



THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

CONSOLIDATED LABOUR DISPUTE NO. 017 OF 2020 AND LABOUR DISPUTE NO. 048 OF 2023
(Arising from MGL/LC/040/2019 & MGLSD/LC/104/2022)

1. MASIKA SAM
2. ODOKI JOSHUA
3. ATHOCON HILLARY
4. ACAM AGNES
5. KWAHA JOSEPHINE

}CLAIMANTS

VERSUS

1. THE SECRETARY KYAMBOGO UNIVERSITY
2. KYAMBOGO UNIVERSITY.....RESPONDENTS

Before:

The Hon. Mr. Justice Anthony Wabwire Musana:

Panelists:

Hon. Adrine Namara, Hon. Susan Nabirye & Hon. Michael Matovu.

Representation:

1. Mr. Denis. C.G Mudhola of Famm Advocates for the Claimants.
2. Mr. Cyrus Baguma and Mr. Amon Abaasa of M/s Kalenge, Bwanika & Kisubi Advocates for the Respondents.

RULING

Introduction

[1] This ruling concerns a notice to produce for inspection qualifications of and salary payment roster for several library staff, including the University Librarian, the Deputy University Librarian, the Senior Librarian, the Librarian, the Assistant Librarian and Library Assistants at the Respondent University for the period 2015 to date. By the direction of this Court, the Notice to Produce was served on the Respondents on the 5th of October 2013.

Submissions

- [2] When this matter came up on the 3rd of November 2023, Mr. Mudhola, appearing for the Claimants, submitted that under Order 10 Rule 21 of the Civil Procedure Rules S. 171-1(**the CPR**) argued that when a party fails to comply with a notice for discovery, their defence or claim can be struck out. Counsel maintained that the Court issued directions, and the non-compliance amounts to contempt. He asked that the respondents' defences and witness statements be struck out and relied on *Standard Chartered Bank Ltd v Jeniffer Uwimana & 4 Others*¹ to support this proposition.
- [3] In reply, Mr. Nabaasa argued that there is no application for discovery before this Court as no order was extracted, compelling Respondent to produce any document. His view was that on the 4th of October 2023, the Court guided Counsel for the Claimants to serve the Respondent with a notice of the documents he wanted. Counsel cited *Simbamanyo Estates Ltd v Peter Kanya & 4 Others*² in support of the proposition that the Court can inspect documents where a party objects to the documents on grounds of privacy of constitutional rights. Counsel argued that 10 rule 21 CPR was not applicable.
- [4] From the submission of the respective parties, Mr. Mudhola submits that the Respondents have disobeyed an order to produce documents. At the same time, Mr. Abaasa counters that there is no such Court order to produce any documents.

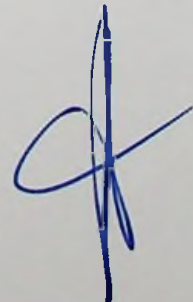
Procedural history

- [5] The procedural history of this matter is essential for an orderly disposition of the contention. On the 10th of March 2020, through M/S Alliance Advocates, the Claimants filed a memorandum of claim seeking various relief, including withheld salaries and allowances. They had been employees of the Respondent University in the Library Department.
- [6] In their memorandum of defence filed on 24th March 2020, the Respondents contended that the Claimants had been given time within which to upgrade their qualifications in accordance with the Universities and Other Tertiary Institutions(Awarding of Honorary Degrees and Academic Titles) Regulations, 2010³ to qualify for enhanced salaries.
- [7] In their rejoinder, the Claimants argue that the position of library assistant was regarded and the refusal to enhance salaries had continued their efforts to improve qualifications.
- [8] Thus, on the 10th of November 2020, the Claimants extracted a notice to produce the original qualifications of library staff and the salary payment roster for 2015 to date.

¹ HCMA 886 of 2015 Commercial Court. 6th November 2015

² [2022] UGCommC 165

³ S.I 50 of 2010



[9] When the matter came before us on 19th September 2022, parties were directed to complete pre-trial filings. On the 6th of December 2012, issues for determination were interrogated, and fresh directions were issued for completing the joint scheduling memorandum(**the JSM**). On the 22nd of October 2023, the parties sought consolidation by consent of this matter with Labour Dispute Reference No. 48 of 2023, which relates to the termination of the Claimants by the Respondent. We issued the order of consolidation directing the amendment of pleadings to reflect that consolidation. On the 4th of October 2023, Mr. Mudhola informed us that the parties would maintain the proceedings as is. He also indicated he had served a notice of discovery. On that date, we issued three directions, to wit:

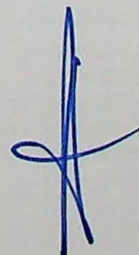
- (i) Parties were directed to file a JSM by close of business on 27th October 2023.
- (ii) Counsel for the Claimant was directed to file in Court a notice of discovery of specific documents and that this notice should be delivered to the Respondents before close of business on 6th October 2010 and;
- (iii) The Respondents were directed to furnish the Claimants with documents requested on or before the 20th of October 2023.

