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COUNTERFEIT BANK NOTE AND OTHER RELATED MATTERS; THE POSITION OF LAW

INTRODUCTION

When most banks discover that a customer has in his/her possession counterfeit bank notes, the counterfeit money is usually collected and mutilated, and the customer cautioned. The bank does this when the customer has one or a few counterfeit notes in his possession without realizing that the notes are counterfeit. Many do not realize that this step taken by the banks is just a tip of the iceberg when compared to the penalty prescribed for possession of counterfeit notes under the law.

COUNTERFEIT CURRENCY

To start with what is a Counterfeit Bank Note? The Central Bank of Nigeria (CBN) is the only agency in Nigeria authorized by law to issue the Naira note, which is the legal tender in Nigeria (that is, the legally accepted means of payment). Where anybody without authorization by the CBN produces his or her own Naira notes or coins and attempts to use them as legal tender, then the person is said to have counterfeit bank notes. A counterfeit note or coin is therefore a bank note or coin issued or made by a person, other than the CBN or without the authorization of the CBN. There are a number of acts, which if done in relation to the Naira note will be deemed to be an offence committed in relation to the currency. It is an offence to counterfeit or falsely reproduce any bank note(s), issued by the CBN. It is also an offence to be in possession of counterfeit bank notes.

The Central Bank of Nigeria Act 2007, (CBN Act), which is the law that makes the Central Bank of Nigeria (CBN or Bank) a fully autonomous body, criminalizes the counterfeiting of banks notes. This act is also criminalized by the **Counterfeit Currency (Special Provisions) Act Cap C35 LFN 2004**. The punishment for counterfeiting bank notes under the Counterfeit Currency (Special Provisions) Act is more stringent than under the CBN Act. Under the latter, counterfeiting a bank note or coin issued by the CBN is punishable by an imprisonment term of not less than five (5) years, whereas

under the Counterfeit Currency (Special Provisions) Act, ***the punishment is life imprisonment.*** The severe punishment prescribed under the law indicates that counterfeiting is a serious offence.

UTTERING AND POSSESSION OF COUNTERFEIT BANK NOTES

Uttering and possession of counterfeit bank notes are also distinct offences. Uttering of counterfeit bank notes means putting counterfeit bank notes in circulation either by using them to make purchases, payments or depositing them in the bank, as if they are genuine legal tender. A person is deemed to be in possession of counterfeit bank notes when he has them under his control, that is, when it is in one's house, pocket, wallet, car etc.

Uttering and possession of counterfeit bank notes are punishable with an imprisonment term ranging between ten (10) to twenty-one (21) years. Thus, where a person is in possession of counterfeit bank notes not exceeding fifty (50) notes, the punishment is imprisonment not exceeding ten (10) years. However, where a person is found to be in possession of counterfeit bank notes, exceeding fifty (50) notes (regardless of the value of such counterfeit notes), the punishment will be an imprisonment term not exceeding twenty-one (21) years.

A person may only be convicted for uttering or possession of counterfeit bank notes if it is established that such a person knew the bank notes were counterfeit. Knowledge is therefore an essential element that must be established before a person can be convicted for this offence. The court is at liberty to presume that a person had knowledge that the bank notes in his or her possession were counterfeits if the person is in possession of more than fifty (50) counterfeit bank notes. This presumption is however rebuttable by credible evidence which shows that the person in whose possession counterfeit bank notes were found, truly had no knowledge that they were counterfeits.

When you are unsure if the money in your possession is counterfeit, you can walk into any bank and ask the teller or customer care service personnel to help you check if the bank notes in your possession are genuine, irrespective of the currency.



RELEVANT PUNISHABLE OFFENCES

It is also important to bring to the fore certain provisions of the CBN Act that are relevant to our discussion with a view of enlighten us on what to and what not to do with a legal tender. To this end, do you know that in Nigeria, only the CBN is permitted by law to burn or destroy currency notes. Section 18(d) of the CBN Act 2007 authorized the CBN to arrange for the destruction of currency notes and coins withdrawn from circulation under the provision of section 20(3) of the said Act or otherwise found by the Bank to be unfit for use.

As a matter of fact, Sections 20 and 21 of the CBN Act, 2007 criminalizes certain actions against currency notes and imposes punishment for them. These include but are not limited to:

COUNTERFEITING: The Central Bank in its Clean Note Policy defined a counterfeit currency as an imitation of currency produced without legal sanction of the state or government. Producing or spending of counterfeit currency is a form of fraud or forgery. It is against the law for any individual or establishment outside the Central Bank of Nigeria, to print money or be in possession of counterfeit money. Section 20 (4) CBN Act 2007 provides that it shall be an offence punishable by a term of imprisonment of not less than 5 years for any person to falsify, make or counterfeit any bank note or coin issued by the Bank.

