



Legal Brief/Case Review

CITIBANK Tanzania Ltd v. Total Tanzania Ltd

Legal and Policy Implications for the Banks in Tanzania on Letters of Credit under UCP 600



1. Introduction

On June 3, 2025, the Court of Appeal of Tanzania delivered a judgment in Civil Appeal No. 165 of 2023 (Citibank Tanzania Ltd v. Total Tanzania Ltd), which establishes fundamental legal principles with practical implications for how banks in Tanzania should manage Letters of Credit (LC), one of the preferred methods of payment settlement in international trade transactions. This legal brief examines the implications of the Court of Appeal's decision regarding the interpretation and application of LCs in Tanzania, which may offer useful considerations for banks in the country. The case focuses on the legality of payments made under a documentary credit based on a provisional invoice and a Letter of Indemnity (LOI), within the framework of the Uniform Customs and Practice for Documentary Credits (UCP) 600.

2. Summarized facts of the case

Total Tanzania Ltd applied for the LC from Citibank Tanzania Limited to pay a supplier of petroleum products. The LC required specific documents for payment, including a signed commercial invoice. However, when the supplier failed to deliver the goods on time, Citibank Tanzania Ltd paid the supplier based on a provisional invoice and a letter of indemnity. Total Tanzania Ltd objected and sued for breach of the LC terms. The High Court of Tanzania found that Citibank violated the LC and UCP 600 by accepting non-compliant documents. Citibank appealed, but the Court of Appeal upheld most of the High Court's decision, except regarding the interest awarded. The full judgment is accessible at: <https://tanzlii.org/akn/tz/judgment/tzca/2025/555/eng@2025-06-03>

3. Jurisprudential Contributions

The Court of Appeal Decision contains several useful contributions in clarifying and reaffirming legal parameters for the banks when handling Letters of Credit. We are highlighting the following key points:

- a) Reaffirmation of the principle of strict documentary compliance (UCP 600 Articles 2 and 14). Banks should not overlook discrepancies in the submitted documents, even if they seem minor or insignificant.
- b) Clarification that tolerances in quantity and pricing cannot override LC terms without express authority to waive. It is always advisable for banks to seek express approval from the applicant before making payments to the beneficiary under the LC, especially when they have identified factual variations in the documents.

- c) Judicial recognition of UCP 600 as an integral part of LC contracts under Tanzanian law implies that once the UCP 600 or any other UCP version is cited or agreed upon in the LC instructions, banks must fully recognize its overarching application in interpreting subsequent ambiguities or misunderstandings and acknowledge the legal obligations that arise from it.
- d) The decision is commendable in aligning LC's principles with accepted international trade standards and norms, as well as case laws from common law jurisdictions. For example, referencing opinions from the Documentary Instruments Dispute Resolution Expertise (DOCDEX), a dispute resolution process provided by the International Chamber of Commerce (ICC) specifically for international trade finance disputes, and English case law, enhances the Court's reasoning and conclusion by adding depth, credibility, and relevance.

4. Legal Gaps and Unaddressed Issues

On the other hand, examining the judgment and relating it to the broader goal of international trade and finance law, there are areas that the Court of Appeal may want to address and clarify in future cases. These include:

- a) Overemphasizing the physical delivery of goods risks undermining LC autonomy (UCP 600 Article 5). Article 5 of UCP 600 emphasizes the core principle that banks engaged in documentary credits handle documents, not the actual goods, services, or performance. This indicates that banks focus solely on whether the documents presented meet the terms and conditions of the credit, rather than the underlying transaction between the applicant and beneficiary.
- b) The judicial analysis of the legal structure, function, and enforceability of Letters of Indemnity (LOI) under the LC terms remains inadequate. This case provided a rare chance for the Court of Appeal to give guidance and clarify the legal boundaries regarding the legality of LOIs in the context of LC and the international payment system. Sadly, the Court only briefly addressed this issue. Essentially, a LOI is a contractual promise made by one party (such as a seller or carrier) to indemnify another party (often a bank or buyer) against specific risks or losses that might occur from non-compliance with certain documentary or delivery conditions. Its main purpose is to support smooth commercial transactions, especially in commodity and oil trades, where the actual delivered quantities may not exactly match the figures in documents like the bill of lading and invoices. Under UCP 600, international trade and transactional law recognize certain acceptable margins for the enforceability of LOIs. The

