**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE MISC.APPLICATION NO. 247/2018**

**ARISING FROM LABOUR DISPUTE NO.271/2016**

**MUSAZIZI ENOCK …………………………………….. APPLICANT**

**VERSUS**

**CIPLA/QUALITY CHEMICALS ……………………………... RESPONDENT**

**BEFORE**

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

**PANELISTS**

**1. MR.MICHEAL MATOVU**

**2. MS. SUSAN NABIRYE**

**3. MS. ADRINE NAMARA**

**RULING**

This application is brought by chamber summons, under Section 98 of the Civil Procedure Act, Order 10 rule 1, 2, 12,14 and rules 24 of the Civil Procedure rules for orders that:

1. Leave be granted to the applicant to deliver interrogatories in writing for the examination of CIPLA/QUALITY CHEMICALS, the Respondents
2. The Respondent enables the discovery on oath of the documents which are in their possession or power relating to the dispute in question and more particularly stated in the proposed document requests.
3. Costs of the application be provided for.

The grounds of the application are set out in and affidavit deponed Mr.Enock Musasizi the applicant as follows;

1. That as the Claimant in Labour Dispute Claim No 271/2016, he is seeking inter alia, outstanding overtime pay, annual leave not taken and weekly rest days not taken.
2. He seeks the information in the interrogatories to prove his claims in the substantive suit because the his Advocates Mukuve Mugagga informed him that the Respondents in their reply to his memorandum of claim deny any liability.
3. He was also informed by his lawyers that seeking supporting witnesses from his former colleagues who were involved in the operation of the quality control department would be helpful to his case.
4. That he is entitled to his pay statements which bear the information that is needed to prove his overtime pay, annual leave and enable Court to justly dispose of the head suit.
5. He was also informed by the same lawyers that he was entitled to written particulars concerning his employment which states the terms and rate of his overtime pay.
6. That in the interest of justice and equity this application should be granted considering the gravity of the suit because the interrogatories sought will provide court with the right context and background for deciding the matter. The documents and information sought will not prejudice the respondent in anyway and the alternative the Claimant will suffer substantial loss it the application is not granted.

The Respondents did not file a reply to this application,we were satisfied that the Respondents were served with the application as far back as January 2019 and on 7/8/2019, Counsel for the Respondent was in Court when the matter was adjourned for hearing on 28/10/2019, therefore the matter proceeded exparte.

The following are interrogatories sought for:

1. Details about the claimant’s functions, powers and duties of the Claimant as a Department Assistant in the Quality control laboratory of the respondent and the identity of all his co- workers in the department and directly involved in his work and their respective roles.
2. Description of the person responsible for supervising and managing the Quality control laboratory of the Respondent.

The document requests are as follows:

1. The claimant’s personal file and all his timesheets, pay slips, annual leave cards for the period January 2007 -January 2014.
2. NSSF statement Remittance documents for the Claimant, for the period January 2007 -January 2014.
3. The Respondent’s Human resources Manual for the the period January 2007 -January 2014.
4. The Claimant’s personal medical file as well as documents relating to his health visits to Friends poly Clinic and Opticals House.
5. Notice of written particular of employment in respect of the Claimant.
6. The Claimants payment statement for the eriod January 2007 and January 2014.

**REPRESENTATION**

Learned Counsel Mr. Mukuve Mugaga for the Applicant of Mukuve &Co. Advocates. There was no one for the Respondents.

 **SUBMISSIONS**

It was submitted for the Applicant that the Claimant was an employee of the respondent for 7 years from 2007-2014, when he was terminated following an incurable eye illness. He brought susbstantive claims for inter alia, overtime, severance allowance and compensation for unfair termination. In their reply the Respondents t claims it discharged all its obligations towards the Claimant, which he disputes hence this application for discovery.

He restated the legal basis and the grounds of the application as set out in the chamber summons and the affidavit in support as summarized above. According to him the grounds of this applications were reiterated in **Marriot vs Chamberlain (1886) 17 QBD 154 ,163** as well as the Kenyan case of **Tulip properties Limited Vs Mohammed Koriow Nur & four others Civil Case No. 1012 of 2004.** Although Counsel did not provide the said authorities therefore, we shall not consider them.

It Counsel’s submission that the information sought in this application will enable quick resolution of whether the claimant is eligible for the benefits, what the quantum of the benefits should be and whether they were paid to him and in what amount. In his view the production of the information sought would expedited the suit and reduce the costs by reducing the number of attences in court and free courts time to handle other matters.

He asserted that the information sought was relevant to the dispute in question and necessary to enable fair disposal of the issue concerning the Claimant’s eligibility for the benefits claimed.

