



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 773 OF 2011

PETER ONDITI OGUGU.....CLAIMANT

VS

ALLPACK INDUSTRIES LIMITED.....1ST RESPONDENT

INDUSTRIAL PROMOTION SERVICES LIMITED.....2ND RESPONDENT

RULING

1. On 28th March 2016 the Claimant served a notice to produce documents on the 1st Respondent. The notice which is dated 21st March 2016 seeks production of the following documents:
 - a) Original copy of investigation report referred to at page 2 paragraph 2 of the summary dismissal letter dated 13th August 2010 together with company rules and regulations;
 - b) All original signed minutes of the meetings of Management for the FY 2010 to 2013;
 - c) All original signed minutes of the meetings of Board of Directors for the FY 2010, 2011 and 2013;
 - d) Copy of letter dated 3rd September 2010 from Jubilee Insurance Company to the 1st Respondent in regard to the Claimant's accrued pension benefits;
 - e) Certified copy of the 1st Respondent's bank statements for the period August to December 2010.
2. The Claimant also served a notice on the 2nd Respondent seeking production of all original minutes of Board of Directors for the FY 2010, 2011 and 2012.
3. In a replying affidavit sworn by the Respondents' Legal Officer, Wilson Mapesa he states that although it is well within the Claimant's right to seek production of documents, this should be within the confines of relevance and reasonableness. Mapesa takes the view that the Claimant's production notices are evidence of a wild fishing expedition
4. Counsel for the Respondents submitted before the Court that an investigation report leading to the Claimant's dismissal was already attached to the reply to claim. Counsel added that there was no management meeting held on 13th August 2010 to discuss the Claimant's case. Further, the 1st Respondent was not aware of any letter from Jubilee Insurance Company.

5. In urging his case, the Claimant referred the Court to its own decisions in

Transport & Allied Workers Union (K) v Societe Internationale De Telecommunication Aereonautiques (SITA) [2014] eKLR and ***Paul Simidi***

Masinde v National Oil Corporation of Kenya Limited & another [2015] eKLR in which the Court affirmed the right to information under Article 35(1)(b) of the Constitution of Kenya, 2010.

6. In the ***Paul Simidi Masinde Case*** (supra), the Court cited the decision by **Lenaola J** (as he then was) in ***Timothy Njoya v Attorney General and another [2014] eKLR*** where the learned Judge rightly held that a party seeking production of documents under Article 35(1) of the Constitution must state clearly the information required, the right they wish to advance and how the information sought would assist in the advancement of that right.

7. The basic principle is that while the law allows a party access to documents in the possession of the opposing party, the documents sought must not only be specific but must also be important for the advancement of the case of the party seeking production (see **Nyamu J** in ***Oluoch v Charagu [2003] 2 EA, 649***).

8. Further, as held by **Azangalala J** (as he then was) in ***National Social Security Fund Trustees v Dr. Sally Kosgei & another [2005] eKLR*** an order for production of documents should not serve as coercion to a party to prove its pleadings at the discovery and inspection stage.

9. I have looked at the notices served by the Claimant and find that no basis has been laid for production of the listed documents as required by law. That being the case, the production notices are overruled with costs being in the cause.

10. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 3RD DAY OF FEBRUARY 2017

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JUDGE

Appearance:

Peter Onditi Ogugu (the Claimant in person)

Mr. Isinta for the Respondents