

Three Fatal Mistakes Bankers Make in Debt Recovery

Introduction

Has it ever occurred to you that money-lending and debt recovery reveal the two faces of a financial institution? While a banker is more than eager to lend money with a big smile on their face, the process of debt recovery from a defaulting borrower and the conventional method of enforcing the security can be destructive and often counterproductive. The smile becomes history. It is not uncommon for banks to file cases to recover debts, obtain judgment and decrees at inordinately high costs in legal fees and expenses with nothing to show for it at the end of it all. Is it not time for financial institutions to think again? Is there need to rethink the recovery process? I think so.

The Conventional Means of Enforcing Bank Securities

A financial institution, and any money-lender for that matter, has the right to enforce the security given under a loan agreement. As is the usual practice, the bank files suit against a defaulting debtor and invests both time and money to obtain judgment. It succeeds. The process of enforcing the decree begins and, as is often the case, the debtor has no more than the property offered as security for repayment of the debt. What next? Insolvency proceedings ensue. To what end, costs upon costs. And who benefits? Legal counsel by whom the courts are kept busy doing what they best know how. To what end? Ask me another question. More often than not, though, the debtor is impoverished and is left helpless, making a vow never to borrow from a bank till death put him or her to rest.

Late last year, I mediated settlement of a dispute between a widow and a local bank. Her deceased husband had borrowed Shs.500,000 from the bank on security of their home, their only property. Then he died having paid an insignificant part of the loan. For years, the widow could only raise a little money from time to time with the help of the only child who was working. Penalties for late payment and interest mounted. By the time a total of about KShs. 3 million had been paid, an equal amount was demanded as due. Then the financier filed suit to enforce the security and sell the home to recover the close to KShs. 3 million and legal costs. The case dragged for years before mediation was recommended. The recommendation was timely because the ailing widow could hardly take the dock to give evidence. She collapsed every time she was sworn to give her testimony. You should have seen the tears of joy after a mediated settlement that culminated in substantial waiver of late-payment interest and related penalties, an outcome no court can decree.

The Three Fatal Mistakes Financiers Make

Simply stated, financiers do not flinch when converting a valued customer into an adversary when times are hard. Secondly, few care to think of the devastating consequences of litigation, enforcement of the decree and security at inordinately high costs in time, money and emotional distress and, finally, the inevitable erosion of goodwill to the detriment of its own business. For years, I represented a local financier in debt recovery and enforcement of securities. In time, it dawned on me that we were succeeding in obtaining what was mere "paper judgments". Attempts to enforce the decrees left the borrowers penniless, scaring everyone around them. So what?

It soon dawned on the management that my suggestion to work with, rather than against, their customers would yield better returns and boost their goodwill. They agreed to put on a human face. It paid off. Negotiated settlements followed with rescheduled debts, waivers of sky-high interest and penalties. Substantial amounts and legal fees were recovered and all sat back with a smile on their face. Within a few years, I quit litigation practice and concentrated on helping clients reach amicable settlement of debts. My ADR practice picked pace to what it is today.

Looking Back with No Regret

It is deeply satisfying to mediate in disputes between bankers and clients, insurers and claimants, and see them walk out of the mediation room with big smiles on their face, having reached settlement in their own terms. Their tears of joy spur me on to tell people what my colleagues either do not know or do not wish to disclose to the disputants.

Premier ADR Consultants work hand-in-hand with entrepreneurs with strained business relations on the verge of breakup and legal battles to resolve their disputes by means of our transformative conflict management and dispute resolution strategies. We help parties salvage, restore and maintain healthy business relationships in a safe and peaceful environment with guaranteed privacy and confidentiality.

Our expeditious, cost-effective and party-controlled techniques guarantee consumer satisfaction resulting from the voluntary and jointly generated win-win outcomes. We provide the best alternative to the all-familiar costly, time-consuming, adversarial and often emotive court litigation that only works to weaken and ultimately destroy business relations and the invaluable goodwill built over a period of time.

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