

IN THE HIGH COURT OF ZAMBIA

COMP/IRCLK/488/21

INDUSTRIAL RELATIONS DIVISION

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:



KUWOLA IDI MWALE

COMPLAINANT

AND

UNITRANS ZAMBIA LIMITED

RESPONDENT

Before the Hon. Mrs. Justice T.S. Musonda

For the Complainant : Mr. H.A. Chizu & Mr. K. Pambwe of Messrs. Chanda
Chizu & Associates

For the Respondent : Mr. Musukwa & Mrs. C. M. Banda of Messrs. Andrew
Musukwa & Co

RULING

Legislation referred to:

- (1) The Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia
- (2) The Industrial and Labour Relations Act, Chapter 59 of the Laws of Zambia

(3) The Constitution of Zambia (Amendment) Act No. 2 of 2016

(4) The High Court Rules, Chapter 27 of the Laws of Zambia

Cases referred to:

(1) Chikuta v. Chipata Rural Council, S.C.Z Judgment No.38 of 1974

(2) Post Newspapers Limited v. Rupiah Banda, S.C.Z Judgement No. 25 of 2009

(3) Lalago Cotton Ginnery and Oil Mills Company Ltd v. Loans Advances Realization Trust (LART), Civil Application No. 80 of 2002 (Unreported)

(4) Tanzania Breweries Limited v. Herman Bildad Minja, Civil Application No. 1.1/18 of 2019

(5) Zahra Noor Ismael v. Nanyingae Kudate & 2 Others, (2025) KEHC 10604 (KLR)

(6) GDC Logistics Zambia Limited v. Joseph Kanyanta & 13 Others, Selected Judgment No. 17 of 2017

(7) Zambia National Commercial Bank Plc v. Martin Musonda & 58 Others, CCZ. Selected Judgment No. 24 of 2018

(8) ZCCM Investments Holdings PLC v. Muyangwa Mufalali and 141 Others, (2017) ZMSC 36

(9) Lackson Mukuma and 43 Others v. Barclays Bank, SCZ Appeal No. 002 of 2013

(10) African Banking Corporation Zambia Limited (T/A Atlas Mara) v. Mattaniah Investments Limited (In Receivership), Development Bank of Zambia, John Peter Sangwa, Leasing Finance Company Limited and Agrifoods and Allied Industries Limited), CAZ Application No. 73 of 2019

(11) George Bienga v. The People, (1978) Z.R 32

(12) CRG Quarries (PVT) Ltd v. The Provincial Mining Director Mashonaland East Province N.O & The Permanent Secretary -Ministry

**of Mines and Mining Development & Natural Stone Export Company
(PVT) Ltd, HH 700-20, HC 9808/19**

Other works referred to:

- (1) Phipson, S. L., *The Law of Evidence*, 6th ed., London: Sweet & Maxwell, 1921**
- (2) Black's Law Dictionary, (10th delux ed. 2014) (Bryan A. Garner ed.)**

1. INTRODUCTION

- 1.1 This ruling concerns the Respondent's application brought by way of summons, made pursuant to **Rule 33** of the Industrial Relations Court Rules, Chapter 269 of the Laws of Zambia. The Respondent, seeks the following orders:
 - (i) An order for the Complainant to produce the original copy of the purported redundancy letter dated 14th June 2019 exhibited in the Complainant's affidavit in reply marked "**KIM1**"; and
 - (ii) An order that the said original copy of the purported redundancy letter be examined by a forensic handwriting expert.
- 1.2 The application is supported by an affidavit and skeleton arguments.
- 1.3 The respondent opposed the application through an affidavit in opposition and accompanying skeleton arguments.
- 1.4 In reply, the applicants filed an affidavit addressing the matters raised in the affidavit in opposition.

2. THE RESPONDENTS' CASE

- 2.1 The Respondent, in the affidavit in support sworn by Christine Chanda Mwamba, Counsel for the Respondent, asserts the following:
- 2.2 On 19th July 2022, the Respondent filed a Notice to Produce (exhibit "**CCM1**"), requiring the Complainant to produce the original copy of his

purported redundancy letter, exhibited as “**KIM1**” in the affidavit in reply.

- 2.3 The request was premised on the need for a handwriting expert to verify its authenticity.
- 2.4 Notwithstanding service of the Notice to Produce on the Complainant’s Counsel on 25th July 2022, as evidenced by exhibit “**CMM2**”, a copy of the letter of service, there was no response from the Complainant.
- 2.5 Furthermore, when the matter came up for hearing on 6th February 2023, the Complainant failed to avail the letter.
- 2.6 According to the Respondent, the purported letter forms the sole basis of the Complainant’s claim for payment of his redundancy package.
- 2.7 The Respondent disputes the claim and seeks verification of the authenticity of the letter in issue through an examination by an expert, to enable the Court to arrive at a just and fair determination of the issues in this matter, in the interest of justice.
- 2.8 The Complainant will suffer no prejudice, as the costs of the expert witness will be borne by the Respondent.

