



THE REPUBLIC OF UGANDA  
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA  
LABOUR DISPUTE REFERENCE NO. 62 OF 2023  
(Arising from KCCA/CEN/LC/016/2023)

YAHAYA RISASI :::CLAIMANT

VERSUS

KCB BANK UGANDA LTD :::RESPONDENT

**Before:**

The Hon. Mr. Justice Anthony Wabwire Musana,

**Panelists:**

1. Hon. Adrine Namara,
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu.

**Representation:**

1. Mr. Jude Byamukama of MS JByamukama & Co. Advocates for the Claimant.
2. Mr. Duncan Muhire of Ligomarc Advocates for the Respondent.

**RULING**

**Introduction**

- [1] The Claimant, who asserts the Respondent unlawfully terminated him, alleges that on the 3<sup>rd</sup> day of August 2022, he sent an internal email from his email address [yrisasi@ug.kcbbankgroup.com](mailto:yrisasi@ug.kcbbankgroup.com) to one Bernard Arinaitwe, the Head of the Respondent's Forensic Services and Security Unit. He avers that he copied the Respondent's Executive Director and Head of Finance. His lawyers served the Respondent with a notice to produce the email on the 24<sup>th</sup> of April, 2023. The Respondent argued that this email was not in its possession. On the 18<sup>th</sup> of March 2024, we directed the parties to file affidavits by Order 10 Rule 13 of the Civil Procedure Rules S.I 71-1(*from now CPR*). We also asked the parties to file representations if they so wished.
- [2] The Respondent filed an affidavit deposed to by Matthew Rukundo Mutagamba, its Head of Technology, by which he averred that following termination, the Respondent's I.T team disables or deactivates the staff from the system, and this deactivation means all mail in the holder's mailbox is erased and/or disabled. He avers to have checked with the Ag. Head of Forensics Security Services and Security Unit who had resigned and whose emails had been deactivated, and the Executive Director's and Head of Finance's inboxes and the search indicated the email was non-existent. He was, therefore, unable to find the email.

[3] In rejoinder, the Claimant filed two affidavits. In his affidavit dated 5<sup>th</sup> April 2024, he averred that he sent an internal email dated 3<sup>rd</sup> August 2022 to the Respondent's Acting Head of Forensic Services and Security and mentioned the same email in his statement to Police Officers on the 28<sup>th</sup> of August 2022 and that he was aware that the Respondent backed up its emails on the cloud. In the second affidavit in rejoinder, Mr. Richard Emuye averred that he was a Digital Forensic and ICT expert of 22 years. In his expert opinion, the disabling/deactivation of an email from the system does not permanently prohibit its recovery. If granted access to the Respondent's email servers, he could make a forensic image acquisition of the servers and deploy appropriate forensic tools to retrieve the email of 3<sup>rd</sup> August 2022.

[4] We reserved our ruling, which we now hand down.

#### Analysis and decision of the Court

[5] The law on any application for discovery of documents whose bedrock we restated in **Twinomujuni Fred v MEC Plastics & Another**<sup>1</sup> is that a party seeking the production of the documents must have a suit filed in the same court, and there must be issues pending determination by the court. On the first test, it is indisputable that there is a dispute between the parties.

[6] The second condition is that the documents sought to be produced must also be relevant to determining the pending suit before the court.<sup>2</sup> On relevance, in **Sibamanyo Estates Ltd & Anor v Equity Bank(U)Ltd & 4 Others**<sup>3</sup> the Honourable Mr. Justice Mubiru suggests that the application must be calculated to discover admissible evidence, which must tend to prove an element of the claim or defence to prove or disprove a fact in issue. The other aspect of the test is that the grant of an order for the discovery of documents is discretionary. The court will deny discovery if the applicant uses it as a fishing expedition to obtain information to start an action or develop a defence.<sup>4</sup> In the **Twinomujuni**(*supra*) case, we added that Order 10 Rule 18 CPR requires that the document is in the possession or power and control of the party against whom the application is made.

[7] Therefore, to succeed in the application for discovery of documents, there must be a dispute, the documents must be in the possession of the person against whom the application is made, and the documents must be relevant in the opinion of the Court. The element of discretion is further enacted in Section 8(2a)(b) and (c) of the Labour Disputes(Arbitration and Settlement) (Amendment) Act 2021 (*from now LADASA as amended*) where this Court can require any person who appears to have special knowledge of any relevant matter to furnish that information before the Court. This provision gives the Court the final discretion to order the inspection and production of documents.

[8] In the matter before us, the subject matter of the application is an email dated the 3<sup>rd</sup> day of August 2022, sent from [yrisasi@ug.kcbbankgroup.com](mailto:yrisasi@ug.kcbbankgroup.com) to one Bernard Arinaitwe, the Head of the Respondent's Forensic Services and Security Unit and copied to the Respondent's Executive Director and Head of Finance. The Respondent voluntarily checked its records and reported that the email could not be found.

<sup>1</sup> LDMA No. 163 of 2023

<sup>2</sup> See HCMA No. 060/2015 Gerald Kafureka Karuhanga & Another V Attorney General & Others and HCMA No. 912 of 2016 Patricia Mutesi V Attorney General which we cited LDMA No. 005 of 2022 Kiryankusa Simon v Crown Beverages Limited

<sup>3</sup> H.C.M.A NO. 583 of 2022 at page 7.

<sup>4</sup> See Kiryankusa(*supra*). A fishing expedition consists of vague, ambiguous and overbroad requests for production such as all notes, records and memoranda.



