

**IN THE HIGH COURT OF THE UNITED REPUBLIC  
OF TANZANIA LABOUR DIVISION  
AT DAR ES SALAAM**

**LABOUR DISPUTE NO. 10 OF 2012**

**BETWEEN**

**MUFINDI PAPER MILLS LTD..... COMPLAINANT**

**VERSUS**

**PROSPER JOHN EUGENE & 3 OTHERS.....RESPONDENTS**

**R U L I N G**

*25/11/2014 & 02/10/2015*

**Mipawa, J.**

The applicant's Learned Counsel Mr. Ngasa asked this Court to allow him to file the documents (photocopies) which were taken by the police and the applicant complainant was refused even to make photocopies by the police. Mr. Ngasa is now *viva voce* (by live voice) applying the photocopies be allowed by the Court so that they may use them in the present filed complaint. Mr. Ngasa has argued that at last the police who had the original documents have allowed them to make photocopies for the purpose of using the documents in this case.

However Mr. Safari Learned Counsel for the first and second Respondent objected to the prayer and argued that the applicant was supposed to disclose the documents and since he did not disclose, then

they cannot do it without the leave of the Court as per Rule 14 of the Labour Court Rules<sup>1</sup>. (For easy of reference Rule 14 of the Rules reads):-

*...A document which has not been disclosed during the pre-trial conference may not except with the leave of the Court be granted on whatever terms the Court deems fit, be used for any purpose at the hearing by the person who was obliged to disclose it except that the document or tape recording may be used by a person other than the person who was obliged to disclose it...<sup>2</sup>*

Mr. Safari further argued that since the documents have been filed already that is a contravention of Rule 14 and hence he asked this Court to ex-punge the documents so filed for they have been filed without the leave of the Court.

Mr. Ngasa Learned Counsel for the Applicant complainant replied that it was not true that they did not disclose the documents when filing the complaint. He said that the list of the documents is annexure '2'. On contravention of the Rule the learned counsel argued that the rule does not prohibit the party to file any document. The Rule prohibit the party to use the same which was not disclosed (i.e. prohibit the use of documents not disclosed). They have brought the documents now and in that they are asking the Court to grant then leave to continue using the photocopies.

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<sup>1</sup> Government Notice No. 106 of 2007. The Labour Court Rules GN. 106 OF 2007

<sup>2</sup> *ibid* Rule 14

I have carefully gone through the documents filed in the record and in view of what the parties have submitted I had to read the record from cover to cover in order to satisfy myself that there was a disclosure of the documents now sought to be used by the complainant applicant in this complaint. It is clear that Rule 14 of the Labour Court Rules<sup>3</sup> requires that a document should be disclosed during the pre-trial conference. If the party does not disclose the documents to be used in the trial then he or she cannot be allowed to use the documents in the case, unless the leave of the Court is sought and granted.

A cursory glance on the various annexures filed by the applicant in Court suggest that the documents not filed by then were disclosed as rightly pointed out by Mr. Ngasa, Learned Counsel and pinpointed as annexure - MPM2 respectively. And that process was at the initial stages of the complaint and all parties must have seen the schedule of documents disclosed.

There was proof by counsel that the police had in fact denied to give the applicant the documents even for the purpose of making photocopies as they were (the documents) and still are in the custody of the police. What the police have did is to allow the applicant complainant to make photocopies only and which he has done and now seeks leave of the Court to be allowed to use them in the hearing of the complaint.

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<sup>3</sup> *ibid* GN. 106 of 2007

The Rule is clear that any document (s) not disclosed at the pre-trial hearing may not be used at the hearing for any purpose save by the leave of the Court

In my view and for the interest of social justice and the objection of the labour legislation especially the principal objects of the Employment and Labour Relations Act which are ***interalia***:-

- a) *...To promote economic development through economic efficiency productivity and social justice.*
- b) *To provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work.*
- c) *....*
- d) *To regulate the resort to industrial action as a means to resolve disputes.*
- e) *To provide a framework for the resolutions of dispute by mediation arbitration and adjudication.*
- f) *...*
- g) *.....*

The spirit is generally to promote social justice industrial harmony and peace at place of work. Now bearing the above discussion I am of the settled mind that the applicant should be allowed to use the documents annexure or MPM2 at the hearing of this complaint as prayed by the applicant. I reject the arguments by the respondent's counsel to deny the applicant that right.

I.S. Mipawa  
**JUDGE**  
02/10/2015

**Appearance:**

1. Applicant: F.M. Kwilukilwa, Advocate - Present
2. Respondent: Emmanuel Safari for 1<sup>st</sup> and 2<sup>nd</sup> Respondent - Present

**Court:** Ruling has been read over and explained to the parties as above shown in the appearance.

I.S. Mipawa  
**JUDGE**  
02/10/2015

**Date: 02/10/2015**

Coram: Hon. I.S. Mipawa, Judge

Complainant:

For Complainant: Mr. Kwilukilwa, Advocate - Present

1<sup>st</sup> Respondent: Emmanuel Safari for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

2<sup>nd</sup> Respondent:

3<sup>rd</sup> Respondent:

4<sup>th</sup> Respondent: Present in person

**Mr. Safari:** We pray to be served the documents and let the Court fixed for hearing.

**Order:** Hearing on 27 and 28 November by consent at 10:00 3<sup>rd</sup> Respondent to be served by complaint.

I.S. Mipawa  
**JUDGE**  
02/10/2015