

THE REPUBLIC OF UGANDA

INDUSTRIAL COURT OF UGANDA AT KAMPALA

(MISCELLANEOUS APPLICATION NO. 12 OF 2016)

ARISING OUT OF LABOUR DISPUTE CLAIM NO 31 OF 2015

WAMALA GROWERS COOPERATIVE UNION LTD.....APPLICANT

VS

STANLEY HENRY KIJJAMBU.....RESPONDENT

ATTORNEY GENERAL.....THIRD PARTY

BEFORE:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

PANELISTS

- 1. MS.JULIAN NYACHWO**
- 2. MR. MAVUNWA EDISON HAN**
- 3. MR. EBYAU FIDEL**

RULING

The Applicants Wamala Growers Cooperative Union seeks the issuance of a 3rd party notice to the Attorney General in respect of Labour dispute No. 31 of 2015.

The claimants claim is premised on his unlawful termination as Union Secretary due to the abolition of the post by the Applicant Cooperative union.

The Applicant now seeks indemnification from the Attorney General for the role played by the commissioner for cooperatives Development or the Registrar cooperative societies, in the abolition of the position of Union Secretary. The Application is premised on Order I rule 14 (1) and (2) of the Civil procedure rules (SI 71-1) and section 40 of the Labour Disputes (Arbitration and Settlement) Act 2006 and is supported by an affidavit deponed by David Kavuma Mutesasira for the applicant, dated 1st March 2016.

Order 1 rule 14(1) and (2) of the CPR provides as below:

1. **Where a defendant claims to be entitled to contribution or indemnity over against any person not a party to the suit, he or she may, by leave of the court, issue a notice (hereafter called a “third party notice”) to that effect.**
2. **The leave shall be applied for by summons in chambers ex parte supported by affidavit.**

Mr. Gumisiriza, who represented the applicant at the hearing of this application, did not cite any case in support of his arguments.

We have carefully considered the applicant’s averments in this matter, as well as pleadings in respect of Labour dispute Claim No. 31 of 2015, from which this Application arises. Paragraph 3(a), (f) and (g) of the Claim in issue state as follows:

3. ***The claimant brings this claim seeking the following orders:***

a) A declaration that the claimant's dismissal from active employment in the Respondent Company was unlawful and illegal.

f) On 30th day of June 2010, the claimant received a letter from the chairman of the claimant company indicating that the post of Union Secretary had been restructured and abolished in the union...

g) The claimant will aver that the respondents act of restructuring and abolishing his position contrary to the bye-laws was unlawful ...

Paragraph 5, 6 and 7 of the affidavit in support of the application state that:

5) That I know the Commissioner cooperative development or the Registrar for cooperative societies directed the Applicant Cooperative Union to abolish the position of Union Secretary (A copy of the letter containing the directive to abolish is hereto attached and marked Annexure "B")

6) That I know the Respondent centre of grievance before this court in labour dispute No. 31 of 2015 is about the abolition of the position of Union Secretary in the Applicant Cooperative Union which act he attributes it to the Applicant

7) That I have been advised by my lawyers and I verily believe to be true that the Applicant is entitled to contribution to liability that may be imposed on the Applicant arising from labour dispute claim 31 of 2015.

It is trite law that for a third party to be legally joined to a suit, the subject matter as between the respondent and the third party must be the same as that between the respondent and the claimant and similarly the cause of action between the defendant and third party must be the same as the original cause of action refer to, **Lasto Bosco Mayanja Vs Lugya Ronald Misc. Application No. 1236 of 2014,**.

The claimant's case is premised on the abolition of the post of Union Secretary in the Applicant Cooperative Union. The application for indemnity is also premised on the abolition of the post of union secretary in the Applicant Cooperative union by the commissioner cooperative development or the registrar of cooperative societies.

Our interpretation of Order 1 rule 14(1) and (2), is that an applicant for third party notice is required to establish his/ her right to indemnity or contribution. In the instant case, the applicant's application is premised on a claim on indemnity by the commissioner cooperative development or registrar of cooperative societies. The Annexure "B" on which Applicant relies to show the contribution of the third party is a letter of promotion and not dismissal. The pleadings on the other hand have attached to them, a letter dated 25 June 2010 marked as Annexure "H". The letter refers to the Registrar of cooperatives approval of new Salary structures of the Union and abolition of the post of Union Secretary among others.

Further paragraph 5 of the affidavit in support of the application is not specific on who actually contributed, and thus creates doubt as to who was actually obliged to indemnify them. Paragraph 5 reads:

“5) That I know the Commissioner cooperative development or the Registrar for cooperative societies directed the Applicant Cooperative Union to abolish the position of Union Secretary (A copy of the letter containing the directive to abolish is hereto attached and marked Annexure “B.”...”

The applicants however did not provide the actual directive of Registrar Cooperative Societies or the Commissioner cooperatives Development, Sthat directed to the Board of the Applicant Union abolish the position of Secretary ,neither is the said directive on the record.

The right to indemnity was articulated in the case of **Lasto Bosco Mayanja Vs Lugya Ronald Misc. Application No. 1236 of 2014(supra)** in which Justice Monica Mugenyi cited with approval the cases of **Eastern Shipping Co. Vs. Quah Beng Kee (1924) AC 177 at 182** and **Birmingham and District Land Co. Vs. London and North Western Ry Co. (1887) 34 Ch. D 261 at 271.**

In **Eastern Shipping Co. Vs. Quah Beng Kee (1924) AC 177 at 182** it was held that:

“A right to indemnity generally arises from contract express or implied, but is not confined to cases of contract. A right to indemnity exists where the relationship between the parties is such that either in law or in equity there is an obligation upon the one party to indemnify the other. ... And in Birmingham and District Land Co. Vs. London and North Western Ry Co. (1887) 34 Ch. D 261 at 271, where Cotton LJ had clarified:

“Of course if A requests B to do a thing for him, and B in consequence of doing that act is subject to some liability or loss, then in consequence of the request to do the act the law implies a contract by A to indemnify B

from the consequence of his doing it. In that case there is not an express but an implied contract to indemnify the party for doing what he does at the request of the other.”

The Applicants have not established the contribution by the Registrar of cooperative societies or the Commissioner Cooperative Development to the liability that may arise under labour dispute no. 31 of 2015, because they did not furnish this court with the actual directive to abolish the post of Union Secretary. In the absence of evidence connecting the Attorney General and the Applicants we cannot grant the order for the issuance of Third party Notice.

The application is denied. No order as to costs is made.

1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE

2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA

PANELISTS

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DATE :