- [9] Regarding relevance, the email, as suggested by the Claimant, relates to his whistleblowing anomalies and irregular payments made to two service providers of the Respondent. He also averred that in a turnaround, he was subjected to disciplinary proceedings by the Respondent after whistleblowing. He first mentioned the email in his letter to the Respondent's Managing Director on the 29<sup>th</sup> of September 2022. In our careful consideration of the arguments and affidavits presented, we find that the email in question is relevant to the dispute at hand, to attend to the averments of whistleblowing and the substantive fairness of the disciplinary proceedings to which the Claimant was subjected. The Respondent ought to produce the email. We are fortified in this conclusion by Mubiru J.'s treatment of the purpose of discovery in **Simbamanyo**(supra). The Court observes seven critical objectives of the discovery process. In our view, these objectives are rooted in trial fairness. They include ascertaining the truth, detecting and exposing sham claims and defences, making difficult facts provable simply, educating the parties about the real values of their cases, expediting litigation, safeguarding against surprise, preventing delay, simplifying and narrowing issues and expediting trial preparation. Fairness is critical before this Court, procedurally and substantively, as with any other justice process. The dictates of justice require the Court to consider the substance of the dispute, and in our view, the email would be relevant in serving lady justice.
- [10] The narrower question is whether the email is recoverable so that it can be produced. Mr. Mutagamba suggests that the Respondent does not have this email because the email is not recoverable after disabling the Claimant's email address. The Claimant took issue with this position and filed an additional affidavit by Mr. Richard Emuye, who, as a digital forensics expert, was deposed to the email being recoverable using appropriate forensic tools. This stance puts Mr. Mutagamba at polar opposites with Mr. Emuye. In our view, it is just that the opinion of a technically competent and independent expert be obtained. We are not suggesting that Mr. Mutagamba and Mr. Emuye are not adept. It is much more a question of fairness and attending to the overarching principles of justice. Our review of forensic tools, such as **Microsoft Purview**<sup>5</sup> **Stellar Repair for Outlook**<sup>6</sup> and **EaseUs Email Recovery Wizard**<sup>7</sup> do not very readily support Mr. Mutagamba's thesis. His statement on oath that he had checked for the email and could not find it, and while we could not discount or disbelieve Mr. Mutagamba's view and Mr. Emuye did not tell us which forensic data recovery tools might be employable, a review of the tools above support Mr. Emuye's opinion on data recovery. Therefore, the hypothesis that the data is recoverable should be tested. Such a test is not to unnecessarily expose the Respondent to undue hardship, considering data privacy laws.
- [11] Section 8(2a) of the LADASA(as Amended) provides a very convenient and efficient approach to inspection by this Court. Section 8(2a)(c) invests this Court with the power to require any person who appears to have special knowledge of any relevant matter to furnish in writing or to confirm on oath or affirmation that expert opinion or evidence. We think the wide berth under this provision is expressive of a liberal system of procedure in discovery proceedings, as Mubiru J. puts it in **Simbamanyo**(op cit). Therefore, in the exercise of our discretion under that provision, and minded that maintaining the data privacy of the Respondent is essential and to avoid intrusion, we direct that the Department of Cybercrime under the Directorate of Forensic Services of the Uganda Police to carry out a forensic examination of the Respondent's servers and advise this Court on a single question; whether on the 3<sup>rd</sup> day of August 2022, the Claimant sent an internal email from his email address [yrisasi@ug.kcbbankgroup.com](mailto:yrisasi@ug.kcbbankgroup.com) to one Bernard Arinaitwe, the Head of the Respondent's Forensic Services and Security Unit which email was copied to the Respondent's Executive Director and the

<sup>5</sup> <https://www.microsoft.com/en-us/security/business/microsoft-purview> last accessed on 23.05.2024 at 9:10 pm

<sup>6</sup> [https://www.stellarinfo.com/outlook-pst-file-recovery.php?qad\\_source](https://www.stellarinfo.com/outlook-pst-file-recovery.php?qad_source) last accessed 22.05.2024. 11:17pm

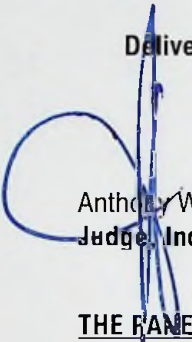
<sup>7</sup> <https://www.easeus.com/emailrecoverywizard/> last accessed 22.05.2024 11:20pm

Respondent's Head of Finance. The Directorate of Forensic Services report shall be rendered to the Registrar of this Court within 45 working days from the date of this order.

[12] There shall be no order as to costs.

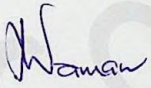

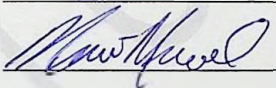
It is so ordered.

Delivered at Kampala this 24<sup>th</sup> day of May 2024.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

**THE PANELISTS AGREE:**

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye
3. Hon. Michael Matovu

  
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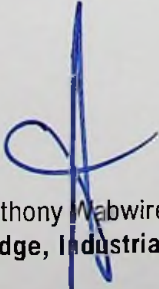
24<sup>th</sup> May 2024  
10.15 a.m.

**Appearances**

- |                      |                           |
|----------------------|---------------------------|
| 1. For the Claimant: | Mr. Phillip Mwesigwa      |
| 2. Respondent:       | Absent.                   |
| Parties:             | Absent.                   |
| Court Clerk:         | <b>Mr. Samuel Mukiza.</b> |

**Mr. Mwesigwa:** Matter is for the ruling, and we are ready to receive it.

**Court:** Ruling delivered in open Court.

  
Anthony Wabwire Musana,  
Judge, Industrial Court

10:30a.m