly to act as a shield for the CBN, and its officers in carrying out of its powers as provided for under BOFIA. From the marginal notes, which is ‘protection against adverse claims’, it is clear that the purpose of the provisions of section 53(1) (section 51 of the new Act) as intended by the drafters of the law is to protect the Government, the CBN and its officers from adverse claims in respect of acts done in good faith and within the scope of their public duty.” Thus, it is submitted that this provision is necessary in order to protect the CBN and her officials from law suits that will impede on their duties as provided by BOFIA and the CBN Act.

The court of appeal in *Savannah Bank of Nigeria PLC v CBN & ors*²⁹ laid to rest the issue of the legality of section 51 of the new Act [the then section 53(1)] in consideration with section 4(8) of the constitution.³⁰ The section of the constitution provides thus:

“Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.”

The court, in settling this disturbing waters, decided that section 51 of the new Act (an equivalent of section 53(1) of the then BOFIA) only sets a condition precedent to be fulfilled before the jurisdiction of a court to hear matters on revocation of a banking licence can be invoked. The court further stated that this provision does not impede on the right of access to court by an individual or a corporate body. This decision has set precedence in the Nigeria’s judicial system and remains the law until it is overturned. This is notwithstanding the fact that some scholars have expressed their dissatisfaction with this decision. Most scholars have not only raised brows but have also spilled their inks to express their profound dissatisfaction and disagreement with this decision. Ifedayo, in one of his writings, expressed his view that:

²⁸(2009)6 NWLR (pt. 1137) 237

²⁹*Ibid*

³⁰Constitution of the Federal Republic of Nigeria, 1999 (as amended)

“...the provisions of section 53(1) (the equivalent of section 51 of the new Act) impede on a bank’s right of access to a court on grounds other than bad faith by restricting the cause of action of aggrieved banks to only bad faith in challenging the revocation of its banking licence, thus restricting its access to court for all other cause of action they might have.”³¹

With the greatest of respect to the reasoning of the learned scholar, the researcher disagrees with him on this point. If the provision that protects against adverse claims is removed or revocation excluded from the application and effect of that provision, as he recommended, then the floodgate will be opened without restrictions and every bank whose licence will be revoked subsequently will want to bring an action to court, no matter how frivolous or trivial it is, just to get the pronouncement of the court on the issue, thus, making the court a customary appellate body for reviewing the revocation of banking licence, thereby calling for the investments of resources (time, money, etc) of the Federal Government and the CBN in defending these suits as they come.³²

The Banks and Other Financial Institutions Act provided for grounds on which the power of revocation deposited on the CBN Governor can be exercised. It provides thus:

“Notwithstanding the provisions of this Act or any other law, the Governor may with the approval of the Board and by notice published in a gazette, or print and electronic media, revoke any licence granted under this Act if a bank:

- (a) ceases to carry on in Nigeria, the type of banking business for which the licence was issued for any continuous period of six months or any period aggregating six months during a continuous period of twelve months;*
- (b) goes into liquidation or is wound up or otherwise dissolved;*
- (c) fails to fulfill or comply with any condition subject to which the licence was granted;*
- (d) has insufficient assets to meet its liabilities;*
- (e) conducts its business in an unsound manner or its directors engage in unsafe practices;*

³¹Ibid at 5

³²Assuming that the recommendation of the legal scholar is granted and considering that there is the opportunity granted to persons, both artificial and natural, to appeal cases, generally, up to the Supreme Court, it is possible that the CBN would engage in the new business of primarily defending or appealing law suits filed by aggrieved banks whose licence was revoked.