He insisted that the information sought should be in the possession of the respondent by operation of law and in support of this assertion he cited section 50 of the Employment Act 2006, which makes it mandatory for an employer to provide an employee with a pay statement which shows deductions made on his pay and his net pay. It was his submission that this pay statement is among the documents requested for and which can indicate the Claimant’s overtime pay, and any annual leave accrued, given that the net pay is derived from the computation of overtime as well as accrued leave.

It was further his submission that Section 59 of the Act requires every employer to give the employee a notice in writing of the particulars of his employment within 12 weeks of his employment. These particulars state the terms of employment and the details including the amount of overtime to be worked and the rate of payment and Section 60 makes these written particulars evidence in case of any dispute arising between the parties. He contended that NSSF records are mandatory and they should not be hard to avail.

It was his prayer that given that the documents requested were mandatoty unde the law it is obvious that the respondent should avail the same to Court and reduce courts time and costs in order to expedite the determination of the head suit.

**DECISION OF COURT**

We have carefully considered Counsel’s submissions and studied the chamber summons and affidavit in support and find as follows:

Order 10 rule one empowers any party to a suit to apply to court within 21 days from the date of the last reply or rejoinder for leave to deliver inerrogtories and discoveries in writing for examination of the opposite parry or any one or mor of these parties and those interrogatories when delivered shall have a note at the foot of them stating which of the interrogatories each of the parties is required to answer the interrogatories must relate to the mater in question between the parties , they must be necessary for saving costs and where there are various respondents to the interrogatories, there should be a note at the foot stating which party/parties are required to answer which interrogatories.

The information sought in this application is relates to settlement of an employment dispute between the parties and particularly whether the claimant is entitled to certain benefits following his termination.

 An employment relationship is established and governed by a contract of employment which could be oral or in writing. The basis of determining any dispute arising out of an employment relationship would therefore be the contract of the employment between the parties.

There are several Authorities which have held that the it is the Responsibility of an employer to provide an employee with a written contract or written terms of the employment, although the employee retains the burden of proving an employment relationship or its termination thereof.

In the substantive suit between the parties under LDC No. 271/2016, the employment relationship is not in dispute, what is in dispute is the termination of the Applicant’s employment relationship with the Respondent and whether he ie entitled to receive any benefits accruing therefrom.

As we understand it the application seeks for information from the Respondent which if availed to Court would enable quick resolution of LDC No. 271/2016.

Indeed Section 59 of the Employment Act entitles an employee to receive from his or her employer notice in writing of the particulars relating to his or her employment including but not limited to full names and addresses of the parties to the contract, the date in which the employment under the contract began, the title of the job, place and where the employees duties are to be performed, the wages which the employee is entitled to receive, the means by which they will be calculated , the intervals within which they will be paid, the deductions that will be made other conditions to which they are subject, the rate of overtime pay applicable to the employee, the normal working hours and shifts or days of the week on which such work is performed, the number of days annual leave to which the employee is entitled or the entitlement to wages during such leave, the terms and conditions relating to incapacity for work due to sickness or injury including provision for sick pay, length of notice in excess of that provided in the Act, required for lawful termination, and all this information can be provided to the employee in writing in a document which is reasonably accessible to the employee during working hour and the notice of these particulars must be issued to the employee by the employer not later than 12 weeks after the commencement of employment.

Section 59(5) specifically provides that: An employer shall retain a copy of thef the written particulars issued under subsection 1 and ay changes in them and shall produce the copy on demand to a Labour officer.

It is clear form this Section that the burden of preparing a written contract and keeping the record of the employee is placed on the employer. In **Akonye David vs Libya Oil, LDC No. 082/2014)** this Court ***“The burden of preparing a contract is placed on the employer because it is the employer who sets the terms and conditions of the employment. The burden of proving the provisions of any allegations regarding the terms of the employment contract therefore remain on the shoulder of the employer. The employer is expected to keep written records of all employees employed by him or her, even for a number of years after they have been terminated.”*** Therefore, the burden to avail Court with the records to enable clarification of disputed facts in a Labour dispute falls squarely of the employer’s shoulders.

The interrogatories and documents requested in this application relate to the employment relationship and are items covered under the written particulars that the employer must issue an employee as provided under Section 59(supra). In our considered view the information sought is relevant to resolving the dispute in the head suit. Therefore given that the particulars of the contract of employment form the basis of the employment relationship and therefore the basis upon which any dispute arising therefrom can be resolved, in the absence of evidence that the Respondent issued the Applicant/ Claimant with the written particulars of his employment, as provided under Section 59 of the Employment Act(supra), we have no reason to deny this application.

In the conclusion this application is granted, the Respondent is ordered to avail the Applicant all the information requested in the interrogatories and requested documents in this application, within 2 weeks from this ruling. No order as to costs is made

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE ……………………..**

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ……………………..**

**PANELISTS**

**1. MR.MICHEAL MATOVU ………………..**

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**DATE: 15TH NOVEMBER 2019**