3. THE COMPLAINANTS’ CASE IN OPPOSITION

- 3.1 The Complainant, in response, firstly assailed Counsel’s swearing of the supporting affidavit in support of the Respondent’s application.
- 3.2 It was contended that this amounted to giving evidence at the bar, which is undesirable in contentious matters. On this basis, the application should not be entertained.
- 3.3 In the event that the application is entertained, Counsel should be required to testify for the purposes of cross-examination.
- 3.4 Furthermore, the issues raised are fit for cross-examination. Additionally, considering that the Complainant has already testified, and the issue was never brought up, the documents were produced on oath.
- 3.5 The Notice to Produce was misconceived, as it should have been issued by the party intending to produce the documents.

- 3.6 The Respondent was merely attempting to delay the conclusion of the matter and frustrate the Complainant by filing several interlocutory applications.
- 3.7 Furthermore, the Respondent had issues which would be raised in the cross-examination of the Respondent's witness regarding the purported list of redundancies.
- 3.8 The original letter required by the Respondent was misplaced, and the Respondent had at its disposal employees who signed the letter in issue.
- 3.9 On the basis of the foregoing, the present application should be dismissed so that the trial proceeds in the matter.

4. THE RESPONDENTS' CASE IN REPLY

- 4.1 In reply, Counsel averred that the supporting affidavit was sworn by herself on the basis of factual issues, perceived as Counsel having conduct.
- 4.2 Furthermore, the affidavit in support does not seek to introduce any new evidence as alleged. The issue in this case was that it was not in contention that the original document requested had not been produced by the Complainant.
- 4.3 The application was made in compliance with the Court's directive when the issue arose at trial. Furthermore, it was procedural and does not result in the final determination of the matter.
- 4.4 The route used to request the Complainant to produce the document through a Notice to Produce was the proper procedure.
- 4.5 The Respondent's application was not aimed at delaying or frustrating the Complainant. It was, in fact, the Complainant who was attempting to introduce fresh evidence despite having closed his case.
- 4.6 The document in issue, produced by the Complainant, was not authentic, as there was an authentic document, exhibit "**CCM1**", which was a true copy of the redundancy letter issued to Mr. Harold

Sakala, and was significantly different from the one exhibited by the Complainant.

- 4.7 Based on the above, the application should be granted so that the Court can decide based on true, authentic documents. Further, the Respondent has the right to call any witness, including one to authenticate the document in issue.

5. SKELETON ARGUMENTS

- 5.1 I am indebted to Counsel for their skeleton arguments, which I will not reproduce here but refer to where appropriate in the course of my analysis.

6. ISSUES FOR DETERMINATION

- 6.1 The main issue for determination is whether the Respondent is entitled to the orders sought in the application.
- 6.2 However, before proceeding to determine this application, there are two issues raised in the Complainants skeleton arguments which must be addressed first as they have a bearing on whether the Court should proceed to determine the application. These are:
- (i) Whether an affidavit can contain a legal argument or hearsay evidence; and
 - (ii) Whether Counsel should depose to an affidavit in a contentious issue.

7. ANALYSIS AND DETERMINATION

- 7.1 In my view, it will be appropriate to first address the issue regarding whether Counsel should depose to an affidavit in a contentious issue, before addressing the objection regarding paragraphs 12,13 and 14.
- 7.2 The Complainant relied on the authority of ***Chikuta v. Chipata Rural Council (1)***, which condemned the practice of Advocates introducing evidence through affidavits containing hearsay. It was submitted that the affidavit sworn by Counsel in support of the present application contained highly contentious matters. On that basis, it was argued that the affidavit ought to be struck out. Alternatively, it was proposed that

Counsel be subjected to cross-examination on the contentious issues raised therein.

- 7.3 In response, the Respondent referred to ***Post Newspapers Limited v. Rupiah Banda (2)***, where the Supreme Court clarified that the rule in ***Chikuta***, prohibiting Counsel from swearing affidavits, was not absolute. The Court held that the prohibition does not extend to affidavits filed in support of procedural applications.
- 7.4 The Respondent further submitted that the present case merely seeks an order the application seeks an order compelling the Complainant to produce an original document, a copy of which the Complainant himself relied upon. The issue is not sufficiently contentious to preclude Counsel from swearing the impugned affidavit.

