**IN THE HIGH COURT FOR ZAMBIA 2014/HPC/0141**

**AT THE COMMERCIAL REGISTRY**

**HOLDEN AT LUSAKA**

(Commercial Jurisdiction)

**BETWEEN:**

INDO-ZAMBIA BANK LIMITED **APPLICANT**

**AND**

AMAZON CARRIERS **1ST RESPONDENT**

KIMBERLY ARETHA ANTOSHA BAINES **2ND RESPONDENT**

**BEFORE THE HON. MR JUSTICE JUSTIN CHASHI IN CHAMBERS ON THE 9TH DAY OF APRIL, 2015**

*For the Applicant: M Ndhlovu, Messrs MRN Legal Practitioners.*

*For the 1st and 2nd: MC Hamachila, Messrs Iven Mulenga and Co*

*Respondents*

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**R U L I N G *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_***

**Legislation referred to:**

1. The High Court Act, Chapter 27 of the Laws of Zambia

2. The Commissioners For Oaths Act, Chapter 33 of the Laws of Zambia

The Applicant **Indo-Zambia Bank Limited** commenced the action herein against the **1st and 2nd Respondents, Amazon Carriers and Kimberly Aretha Antosha Baines** respectively by way of Originating Summons pursuant to **Order 30 Rule 14 of The High Court Rules1**

 The 1st and 2nd Respondents, although they were represented, did not file any documentation to oppose the application as Counsel for the Respondents was of the view that this was a matter the Parties could amicably resolve.

However, the Court brought to the attention of the Parties that the **jurat** to the affidavit in support of the Originating Summons, though Commissioned was not dated.

**Order 5 Rule 20 (g) of The High Court Rules1** on affidavits states as follows:

 **“The jurat** *shall be written, without interlineations, alteration or erasure (unless the same be initialed by the Commissioner) immediately at the foot of the affidavit and towards the left side of the paper and shall be signed by the Commissioner.*

*It* ***shall******state the date*** *of the swearing and* ***the place*** *where it is sworn***”**

Equally, Section 6 of **The Commissioners For Oaths Act2**provides that:

“Every Commissioner for Oaths before whom any Oath or affirmation is taken or made under this Act **shall** state truly in the **jurat** or attestation at **what place** and **on what date** the oath or affidavit is taken or made”.

It is clear from the aforestated provisions of the law that it is mandatory that the **jurat** to an affidavit must state **the date** of the swearing.

Therefore, an affidavit that does not show in the **jurat** the date the oath or affirmation was taken as is the case in the affidavit in this Cause, offends the mandatory provisions of **Order 5 Rule 20 (g)** of **The High Court Rules1** and Section 6 of **The Commissioners For Oaths Act2** and is to that extent incurably defective.

In the view that I have taken the affidavit in support of the Originating Summons is expunged from the record and consequently the cause is **accordingly dismissed**.

As the Respondents had not filed any documents in the matter, each party shall bear its own costs.

**Leave to appeal is hereby granted.**

**Delivered at Lusaka this 9th day of April 2015.**

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Justin Chashi

**HIGH COURT JUDGE**