[10] When the matter came before us on the 3rd of November 2011, the parties had not concluded the JSM because they had reservations on the issues. Mr. Abaasa also informed us that the documents sought were confidential and far-fetched. We heard the submissions of Counsel and reserved our ruling, which we now render.

Determination

[11] For starters, the notice to produce documents was made under Order 10 Rule 15CPR, which entitles a party to a proceeding to give notice to the opposite party to produce documents referred to in the pleadings for inspection. Under Order 10 Rule 17CPR, the party to whom notice is given shall, within ten days of receipt of the notice, deliver a notice stating the time and place of inspection. The forms of notice to produce and notice of inspection are provided in Forms 7 and 8 of Appendix B to the CPR. In the matter before us, the Claimants were, on the 4th of October 2023, directed to serve the Respondents with a notice to produce documents. On the 3rd of November, Mr. Abaasa reported to the Court that the documents sought were confidential and far-fetched. Therefore, whether there was an order directing inspection, the answer to that question would be a resounding yes. This Court issued two directions: first, for the Claimants to serve the Respondents with a notice to produce and, secondly, that the Respondents produce the documents by the 20th of October 2023. Therefore, there was an order to produce the documents.

[12] Order 10 Rule 18CPR provides for where a party served with notice under rule 15 omits to give notice of a time for inspection or objects to inspection, the Court may, on the application of the party desiring it, make an order for inspection at such place and in such manner as it may think fit: except if the Court thinks that the order is not necessary.



- [13] In our view, what comprises the rule cited above is the discretion of the Court to grant an order of inspection in such manner as the Court thinks fit, if the Court thinks fit. In other words, if it is necessary for the fair disposal of the suit and for saving costs, the Court may grant the order. And we shall return to this point later in this ruling.
- [14] Mr. Mudhola cited *Standard Chartered Bank Ltd* in support of the proposition that the Respondent was in contempt of the Court order. In that case, the Court issued directions for producing certain documents, but the Applicant did not comply. The Court found the Applicant in contempt and, having not purged themselves of the contempt, could not bring an application to review the court's orders. Mr. Abaasa suggests that there was no Court order. The record of proceedings of the 4th of October 2023 reflects that three directions were issued. The directions of the Court were clear: to file a JSM, to serve a fresh notice to produce and to produce those documents by the 20th of October 2023. Mr. Abaasa suggests that there was no application for discovery. That is correct but not for the reasons Counsel asserts. This was not an application for discovery, but the Claimant served the Respondent with a notice to produce documents under Order 10 Rule 15CPR. Pursuant to that notice, the Court directed fresh service of the notice and production of the documents for inspection.
- [15] It would follow that the Respondent did not abide by the direction of this Court, which is disobedience to a court order or directive. In *Nyende and 44 Others v Shoprite Checkers (U) Limited*⁴ we cited *Washington Inima v Mohammed El Tahir and Another*⁵ and *Megha Industries Ltd v Conform Uganda Ltd*,⁶ where it was held that contempt of court exists where there is a lawful court order, and the potential contemnor must have been aware of the court order and failed to comply with the order. We also observed that before a court finds a potential contemnor in contempt of court, it is to be satisfied on a balance higher than the balance of probabilities but lower than beyond reasonable doubt.⁷
- [16] In the matter before us, we directed the Respondents to furnish the documents listed in the notice to produce by the 20th of October 2023. The Respondents did not and viewed the documents to be confidential and far-fetched. In Mr. Abaasa's opinion, it was unnecessary to comply with the order. For that stance, the Respondent would be held in contempt for failing to comply with the order.
- [17] The next question is should the Court impose then any penalty for contempt? In their treatment of contempt, the Learned Authors M.Ssekaana J and SN Ssekaana⁸ opine that before imposing sanction, there must be an application for contempt, which must be served on the contemnor, and an opportunity to hear the evidence of contempt. In the matter before us, no such application was made. In the result, we would not entertain the matters of contempt.

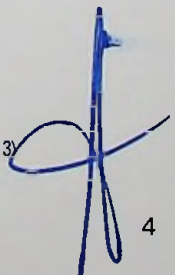
⁴ LDMA 31 of 2023

⁵ LDMA 202 of 2021

⁶ [2014] UGCommC 162

⁷ Hon Sitenda Sebalu v Secretary General of East African Community Reference No. 8 of 2021 EACJ(First Instance Division) (22nd November 2013)

⁸ Civil Procedure and Practice in Uganda 39[6]



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[18] That takes us back to the matter of inspection of documents. Mr. Abaasa cited *Simbamanyo* in opposition to the Claimant's prayer that the memorandum of defence be struck off. *Simbamanyo* concerned an application by notice of motion under the provisions of The Evidence(Bankers Books) Act Cap.9 and Order 10 Rules 12 and 14CPR seeking certified copies of bank statements and discovery of emails and a copy of a performance-based guarantee. In an expansive discourse on the discretionary power of the court to grant an order of discovery, Mubiru J. set the threshold for the grant of the order to include relevance, materiality, and admissible of the evidence sought, that the documents sought are not otherwise privileged or protected by law, that the documents are in the Respondents' power possession and control and that there has been an attempt at voluntary cooperation such as the notice in the present matter. In that case, the application for discovery under Order 10 CPR includes a summons for production, inspection, production, or admission. His Lordship places these in one category. For emphasis, this case demonstrates three broad considerations: (i) That the Court will order discovery if voluntary cooperation has failed, (ii) the documents sought must be relevant, material, and admissible evidence before the Court and (iii) that the documents are in the possession and control of the Respondent.