conditions for enforceability include: (1) explicit and clear authorization in the Letter of Credit or sale agreement, (2) drafting with precise indemnity language signed by a solvent party, (3) prior acceptance by the bank before the action it covers, and (4) use mainly to address temporary documentary deficiencies rather than fundamental breaches. On the other hand, courts may refuse to enforce LOIs if: (1) they are used to bypass mandatory compliance with UCP 600, (2) when banks pay based on LOIs without proper LC approval, (3) if they conflict with public policy, such as facilitating fraud or illegal cargo, or (4) if the terms are vague or overly broad, aiming to exempt banks from their fundamental duty to review documents for compliance. Under UCP 600, banks are not required to accept LOIs instead of the necessary documents. These issues highlight the need for judicial clarity, which, in our view, the Court of Appeal failed to provide in solidifying Tanzania's legal stance.

- c) Failing to address the operational links between bank indemnities and interbank risk sharing in confirmed LCs poses issues. Judicial clarification on these links is crucial for ensuring clarity, accountability, and legal certainty in cross-border trade finance. These links determine how risk is shared among the issuing bank, the confirming bank, and the nominated bank [in this case, Citibank Europe Public Limited Company], especially when it comes to document discrepancies, indemnities, or default. This risk sharing is vital for building trust in international trade finance. Legally, while confirming banks must act independently, their rights and liabilities can be significantly affected by contractual indemnities, UCP 600 standards, and SWIFT communications. Therefore, managing this inter-bank relationship carefully reduces litigation and enhances commercial certainty. A court ruling on this issue would have added to the developing Tanzanian legal framework concerning LOI and its practical and legal effects for banks.
- d) A missed opportunity to clearly distinguish between substantive and operational breaches in LC disputes. The legal and practical difference between these breaches lies in the nature of the violation, who is responsible, and the legal consequences. A substantive breach occurs when a party, usually a bank, makes or authorizes a payment under an LC based on documents that do not comply with the LC's terms, as defined by UCP 600 [i.e., failure to follow the instructions in the LC resulting in wrongful payments as was the case in the *Citibank Tanzania Ltd vs Total Tanzania Ltd*]. It is a breach of contract by the bank. On the other hand, operational breaches happen when a bank fails to follow its internal or procedural standards in managing the LC transaction, without

necessarily violating the LC's terms. While this may not affect the legality of the payment or invalidate the contract, it can damage the bank's reputation. However, it does not automatically create legal liability for wrongful payment if the documents complied,

5. Policy and Practice Implications/Recommendations

Based on the above review, there are a few points that we recommend for action:

- a) Banks in Tanzania are required to enhance their due diligence procedures and standardize their internal processes for verifying letter of credit (LC) compliance. According to UCP 600, banks primarily handle documents rather than the actual goods described therein. Consequently, it is imperative that the standard of documentary examination in documentary credits be exceptionally rigorous. Financial institutions must confirm that all documentary submissions fully comply with relevant requirements prior to authorizing payments. Any discrepancies, regardless of their magnitude, should discourage the bank from proceeding with the payment unless explicit waiver authorizations from the applicant have been obtained.
- b) In the context of bulk oil trade, parties may consider using a specialized contractual form such as INCOTERMS, like the C.I.F. Out-Turn Contracts, to minimize risk and disputes. Under this CIF variant, mainly used in bulk oil trade, the price is payable based on the delivered quantity; therefore, the price on the bill of lading will reflect the supplied amount. It can be argued that, under this contractual arrangement, the risk remains with the seller during the voyage since they will not receive payment for any loss while the cargo is in transit. In such cases, the terms in the LC must align with the specific contractual context. Additionally, the banks' documentary compliance check will depend on the confirmation of the final quantity delivered. Likewise, the terms in the LOI must correspond with the nature and context of the undertaking under this type of CIF. The main reason for this contract type is to protect buyers from evaporation, sedimentation, and clingage to tanks, rather than from accidents. For further understanding of this type of INCOTERMS, you may read *Panda OHG v. Circle Products Ltd* [1970] *Lloyd's Rep.* 499, and also *Standard Chartered Bank v. Pakistan National Shipping Corp* [2003] 1 AC 959 (UK HL), where the House of Lords rejected a bank's reliance on an LOI that was not expressly incorporated into the credit terms.