REJECTION OF NAIRA: A person who refuses to accept the naira as a means of payment is guilty of an offence and liable on conviction to a fine of NGN50,000 or 6 months imprisonment: Provided that the Bank shall have powers to prescribe the circumstances and conditions under which other currencies may be used as medium of exchange in Nigeria.

MUTILATION: A person who tampers with a coin or note issued by the Bank is guilty of an offence and shall on conviction be liable to, imprisonment for a term not less than six months or to a fine not less than NGN50,000 or both fine and imprisonment.

A coin or note shall be deemed to have been tampered with if the coin or note has been impaired, diminished or lightened otherwise than by fair wear and tear or has been defaced by stumping, engraving, mutilating, piercing, stapling, writing, tearing, soiling, squeezing or any other form of deliberate and willful abuse whether the coin or note has or has not been thereby diminished or lightened.

The CBN Clean Notes Policy provides that a currency banknote shall be considered mutilated when it is partially or permanently damaged by fire, flood, soaked, dyed, torn or destroyed by insects and other natural disasters and is clearly more than one half of the size of the original note. It may or may not require special examination to determine its value.

SPRAYING: For the avoidance of doubt, spraying of, dancing or stepping on the naira or any note issued by the CBN during social occasions or otherwise howsoever shall constitute an abuse and defacing of the naira or such note and the person shall be liable upon conviction to imprisonment for a term not less than six months or to a fine not less than NGN50, 000 or both fine and imprisonment.

Spraying includes adorning, decorating or spraying anything or any person or any part of any person or the person of another with naira notes or coins or sprinkling or sticking of the naira notes or coins in a similar manner regardless of the amount, occasion or the intent.

MARCHING: It is against the law to step on the currency notes. Marching includes spreading, scattering or littering of any surface with any naira notes or coins and stepping thereon, regardless of the value, volume, occasion or intent. It amounts to an act of defacing of the naira and the person shall be liable upon conviction to imprisonment for a term not less than six months or to a fine not less than NGN50, 000 or both fine and imprisonment.

SALE: It shall also be an offence for any person to hawk, sell or otherwise trade in the naira notes, coins or any other note issued by the CBN. The person upon conviction shall be liable to imprisonment for a term not less than six months or to a fine not less than NGN50, 000 or both fine and imprisonment.

BURNING: It is implied that burning currency notes is against the law. A person who tampers with a Naira note or coin issued by the CBN is guilty of an offence. A coin or note shall be deemed to have been tampered with if the coin or note has been impaired or any other form of deliberate and willful abuse. It is pertinent to state that burning of currency notes is not expressly stated as an offence however from the clear wordings of this above provision, it can be implied that the act of burning currency note is a form of deliberate and willful abuse. *See Section 21(2) CBN Act, 2007.*

PROSECUTION OF OFFENDERS

A combined reading of Section 31, 32 (2) and 66 (1) of Police Act, 2020, indicates that the Police is empowered to investigate, arrest and prosecute offenders of our laws. Notwithstanding the powers of the Police in this regard, the Attorney General of the Federation, workers in the Ministry of Justice and the CBN are also empowered to prosecute offenders of the CBN Act.

The Federal High Court shall exercise jurisdiction to try offenders of the CBN Act. This is pursuant to the combined provisions of Section 251 (1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria.



CONCLUSION

Counterfeiting of bank notes and coins, uttering, possession, mutilation, spraying, stepping on and sale of counterfeit currency as well as unauthorized rejection and burning of the Nigerian currency are punishable criminal offences. It has thus become increasingly apparent that the sensitization of the public on the security features of the Nigerian currency (for proper detection of counterfeit currency) and the proper handling of same is sacrosanct and should be spearheaded by the Central Bank of Nigeria. This would inevitably promote and maintain public confidence in the currency. It is also recommended that the campaign on abuse/counterfeiting of the Nigerian currency should reiterate the applicable punishable offences and this should serve as a deterrence. This becomes even more important because ignorance of the law is not an excuse.

Should you have further questions on the Central Bank of Nigeria's regulations, the Nigerian currency and possible prohibited acts thereon, please do not hesitate to **Contact Us**.