- (f) *Is involved in a situation, circumstance, action or inaction which constitutes a threat to financial stability; or*
- (g) *fails to comply with any obligation imposed upon it by or under this Act or the Central Bank of Nigeria Act, or any other rules, regulations, guidelines or directives made hereunder;*
- (h) *is in the opinion of the Bank critically undercapitalized with a capital adequacy ratio below the prudential minimum or such other ratio as the Bank may prescribe from time to time;*
- (i) *fails to commence banking operations within a period of twelve months following the grant of a licence*
- (j) *fails to comply with the provisions of sections 9 or 13 of this Act.”*³³

Thus, just as already been stated earlier, if it is clear that revocation was done outside the grounds on which the Act specified it to be done (which has been reproduced above), then there is a reasonable cause of action.³⁴

At this juncture, it is pertinent to discuss the innovations made in the new Act which is to the effect that legal actions challenging the revocation of banking licence must be done timeously and expediently.³⁵ This is to ensure that such actions are fast-tracked and are not subjected to the tortoise-paced adjudication system fraught with frustration-filled delays. Another innovative and laudable provision is section 12(5) of the new Act that expressly provides the limitation period within which an action can be brought, lest it becomes statute-barred. This provision is as follows:

“No action in respect of the revocation of the licence of a bank, Specialized bank or other financial institution shall be filed or maintained unless such action is filed within a period of thirty days from the date of revocation.”

While some might want to argue that thirty days is not ample time to get notice of the said revocation and prepare accordingly, it is necessary to state that once a revocation is made, a

³³Banks and Other Financial Institutions Act (Repeal and Re-enactment) 2020, section 12(1)

³⁴On what other grounds aside bad faith can there be need for challenging revocation of licence? Assuming without conceding that there are other grounds, what is the probability of them occurring? In fact, this is less likely to happen as before a licence is revoked, the banks involved are allowed to make representations to the CBN governor—(section 5(4) of the new Act). While an argument can be canvassed that this is tantamount to making the CBN governor both the accuser and the judge, it is submitted that this power is an administrative power and not a judicial or quasi-judicial power.

³⁵Banks and Other Financial Institutions Act (Repeal and Re-enactment) 2020, section 12(4)

notice must be published in a gazette or print and electronic media immediately.³⁶ Before the advent of the new Act, scholars like Ifedayo have stated that “Bad Faith is hard to prove because it has to be established by looking at the intention of the CBN in revoking the licence and whether all the steps taken by it was taken in good faith or not. *The bank may not have access to facts needed to prove the aforementioned.*”³⁷

With the birth of the Limitation period in the new Act, one cannot help but imagine the learned scholar and others who subscribe to his views, sweating their brows and penning down how this is not just to make it difficult to investigate bad faith but to also cut banks out by making sure they don’t have ample time to investigate bad faith and challenging the revocation based on it.

In an answer to this, it is submitted that the CBN would always furnish the bank and even the public with the reason for which revocation was done. Thus, just as stated above by the citation of the court in *NDIC v CBN & anor*³⁸ in what a court is supposed to do when such actions arise, it is for the trial courts to determine if the said revocation was carried out *malafide* i.e. outside the grounds on which revocation can be lawfully made under the Act as to activate the court’s jurisdiction and also to provide a reasonable cause of action. The legal scholar had mentioned that to prove bad faith, the intention of the CBN has to be looked into to see if it was done in good faith or not.³⁹ It is submitted that the intention and manner with which the revocation was carried out—whether *bona fide* or *mala fide* can be ascertained by the circumstances; reasons for the revocation; and evidence on which the said revocation was carried out on.

This Limitation period is very important and applaudable as an aggrieved bank has to be heard crying immediately and seeking for ventilation of his right and not be allowed to bring an action after he must have slumbered on his rights to complain.⁴⁰

3.0. LIMITATION TO THE REMEDY TO BE GRANTED FOR THE REVOCATION OF LICENCE

The old BOFIA was silent about the type of remedy that can be granted when revocation of licence done in bad faith is successfully challenged and proved. Thus, courts could, as at then,

³⁶Ibid, section 12(1)

³⁷(emphasis mine)

³⁸Ibid at 15

³⁹Ibid at 37

⁴⁰Equity aids the diligent and not the indolent.

grant restorative orders. So, in the case of *Savannah Bank of Nigeria PLC v CBN & ors*⁴¹, the Court of Appeal ordered the restoration of the licence of Savannah Bank which the CBN refused to appeal against, despite their dissatisfaction.⁴²

However, in the new Act, the court only has power to grant monetary compensation not exceeding the equivalent value of the paid-up capital of the bank at the time of the revocation of its licence.⁴³ The provision states as follows:

“Notwithstanding the provisions of this Act or any other enactment, no restorative or like other howsoever described, shall be granted against the Bank or governor in any action, suit or proceedings in relation to the revocation of the licence by the Bank under this Act, and the remedy of any claimant or applicant against the Bank or the Governor in any such action, suit or proceedings is limited to monetary compensation not exceeding the equivalent of the value of the paid-up capital of the bank at the time of the revocation of its licence.”

