

**IN THE HIGH COURT FOR ZAMBIA
AT THE COMMERCIAL REGISTRY
HOLDEN AT LUSAKA**

2014/HPC/0141

(Commercial Jurisdiction)

BETWEEN:

INDO-ZAMBIA BANK LIMITED
APPLICANT

AND

AMAZON CARRIERS
RESPONDENT

1ST

KIMBERLY ARETHA ANTOSHA BAINES
RESPONDENT

2ND

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

*For the Applicant:
For the 1st and 2nd:
Respondents*

*M Ndhlovu, Messrs MRN Legal Practitioners.
MC Hamachila, Messrs Iven Mulenga and Co*

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 Rules**¹

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 Act**² 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 aforesaid 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 Rules**¹ and Section 6 of **The Commissioners For Oaths Act**² 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.

Justin Chashi
HIGH COURT JUDGE