[19] We suggested that we should return to the matter of discretion. The present matter relates to a notice to produce under Order 10 Rule 15CPR, and Counsel was in Court when the directions were given. It is possible that the parties did not extract and serve the orders of the Court, which informed Mr. Abaasa's view that there was no application for discovery. He also suggested the documents to be confidential and far-fetched. We disagree. The Claimants' case from the pleadings relates to salary arrears for positions at the Respondents' Library Department. The documents sought to be produced for inspection relate to the qualifications and salaries of the positions of University Librarians, Deputy University Librarians, Senior Librarians, Librarians, Assistant Librarians and Library Assistants for the period 2015 to date. The names of the officers are listed in the notice to produce. The Respondent University is a public University established under the Universities and Other Tertiary Institutions Act Cap. 262(**the UOTIA**). Offices and qualifications for such officers in a public university are in the public domain. Under Section 62(2)(a) and (3)UOTIA, the payment of salaries is out of annual estimates approved by Parliament. In our view, that is not confidential, as Mr. Abaasa would have this Court believe. Secondly, the list is not far-fetched. It is quite the opposite. It is pointed, legitimate, relevant, and material to the dispute before this Court. The list concerns positions, qualifications, and salaries, disputed matters.

Final Orders

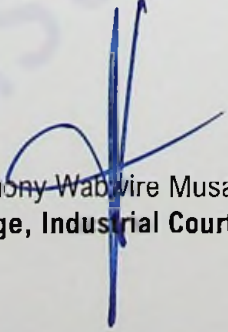
[20] Therefore, if the Respondent has not cooperated voluntarily, striking out the Respondent's memorandum of defence now would be a last resort. Our view is that under Section 8(3) of the Labour Disputes(Arbitration and Settlement) Act Cap. 227(**the LADASA**), this Court has powers to order discovery, inspection, or production of documents or require any

person who has special knowledge of any relevant matter to furnish the same to the Court. In the circumstances that the directions of the Court were not perfectly clear, we now order the Respondents to furnish under Oath by the 1st Respondent the following documents, information, and records:

- (i) Qualifications and salaries for the office of the University Librarian held by Dr. Bernard Bazirake from 2015 to 2018 and Liz S. Nassali from 2018 to date.
- (ii) Qualifications and salaries for the office of Deputy University Librarian held by Ntege Harriet Kiwanuka from 2015 to 2018 and by the current occupant of the office.
- (iii) Qualifications and salaries for the office of Senior Librarians as occupied by Edward Mukiibi, Nabosa Mary Gorreti Kyagaba and Buule Robert from 2015 to 2018.
- (iv) Qualifications and salaries for the office of Librarian from 2015 to date.
- (v) Qualifications and salaries for the office of Assistant Librarians as occupied by Ndagabirano Paul, Kabogoza Fatima, Kamanda Francis, Nampomba Norah, Adibo Sicolastica, Tusubira King David, Okware James, Mafukho Francis John, Nakato Margaret, Acanit Mary, Kuteesa Happy Naphtali, Namugenyi Amina Saaku and Nabwami Evelyn from 2015 to date and;
- (vi) Qualifications and salaries for the office of Library Assistants as occupied by Wamala Lincon Samuel, Nanginzi Jennifer, Kanyi Ritah, Igaba Irene, Mukwhwana Tonny, Nairubi Gorreti, Gidgui Perez and Muwongo Christopher from 2015 to 2018.
- (vii) The documents and information in Paragraph [18] (i) to (vii) above shall be furnished on or before the 15th of July 2024 with a copy filed upon the Court record.

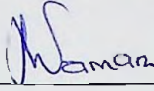
It is so ordered.

Dated and delivered at Kampala this 1st day of July 2024.


Anthony Wabwire Musana,
Judge, Industrial Court

The Panelists Agree:

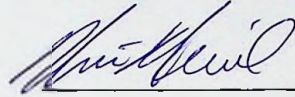
1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



1.07.2024

9:40 a.m.

Appearances:

1. **For the Claimant:**

Mr. Denis Mudhola
Claimants in Court.

2. **For the Respondent:**

No one for the Respondent.

Court Clerk:

Mr. Samuel Mukiza

Mr. Mudhola:

Matter for ruling, and I am ready to receive it.

Court:

Ruling delivered in open Court.

Anthony Wabwire Musana,
Judge, Industrial Court.
10:00 a:m