While one will be tempted to argue that this is an attempt to clamp the powers of the court to grant restorative reliefs, which is the most important relief to a bank whose licence has been revoked, considering the circumstances and the need for the bank to continue banking business; however, it is submitted that this situation is a converse of “*Nemo dat quod non habet*”—you cannot take from a person what that person doesn’t have.⁴⁴ The courts, by the provision of the new Act, no longer have the power to grant restorative remedies, as matters connected with the granting, revocation and like matters of banking licence are now within the exclusive preserve of the CBN and her governor, just as how it is supposed to be.

At the Senate committee on Banking, Insurance and other Financial Institutions public hearing on the Banks and Other Financial Institutions Act Cap B3 LFN 2004 (Repeal and Re-enactment) Bill⁴⁵ 2020, Mr Godwin Emefiele, the CBN governor, represented by Mr. Kofo Abdusalam-Alada, the director of legal services of the apex bank, noted that “...*the global best practice is to have the banking legislation empower the financial services industry regulator to*

⁴¹Ibid at 28

⁴²F. O. Odoko, ‘Press Statement on the Decision of the Court of Appeal in the Case of Savannah Bank of Nigeria PLC v the Central Bank of Nigeria, Nigeria Deposit Insurance Corporation and the Inspector General of Police’ (2009) <<[CBN refuses to appeal the Court of Appeal decision in Savannah Bank](#)>> accessed on 11th of December, 2020.

⁴³Banks and Other Financial Institutions Act (Repeal and Re-enactment) 2020, section 12(6).

⁴⁴Abaribe v Speaker, Abia state House of Assembly (2002) 14 NWLR (pt 788) 466

⁴⁵Now Act

regulate banks, promote their soundness and stability; superintend issuance and revocation of operating licence without recourse to any other institution⁴⁶; while the Deposit insurer is in charge of bank resolution activities after the revocation of operating licence.”⁴⁷ Thus, this representation saw to the eventual birth in the new Act of the vesting on the CBN and her governor the exclusive power of granting licence to banks and revoking same when the bank goes distressed after all attempts to help it fails.

So, if an action for revocation is successfully challenged and proved, the aggrieved party will only be entitled to monetary compensation. This was not the case under the old BOFIA and so, when Savannah Bank of Nigeria PLC brought an action against the CBN, amongst others, it sought among other reliefs for an order of the court to set aside the order of revocation of its banking licence; direct the CBN to reissue the bank’s licence or restore the revoked one alternatively; compel the defendants to open its business premises nationwide and stop them from further sealing it off. The Court of Appeal granted these reliefs as was prayed.⁴⁸ As was stated earlier, neither the CBN nor any of the other defendants appealed against the decision.

The Court of Appeal had given Savannah Bank eighteen (18) months to raise the twenty five (25) billion naira mandatory capital base before it could commence or rather continue carrying out banking business from where it stopped.⁴⁹ It is to be noted that the banking licence of Savannah Bank was revoked in the first quarter of 2002. That same year, an action challenging the revocation was filed at the Federal High Court in the Abuja Judicial division. After about seven years, the court of Appeal in its decision that was not appealed against ordered for the restoration of the revoked licence. It is also to be noted that till the date of this research and writing, the bank is yet to commence operations, despite the exercise of the resurrection power of the court about eleven years ago. Thus, the bank is still in the state of limbo.

So, the exercise of the resurrection power by the court is a distortion of the banking system and practice, at large.

