

UGANDA / JUDGMENT

Legal Brains Trust (LBT) Ltd v Attorney General (Miscellaneous Application No. 599 of 2021) [2025] UGHCCD 96 (4 July 2025)

[2025] UGHCCD 96

COURT

HC: Civil Division (Uganda)

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Miscellaneous Application No. 599 of 2021

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION) MISCELLANEOUS APPLICATION NO. 599 OF 2021 (ARISING FROM MISC. CAUSE NO. 225 OF 2021) LEGAL BRAINS TRUST (LBT) LTD ::::::::::: APPLICANT VERSUS ATTORNEY GENERAL ::::::::::: RESPONDENT

BEFORE HON. JUSTICE BONIFACE WAMALA RULING**Introduction**

- [1] This application was brought by Chamber Summons under Order 6 rule 4 and Order 10 rules 12, 14, 15, 16 & 18 of the Civil Procedure Rules, for orders that;
- a) The respondent be ordered to produce and permit the applicant and its advocates to inspect and make copies of the following documents or classes of documents, namely;
- (i) The memorandum of understanding executed by the Government of Uganda and the Russian Company called Joint Stock Company Global Security to carry out a feasibility study for an intelligent Transport Monitoring system (ITMS), referred to in paragraph 8 of the affidavit in reply by Haji Kakande Yunusu in M. C No. 225 of 2021 (hereinafter referred to as "the main cause").
 - (ii) The agreement executed by the Government of Uganda and the Russian Company called Joint Stock Company Global Security for provision of a digital monitoring and tracking system of motor vehicles and motorcycles in Uganda through a real time control monitoring center referred to in paragraph 9 of the affidavit in reply in the main cause.

- (iii) The financial model referred to in paragraph 13 of the affidavit in reply in the main cause.
 - (iv) The due diligence report referred to in paragraphs 7 and 16 of the affidavit in reply in the main cause.
 - (v) The technical and financial capacity assessment reports referred to in paragraphs 16 of the affidavit in reply in the main cause.
 - b) The respondent's agents and servants be ordered to provide further and better particulars in respect of;
 - (i) The Intelligent Transport Monitoring System (ITMS) referred to in paragraphs 8, 11, 12, 14, 18, 19 and 20 of the affidavit in reply including but not limited to its standard operating procedure manual and the alleged hierarchy of selected officers and related checks and balances.
 - (ii) The shocking and gruesome crimes allegedly committed by criminals moving by motorcycles referred to in paragraph 4 of the affidavit in reply including supporting extracts in the published crime reports and security policies for the relevant years.
 - (iii) Particulars of the records through which the President of Uganda allegedly expressed the concerns and made the identification referred to in paragraphs 5 and 6 of the affidavit in reply.
 - (iv) Particulars of the technical committee referred to in paragraph 7 including but not limited to its establishment, composition, appointing authority, tenure or duration of mandate, minutes of meetings, reports of activities undertaken, and budgets and accountability.
 - (v) The feasibility study report, if any, arising from the memorandum of understanding referred to in paragraph 8 of the affidavit in reply.
 - (vi) Particulars of the technical and financial capacity of the Russian Company referred to in paragraph 16 of the affidavit in reply including but not limited to the company's certificate of incorporation, audited financial statements, management policies and standard operating procedures and critical policies.
 - (vii) Particulars of the due diligence allegedly undertaken as referred to in paragraph 16 of the affidavit in reply including but not limited to the due diligence report, its methodology, findings, funds spent and details of the meeting to approve the same.
 - d) The costs of the application be provided for.
- [2] The grounds upon which the application is based are set out in the affidavit sworn in support in support of the application by **Ms. Lynette Akankwatsa**, a lawyer and one of the case officers of the applicant. Briefly, the grounds are that the applicant filed Miscellaneous Cause No. 225 of 2021 against the respondent seeking several declarations and orders to

which the respondent filed an affidavit in reply. The applicant filed and served the respondent with a request to provide further and better particulars and a notice to produce documents referred to in the affidavit in reply; which the respondent has unjustifiably failed to respond to. The documents and particulars sought relate to the established practice and procedure of conducting government business and are in possession, power and custody of the respondent or its servants. The deponent further stated that the documents and particulars sought are a legal requirement for a foreign company that intends to collect, store and process personal data. She also stated that granting the instant application will facilitate fair and expeditious disposal of the main suit, facilitate pre-trial admissions, concessions, compromise or settlement of the suit either in whole or in part.

