

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.53 OF 2021
(Arising from Civil Suit No.021 of 2021)

REAL ENGINEERING CONTRACTORS LTD

APPLICANT

VERSUS

RUBANDA DISTRICT LOCAL GOVERNMENT

RESPONDENT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

RULING

The Applicant was contracted to execute construction work for the Respondent and was paid part of the contractual sum. The Applicant then filed Civil Suit No.021 of 2021 against the Respondent for a declaration that the Respondent breached the contracts, a declaration that the Applicant is entitled to unpaid money under the contracts, special and general damages, interest on the claimed sum and costs.

The Respondent in her defense contends that the Applicant was duly paid for the work done under the contracts and that the suit is a fishing expedition, frivolous, misconceived and bad in law.

Subsequent to the filing of the suit, the Applicant lodged the current application under section 33 of the Judicature Act, section 22(a) and 98 of the Civil Procedure Act, Order 10 rules, 14, 21 and 24 of the Civil Procedure Rules. Orders sought are for the Respondent to produce for

inspection documents relating to the contracts and sums paid to the Applicant.

The Applicant's Managing Director is stated to have died mysteriously on a return journey from demanding money from the Respondents. The Respondent's officials are alleged to have confiscated the documents in the possession of the Managing Director and no further payments were made from then hence the suit.

The Applicant seeks the Respondent to produce and grant inspection of (i) the three contracts awarded to the Applicant (ii) certificates of completion of the contracts awarded by the Respondent (iii) cheque deposit slips or evidence of payment for the work done under the contracts and (iv) cheque deposit slips and/or evidence of payment for defects rectified under the defect liability clauses.

The Application is supported by an affidavit deposed by a one Suzan Tweheyo who claims to be a Director in the Applicant contending that the Respondent did not attach any documents to support the alleged payments. She further contends that it is necessary for the documents to be produced for the court to arrive at a right decision.

It is further averred by the deponent that the sought documents are in possession of the Respondent and if availed will shade more light and substantiate the claim in the proceedings. It is further averred that failure to produce the documents will greatly prejudice the main suit and there is no legal justification for denying to produce them.

In reply to the Application the Respondent's Chief Administrative Officer contends that the sought documents are in the possession of the Applicant and receipt of part of the contract sum is not disputed. The Respondents contends further that the application is a fishing

expedition, devoid of merit and an abuse of the court process. The court was urged to dismiss the application with costs.

Decision.

I have perused the pleadings by the parties, the affidavits for and against the application and the submissions filed by Counsel.

Order 10 rule 12(1) of the Civil Procedure Rules provides:-

“Any party may, without filing any affidavit apply to the court for an order directing any other party to the Suit to make a discovery on oath of the documents, which are or have been in his or her possession or power relating to any matter in question in the suit.”

Order 10 rule 14 of the Civil Procedure Rules provides:-

“The court may, at any time during the pendency of a suit, order the production by any party to the suit, upon oath, of such documents in his or her possession or power relating to any matter in question in the suit, as the court shall think right.....”

The general principles regarding the production of documents are that the party seeking the production of the documents must have a suit in the same court and there must be issues pending determination by the court. The documents sought to be produced must also be relevant to the determination of the pending suit before the court.

Gerald Katureka Karuhanga & Another V Attorney General & others. Miscellaneous .Cause No.060 of 2015; Patricia Mutesi V Attorney General. MA No.912 of 2016.

The grant of an order for discovery of documents is discretionary and the court will deny discovery if the applicant is using it as a fishing expedition to obtain information for the purpose of starting an action or developing a defence.

Oluoch V Charagu [2003] EALR 649 ;Dresdener Bank V Sango Bay Estates & Others. CS No.322 of 1968;John Kato V Muhlbauer & Another.MA No.185/2011.

The Complaint filed by the Applicant has the three contracts executed by the parties as attachments. The application for their production by the Respondent is an act in frivolity. The Applicant claims to have invoiced the Respondent for the completed works and this could not have been done without certificates of completion.

Any payments made by the Respondent must have been by cheques cashed by the Applicant and this is information in the possession of the Applicant and her bankers. The Applicant further prays for special damages for Shs.54,337,834/= and 250,000,000/= being money retained under the contracts and the unpaid balance respectively.

The Applicant must have arrived at the above sums after computation of all the payments made by the Respondent based on the documents in her possession. The application for the Respondent to produce what is in the possession of the Applicant is an abuse of the court process and a fishing expedition which cannot be condoned by the court.

In **Gale Versus Denman Picture Houses Ltd[1930]1KB 588** it was observed:-

“A plaintiff who issues a writ of discovery must be taken to know what his case is. If he merely issues a writ on the chance of making a case, he is issuing what is called a “fishing bill” to try to find out whether he has a case or not. That kind of proceeding is not to be encouraged .For a Plaintiff after issuing his writ but before delivering his statement of claim to say “show me the document which may be relevant, so that I may see whether I have a case or not is a most undesirable proceeding.”

I find the above passage relevant to the Application in this matter. The Applicant is on a fishing expedition since she has all required to support her claim in court. The Application is dismissed with costs to the Respondent.

Moses Kazibwe Kawumi

Judge

21st March 2022