“Revocation of the operating licence of a bank is like the lawful termination of a human life for the greater good. When a person is executed in the exercise of a lawful duty, the

⁴⁶Emphasis mine

⁴⁷C. Agbai, ‘CBN Seeks Exclusive Rights to Bank Licensing; Revocation’(2020) Daily Trust <<<https://dailytrust.com/cbn-seeks-exclusive-right-to-bank-licensing-revocation>>> accessed on the 11th of December, 2020

⁴⁸I. O. Ige, ‘Court Re-opens Savannah Bank, 7yrs After. (2009) Nairaland forum.

<<<https://www.nairaland.com/230184/court-re-opens-savannah-bank-7>>> accessed on the 12th of December, 2020

⁴⁹Ibid

courts do not order his resurrection. While it may be possible to reanimate a human tissue or to keep a person whose life force is spent on a life support machine, it is impossible to imbue it with what it needs to function as a person...Well since a bank is not a living tissue, it is incumbent upon the CBN to guard against the painful occurrence of restoration of banking license. While it may be a victory for the law and the shareholders are basking in the euphoria of their success, the celebration appears to be grotesque in view of the injustice of the whole piece. The main persons affected by the drama, the hapless depositors whom the law is designed to protect, are suffering the negative effects of the death and resurrection of the two banks. The CBN in the interest of justice has to champion the reform of the current law which allows for the distortion in the system. The law must be amended to ensure the dead remain dead. The right of the shareholders to challenge the revocation of the operating licence of their bank is guaranteed and must remain, however, the courts should not encourage a distortion in the system by creating zombie banks, rather it should punish the CBN with punitive damages which should compensate the shareholders while allowing the depositors and creditors receive their dues as determined by law. Public interest, which is the interest of the depositors who are the mainstay of the bank, should override the narrow interest of the shareholders which is purely profit.’’⁵⁰

The above cited work was written following the restoration of the licence of Savannah Bank and one other bank in 2009. It is commendable that the recommendations made above were fully provided for in the new Act. The idea of courts resurrecting banks whose “breath” has been taken by the CBN is one that is, though well intended, but fraught with undesirable consequences. There will be great difficulty in getting investors and customers as even the old customers will be interested in coming for the money that was in their accounts prior to the revocation of licence and subsequent restoration rather than making fresh deposits because of their deflated confidence in the bank. So, at the end, it is advisable (because it will be cheaper, easier and convenient) to apply for a fresh licence than wanting to operate with the old one.

⁵⁰The Legal Luminary, 'Revocation of Banking Licence in Nigeria: A Regulatory Blindside' (2012)<<<https://ndic.gov.ng/files/Legal%20Luminary%20April%202012.pdf>>> accessed on the 12th of December, 2020

4.0. CONCLUSION

With the enactment of a new law or even with the introduction of an amendment in an already existing legislation, at first, it appears all is perfect and all grounds in that particular area of law legislated upon or amended has been adequately provided for and covered, which thus ensure justice to all stakeholders involved in that particular field. But as time goes on and as this new law or amendment is tested in law courts when disputes arise between parties or when the court is called to interpret these laws, the lacuna which were initially not noticed are magnified under the judicial lens, thus, calling for further amendment or repeal and subsequent re-enactment. Notwithstanding, there are times when, even though the judgement was made in the spirit and letters of the enactment, enforcement of such judgements become *ad impossibilia* or some provisions in these laws do not conform to international best practices. At these points, it becomes incumbent on the legislature to exercise her law making power to cover these grounds. These they can do by covering existing lacuna and bringing these legislations in line with existing international best practice.

It has already been pointed out above that the removal of the resurrection power from courts is best intended for the interest of the innocent depositors who had deposits at the bank as at the time of the revocation thus allowing the dead remain dead. Savannah Bank was used as a case study to show the problems involved with granting restorative reliefs when revocation has been made by the CBN governor. Consequences have been highlighted, in cases, though very rare, when even if banks whose revoked licence has been restored, will be faced. Also, it was, earlier on, shown that it is for the best that bad faith should be shown before an action challenging revocation of banking licence can be entertained, else the Federal High Court will be gone to each time revocation has been done, even on frivolous matters, thus, distracting the CBN from her mandate which is to promote a sound financial system in Nigeria.