- [3] The respondent opposed the application through an affidavit in reply affirmed by **Haji Kakande Yunus**, the Secretary, Office of the President. He stated that the respondent duly responded to the applicant's request for further and better particulars and to the notice to produce documents on 25th August 2021 stating the grounds for objecting to the applicant's requests. He further stated that the instant application is a fishing expedition and there are no grounds to justify production of documents or further and better particulars as requested by the applicant. He also stated that the documents sought to be produced contain information of a confidential nature for both the investors and the Government for which disclosure would not only infringe the investors' right to privacy but may also pose a threat to national security.

Representation and Hearing

- [4] At the hearing, the applicant was represented by **Mr. Stanely Oketcho** from M/s Centre for Legal Aid while the respondent was represented by **Mr. Hillary Nathan Ebila** who appeared on brief for **Mr. Allan Mukama** from the Chambers of the Attorney General. It was agreed that the hearing would proceed by way of written submissions but neither counsel filed submissions despite schedules being issued twice. I have therefore determined the matter on basis of affidavit evidence adduced by both parties.

Issues for determination by the Court

- [5] The issue for determination by the Court is **whether the application discloses sufficient grounds for grant of orders of discovery, production and inspection of the named documents and the further and better particulars sought?**

Determination by the Court

- [6] The applicant in this case has sought for production, inspection and permission to make copies of a number of documents and for further and better particulars as set out in paragraphs (a) and (b) of the Chamber Summons. The law on discovery has its roots under the provision of section 22(a) of the Civil Procedure Act. It is also specifically provided for under Order 10 rule 12(1), 14 and 15 of the Civil Procedure Rules. Whereas rule 15 applies

only to documents referred to in the pleadings, rule 12 is generally applicable to any document related to the suit in possession of another party. Order 10 rule 12(1) of the Civil Procedure Rules provides that;

"(1) 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".

[7] Order 10 rule 14 of the CPR provides that;

"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; and the court may deal with the documents, when produced, in such a manner as shall appear just".

[8] Order 10 rule 15 of the CPR provides as follows;

"Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce the document for the inspection of the party giving the notice, or of his or her advocate, and to permit him or her or them to take copies of the document; and any party not complying with the notice shall not afterwards be at liberty to put any such document in evidence on his or her behalf in that suit unless he or she shall satisfy the court that the document relates only to his or her own title, he or she being a defendant to the suit, or that he or she had some other cause or excuse which the court shall deem sufficient for not complying with the notice, in which case the court may allow the document to be put in evidence on such terms as to costs and otherwise as the court shall think fit".

[9] Order 10 rule 18(1) of the CPR, in as far as is relevant to the present matter, provides that;

"(1) Where the party served with notice under rule 15 of this Order omits to give the notice of a time for inspection, or objects to give inspection, ... the court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit; except that the order shall not be made when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs".

[10] In line with the above provisions and in view of decided cases, the conditions that are to be satisfied before the court can grant an order of discovery or inspection are that;

- a) The power to grant an order for discovery or inspection is discretionary;
- b) The document exists and is in possession or control of the respondent;
- c) The document relates and is relevant to the matter in issue in the action; and
- d) The application is not a fishing expedition.

See: *John Kato v Muhlbauer & Another MA No. 333 of 2010*; *Dresdner Bank Ag. v Sango Bay Estates Ltd (No. 3) [1971] 1 EA 326* and *Dresdner Bank Ag. v Sango Bay Estates Ltd (No. 4) [1971] 1 EA 409)*.

The power to grant an order for discovery or inspection is discretionary

[11] It is not disputed that the power to grant an order of discovery or inspection by the court is discretionary and that exercise of the same depends on the applicant satisfying the court on a balance of probabilities that the next three conditions are satisfied.

The document exists and is in possession or control of the respondent

[12] The applicant under paragraph (a) of the application seeks discovery and inspection of a memorandum of understanding to carry out a feasibility study, the agreement executed between the government of Uganda and Joint Stock

Global Security Company, the financial model, the financial capacity assessment report and the due diligence report which were all referred to by the respondent in their affidavit in reply in the main cause. The respondent does not specifically deny the existence of the said documents but objected to the application basing on a number of reasons, namely; that the system had not been developed or implemented and that the application calls for production of privileged and confidential information which may not only infringe the investors' right to privacy but may also pose a threat to national security. It was further stated by the respondent that the financial model referred to in paragraph 13 of the affidavit in reply in the main cause was not yet developed. That was the position as of August 2021.