- c) Statutory reforms may be necessary in Tanzania to incorporate or codify the perspectives of UCP 600, along with any subsequent revisions, in conjunction with local statutes and commercial customs. Currently, courts in Tanzania enforce UCP only if parties explicitly include it in the contract. Therefore, a review of relevant local legislation in Tanzania—such as the Bills of Exchange Act regarding the validity of negotiable instruments, the Banking and Financial Institutions Act concerning risk management and compliance with international standards for handling LCs, the Foreign Exchange Regulations under the Bank of Tanzania Act addressing cross-border transaction limitations and payment execution under UCP, the Law of Contract Act supporting the enforcement of tripartite agreements involving the applicant, issuing bank, and beneficiary, and the Sale of Goods Act defining the rights and obligations of buyers and sellers using LCs—is essential.
- d) Based on the underlying legal implications, as a matter of interpretation and persuasion strategy, the courts and legal practitioners in Tanzania must have a proper understanding of the role of banks in the context of LC and UCP 600 (and its revisions). They should refrain from overly referencing goods or physical performance when interpreting LCs. Instead, the focus should be on analogizing the banks' adherence to the documentary compliance standard of checking, given the cardinal rule under UCP 600 that banks deal with documents, not the goods (physical performance) underlying the transaction.
- e) As a capacity-building initiative in the judiciary, it is advisable to incorporate UCP 600 compliance modules and other commonly used payment systems in international trade into judicial training programs under the Institute of Judicial Administration (Lushoto), as well as into induction and training programs for judges in Tanzania. This recommendation is justified because legal issues governing international trade finance are highly specialized, complex, and continually evolving.
- f) The Tanzania Bankers Association (TBA) should consider engaging with the Bank of Tanzania to develop regulatory guidance on the enforceability of LOIs and provisional invoices in the context of payment methods under documentary credits. A clear guide regarding the conditions precedent to determine the legality of the LOI is a crucial part of banking operations, considering the potential inherent risk exposure to the bank.

- g) Banks in Tanzania should consider including explicit terms in LC contracts regarding LOI risk allocation. To ensure clarity and legality, LOI provisions must clearly define, among other aspects, the scope of non-compliance that is acceptable or tolerated (such as specific document deficiencies), the coverage period (i.e., the timeframe), and the liability limits (including caps on liability).

6. Conclusion

The Citibank Tanzania Ltd vs Total Tanzania Ltd case represents an important step in aligning Tanzanian commercial law with international banking standards. However, gaps in clarifying the role of banks (documents vs goods under UCP 600), Letters of Indemnity (LOIs), and operational compliance highlight the need for further judicial reviews to address these issues and define the operational limits of LC and UCP 600 at both the institutional and policy levels, thereby promoting predictable and secure trade finance systems in Tanzania.

Disclaimer: This legal brief summarizes our reflections on the recent Court of Appeal of Tanzania's decision in *Citibank Tanzania Ltd v. Total Tanzania Ltd*. It is not intended to serve as legal advice for any specific case you may be dealing with. For tailored legal guidance, please consult your preferred attorney or the undersigned.

Prepared by:

Prof. Saudin J. Mwakaje,

Partner, NexLaw Advocates,

Email: smwakaje@nexlaw.co.tz, info@nexlaw.co.tz

Tel. No: +25522213567, Cell: +255754 300132

[Prof. Mwakaje is also an Associate Professor at the University of Dar es Salaam, among other courses, he teaches International Trade and Finance Law in the Master of International Trade (MIT), offered by the University of Dar es Salaam Business School (UDBS) and in the Master of Taxation, and Master of Arts in Revenue Law and Administration (MARLA) both offered by the University of Dar es Salaam School of Law (UDSoL)]



NEXLAW

Contact us:

NexLaw Advocates,
Ground Floor, Kilwa House
369 Toure Drive, Oyster Bay,
P.O Box 75578 Dar es Salaam,
TANZANIA.

Tel. No: +255 22 2135677/2126552

Email: info@nexlaw.co.tz

Website: www.nexlaw.co.tz