



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 1947 OF 2012**  
**TRANSPORT AND ALLIED WORKERS UNION (K).....CLAIMANT**  
**VS**  
**SOCIETE INTERNATIONALE DE TELE**  
**COMMUNICATION AERONAUTIQUES (SITA).....RESPONDENT**  
**RULING**

1. The Claimant's claim brought by way of a Statement of Claim dated 27th September and filed in Court on 28th September 2012 emanates from alleged unlawful redundancy of Henry Nyabuto Nyarango, Wanjira Waira Kamau and Kennedy Nyariba Basweti, the grievants herein.

2. The Respondent filed a Reply on 29th October 2012 which was amended on 28th June 2013. In the amended Reply to Statement of Claim, the Respondent took issue with the production of evidence in relation to previous employees of the Respondent who are not parties to this claim and asked that this evidence be expunged for contravening Article 31(c) & (d) of the Constitution.

3. On 9th January 2013, the Claimant filed a notice to produce under Section 69 of the Evidence Act, requiring the Respondent to produce the original agreements of settlement in respect of the following former employees of the Respondent:

- a. Samuel Matolo

- b. Peter Muhanda
- c. Joshua K'odiawo
- d. Mary Kichamu
- e. Margaret Githinji
- f. James Maina Kamau

4. On 27th May 2013, the Respondent filed a notice of non-admission on the ground that the notice to produce was bad in law and the documents requested for are confidential and protected under Article 31 (c) & (d) of the Constitution.

5. When the main claim came up for hearing on 4th February 2014 Mrs. Opiyo, Counsel for the Respondent objected to production of documents exhibited at pages 30-44 of the Statement of Claim dated 27th September 2012 on the ground that the said documents are private and confidential. Citing Article 31 (c) & (d), Counsel submitted that the documents being private and confidential, cannot be produced without the Respondent's consent.

6. With regard to the notice to produce filed on 9th January 2013, Counsel submitted that the Evidence Act does not apply to the Industrial Court and the notice was therefore bad in law. Additionally, the notice to produce was in contravention of Article 31 (c) & (d) of the Constitution.

7. Mr. Mungla, Counsel for the Claimant submitted that the preliminary objection taken by the Respondent was to serve the collateral purpose of improperly shielding the production of documents that would assist the Court to conclusively determine the Claimant's claim.

8. With regard to Article 31, Counsel submitted that the word '*unnecessarily*' appearing in Sub Article (c) is instructive and that Counsel for the Respondent should have demonstrated that the production being sought was unnecessary.

9. Mr. Mungla further submitted that Article 31 (c) & (d) was not an absolute bar to production of private documents and where necessary, production was permissible. Counsel added that the Claimant could not discharge its burden of proving the Respondent's previous practice on statutory obligations arising from redundancy without production of these documents.

10. Citing Article 35 of the Constitution, Counsel submitted that in seeking production of the documents in issue, the Claimant's aim was to protect a fundamental right. Further, under Article 50 of the Constitution, the Claimant was entitled to a fair judicial process which could not be achieved without production of the documents.

11. The issue for determination in this ruling has to do with the admissibility of the documents exhibited at pages 30-44 of the Statement of Claim dated 27th September 2012. According to the Respondent, the said documents are protected under Article 31 (c) & (d) of the Constitution and cannot therefore be produced without the Respondent's consent.

12. Article 31 (c) & (d) provides as follows:

***31. Every person has the right to privacy, which includes the right not to have-***

***(c) information relating to their family or private affairs unnecessarily required or revealed; or***

***(d) the privacy of their communications infringed.***

13. It is the Claimant's case that the rights conferred under Article 31 are not absolute and in the instant case the documents in issue are necessary for the Claimant's case. Article 35 (1) which Counsel for the Claimant relied on provides that:

***35. (1) Every citizen has the right of access to-***

***a. information held by the State; and***

b. *information held by another person and required for the exercise or protection of any right or fundamental freedom.*

14. The Claimant claims that in order to enforce the rights of the grievants under their employment contracts with the Respondent, the production of the documents in issue is necessary. On the other hand, the Respondent maintains that the production of these documents will occasion an infringement of its rights under Article 31 of the Constitution.

15. Neither the Claimant's right under Article 35 nor the Respondent's right under Article 31 are absolute rights as defined in Article 25. It follows therefore that the rights of both parties in this instance are subject to limitation under Article 24.

16. The Claimant seeks to advance its right to information and the Respondent seeks to protect its right to privacy. If the Claimant's plea is rejected, the information contained in the documents in issue will be insulated from the eyes of the Court and if the Respondent's plea is rejected, some information which the Respondent has categorised as private and confidential will be brought to the attention of the Court for purposes of determining this case.

17. Balancing the rights of the parties, I have come to the conclusion that admission of the documents in issue is necessary for a fair determination of this case. The objection by the Respondent is therefore overruled.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF FEBRUARY 2014**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....*Claimant*

.....*Respondent*



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