[13] I am in position to take judicial notice of the fact that the arrangement between the Government of Uganda and Joint Stock Global Security Company has since progressed to implementation stage which leads to an inference that the financial model referred to must now be in place. From the available evidence, it is clear that all the documents and information sought by the applicant exist and is in possession or control of the respondent. This ground of the application is therefore made out.

The document relates and is relevant to the matter in issue in the action

[14] I have already set out the various documents sought by the applicant to be produced for inspection. The applicant states that production of the same is necessary for a fair and expeditious disposal of the main cause and to establish as to whether the project in issue is in accordance with the laws of Uganda and does not violate or threaten the fundamental rights and freedoms complained of. For the respondent, it was stated that the information requested for is not necessary for disposing fairly of the matters before court, it is vague, ambiguous, overboard and unduly burdensome.

[15] The application in the main cause is for enforcement of human rights and is premised on apprehended breach of rights to privacy, human dignity, civic participation and economic rights. Under Article 50(1) of the Constitution of Uganda and Section 3 of the Human Rights (Enforcement) Act Cap 12, "... a person or organization who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court ...". In this case, the documents sought to be produced by the respondent for inspection by the applicant are the memorandum of understanding and agreement executed between the Government of Uganda and the Joint Stock Global Security Company, the financial model for the project, the due diligence report and the technical and financial assessment report for the project. It is clear to me that the implementation of the project is to be based on the said documents. I find that the documents relate and are relevant to the matter in issue in the main action. This ground of the application is also made out.

The application is not a fishing expedition

[16] The position of the law is that discovery should not be used as a fishing expedition for the applicant to build up a case that he is unsure of. See: **Dresdner Bank Ag. v Sango Bay Estates Limited (No.4) [1971] 1EA 409** and **John Kato v Muhlbauer and Another HCMA No.175 of 2011**. The information sought to be discovered must be particularly stated and consistent with the applicant's case and should not go beyond the allegations in the pleadings. The application becomes a fishing expedition when the process is used to discover whether there is a case at all rather than support well founded grounds. The rationale for this position was well explained in the case of **Gale v Denman Picture Houses Ltd [1930] KB 588, at* 590 by Lord, Scrutton L. J wherein he held that;*

"A plaintiff who issues a writ 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 used to be 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 documents which may be relevant so that I may see whether I have a case or not" is a most undesirable proceeding."

[17] It was averred for the respondent that the application by the applicant amounts to a fishing expedition and there are no grounds to justify the production of the documents or information requested by the applicant. To my finding, the request for documents by the applicant is specific and/or particularized. I do not find it far-fetched, vague or ambiguous. In **Simbamanyo Estates Ltd & Another v Equity Bank Ltd & Others, HCMA No. 583 of 2022**, the Court stated that when disputed facts provide a basis for the exercise of discretion, those facts should be literally construed in favour of discovery. In the circumstances, I am satisfied that the instant application, in as far as production and inspection of documents is concerned, is not a fishing expedition and the application succeeds on this ground as well.

- [18] Concerning the application for further and better particulars, Order 6 rule 4 of the CPR provides that "... further and better particulars of any matter stated in any pleading, may in all cases be ordered upon such terms as to costs and otherwise as may be just". On the facts before me, some of the information sought under this ground is or ought to be contained in the very documents sought to be produced by the respondent and inspected by the applicant. This includes the Intelligent Transport Monitoring System (ITMS); particulars of the technical committee referred to in paragraph 7 of the affidavit in reply in the main cause; the feasibility study report; particulars of the technical and financial capacity of Joint Stock Global Security Company and particulars of due diligence undertaken by the Government in respect to the said company.
- [19] In my view, after seeking the production of the various documents including the agreement and a memorandum of understanding executed between the Government of Uganda and the Joint Stock Global Security Company, the financial model for the project, the due diligence report and the technical and financial assessment report for the project; it would be unreasonable for the applicant to, at the same time, seek the above named particulars from the same party and for the same purpose. As stated by the respondent, such a request is overboard and unduly burdensome. I therefore reject the request for the above stated further and better particulars as unnecessary, overboard and unduly burdensome.
- [20] The applicant also sought further and better particulars of the shocking and gruesome crimes allegedly committed by criminals moving by motorcycles referred to in paragraph 4 of the affidavit in reply in the main cause; and particulars of the records through which the President of Uganda allegedly expressed the concerns and made the identification referred to in paragraphs 5 and 6 of the said affidavit in reply. In my view, this information too is unnecessary, overboard and unduly burdensome. It does not pass the threshold of not being far-fetched, vague or ambiguous. In the case of **Loftin v Martin 776 S. W. 2d145(1989)** that concerned a request for all notes, records, memoranda, documents and communications, the Supreme Court of Texas held that the rule (for discovery) does not permit a general inspection of an adversary's records and held that the request was so vague, ambiguous and over board. In the circumstances, I also reject this part of the claim for further and better particulars.
- [21] It was further stated by the respondent that the documents sought by the applicant contain information of a confidential nature for both the investors and the Government; disclosure of which would not only infringe the investors' right to privacy but may also pose a threat to national security. It is apparent that the dispute in the main cause concerns a project undertaken under a public private partnership between the Government of Uganda and the Joint Stock Global Security Company for implementation of an intelligent monitoring system for motor vehicles and motorcycles. Such a partnership is governed by the Public Private Partnership Act Cap 111.

[22] Concerning the issue of privacy and national security, Section 46 of the Public Private Partnerships Act provides as follows;

***"Confidentiality"**

- *1) A contracting authority shall upon written request by any person disclose information regarding a public private partnership.*
- *2) Notwithstanding sub-section (1), information shall not be disclosed where –*
- *a) the disclosure is likely to prejudice security of or sovereignty of the State;*
- *b) the disclosure interferes with the right to privacy of any person;*
- *c) the disclosure would amount to a breach of the law, impede law enforcement or would not be in public interest; or*
- *d) the information contains –*
- *i) proprietary information including information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law or by international treaty to which Uganda is a party;*
- *ii) scientific or technical information, the disclosure of which is likely to cause harm to the interests of the proper functioning of the contracting authority; and*
- *iii) information supplied in confidence by a bidder, the disclosure of which could reasonably be expected to put that bidder at a disadvantage in contractual commercial negotiations or to prejudice the bidder in commercial competition.*

3) Subject to subsection (2), all public private partnerships agreements shall be published on the website of the Ministry".

[23] The above provision of the law sets out the parameters for disclosure of documents of the kind in issue herein. It is clear to me that the claim that disclosure of the requested documents may prejudice the security of the state and interfere with the right to privacy or economic interests of the investor cannot be investigated and determined in absence of the said documents. There is no allegation or material showing that the production of the said documents for inspection and use before the court will be detrimental in a particular way or that the need to prevent their production far outweighs the purpose for which the applicant seeks their production. It appears fair and just that the documents be produced for inspection albeit in a guarded environment. The court and the parties can access the documents with a limitation to unauthorized publication of the same into the public domain. The court may also determine which parts of the documents are affected by needs of privilege, confidentiality or otherwise.

- [24] According to Order 10 rule 14 of the CPR, "the court may deal with the documents, when produced, in such manner as shall appear just". Under Order 10 rule 19(2) of the CPR, where, on an application for an order for inspection, privilege is claimed for any document, the court may inspect the document for the purpose of deciding as to the validity of the claim of privilege. The above cited rules give the court the power to order production of documents for inspection even in the face of a claim of confidentiality or privilege if the court is satisfied that their production is necessary for disposing of the matter fairly or for saving of costs. The court is empowered to order for guarded inspection based on the particular circumstances of a given matter. In event that the subject documents, upon production, contain matters that deserve protection on basis of confidentiality or privilege, the court may make such orders as may be necessary.
- [25] In light of the above findings, therefore, the application partly succeeds and is allowed with the following orders;
- a) The respondent shall, within sixty (60) days, produce in court for inspection the memorandum of understanding and agreement executed between the Government of Uganda and the Joint Stock Global Security Company, the financial model for the project, the due diligence report and the technical and financial assessment report for the project as referred to in the affidavit in reply deposed by Haji Kakande Yunusu in Misc. Cause No. 225 of 2021.
 - b) The production of the said documents shall be for purpose of inspection before the court and for court-use only; and no publication of the same shall be done by any of the parties or their privies unless the court has, during the hearing and determination of the matter, pronounced itself on the questions of alleged confidentiality or privilege concerning the subject documents or unless otherwise authorized.
 - c) The costs of the application shall be in the cause.

It is so ordered.

Dated, signed and delivered by email this 4th day of July, 2025.

Boniface Wamala JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccd/2025/96/eng@2025-07-04>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/legal-brains-trust-lbt-ltd-v-attorney-general-miscellaneous-application-no-599-of-2021-2025-ughccd-96-4-july-2025-unknown-topic-unknown-court-2025>

Prepared on 13 October 2026 · Esheria