Resolution of rival contentions

- 7.5 The principle to be drawn from ***Chikuta*** is that counsel should refrain from swearing affidavits on disputed matters, or on matters likely to be disputed, where the client is available and capable of deposing to the facts. This principle serves to protect Advocates, who are officers of the court, from being drawn into the litigation process in a way that compromises their professional role. When counsel swears an affidavit on contentious issues, they risk stepping out of their role as legal representative and into the position of a witness, exposing themselves to cross-examination and the contentious nature of litigation, which the rule is designed to avoid.
- 7.6 In the ***Post Newspaper*** case, as correctly noted in the Respondent's skeleton arguments in reply, the Supreme Court offered the following guidance at pages J18 to J19:

Our understanding of the Chikuta (1) case is that this Court did not impose a blanket ban on the swearing of affidavits by counsel even in procedural applications, such as contempt of court proceedings.

- 7.7 I also find helpful guidance in the Tanzanian Court of Appeal decision in ***Lalago Cotton Ginnery and Oil Mills Company Ltd v. Loans Advances Realization Trust (LART)*** (3), as quoted by the Court of Appeal in ***Tanzania Breweries Limited v. Herman Bildad Minja*** (4), at pages 13–14. In that case, the Court stated:

Advocate can swear and file an affidavit in proceedings in which he appears for his client, but on matters which are in the advocate's personal knowledge only. For example, he can swear an affidavit to state that he appeared earlier in the proceedings for his client and that he personally knew what transpired during those proceedings.

- 7.8 Furthermore, persuasive guidance is found in the Kenyan case of ***Zahra Noor Ismael v. Nanyingae Kudate & 2 Others*** (5), where the Court emphasized the need for caution when counsel swears affidavits. The Court stated:

Secondly, even though an advocate is at liberty to swear an affidavit in a matter wherein the advocate is acting for a party, the advocate must take care and exercise caution. In particular, an advocate is only at liberty to swearing an affidavit touching on matters/facts which are within his/her knowledge and not otherwise.

7. . Additionally, there is no gainsaying that where the matter and/or facts are borne out from the record of the Court and the same are not in contest, then an advocate can also depose to an affidavit. Nevertheless, it is instructive to underscore that an advocate cannot swear an affidavit and depose to contentious Evidential matters.

- 7.9 Applying the above authorities to the facts of this case, I find that Counsel primarily deposed to matters within her personal knowledge. The averments concerning the filing of the notice of complaint, the affidavit in support, the answer and supporting affidavit, the subsequent affidavit in reply, and the amended affidavit in support of the answer and reply are all confirmed by the record. The notice to produce is similarly on record, and the absence of any response is evident from the Complainant's affidavit in reply.
- 7.10 I therefore find that, although it is generally undesirable for Counsel to swear an affidavit, particularly for reasons already outlined above, the affidavit in this instance was confined to factual matters within Counsel's knowledge and supported by the record.
- 7.11 Accordingly, I find that the Complainant's objection, premised on the fact that the affidavit was sworn by Counsel, is without merit and cannot be sustained.

Whether an affidavit can contain a legal argument or hearsay evidence

- 7.12 The Complainant's objection under this head challenges paragraphs 12, 13, and 14 of the affidavit in support, on the ground that they contravene **Order 5 Rules 15** and **16** of the High Court Rules, which provide as follows:

15. An affidavit shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion.

16. Every affidavit shall contain only a statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believes to be true.

- 7.13 In response, the Respondent's skeleton arguments contend that the Complainant's objection is untenable, as the High Court Rules do not apply to proceedings in the Industrial Relations Division. This position is supported by the authorities of ***GDC Logistics Zambia Limited v. Joseph Kanyanta & 13 Others (6)*** and ***Zambia National Commercial Bank Plc v. Martin Musonda & 58 Others (7)***, which collectively affirm that although the Industrial Relations Division is now a division of the High Court, it is governed by its own Rules, promulgated under Statutory Instrument No. 206 of 1974.
- 7.14 In any event, the Respondent, despite contesting the applicability of the High Court Rules, did respond to the objection.
- 7.15 It was argued that the assailed paragraphs 12, 13, and 14 of the affidavit in support contain facts with which Counsel was familiar, on the following grounds:
- (i) Counsel has conduct of the matter;
 - (ii) Counsel caused the filing of the Notice to Produce;
 - (iii) Facts in issue are on record, contained in the Complainant's affidavit in support of complaint filed into court on 15th September 2015 and amended affidavit dated 7th October 2022.
- 7.16 Furthermore, the facts deposed to in the assailed paragraphs do not concern the final determination of issues, as they are primarily in support of the present application.

Resolution of rival contentions

- 7.17 I have reviewed the authorities cited in the Respondent's skeleton arguments. Both the Supreme Court and the Constitutional Court have affirmed that the processes and procedures applicable in the Industrial Relations Division are governed by the Industrial Relations Court Rules.
- 7.18 Of the two cases cited by the Respondent, I have elected to focus on the ***GDC Logistics Zambia Limited*** case, as it offers useful guidance for

the issues at hand. I shall thereafter refer to other authorities where relevant to further support the analysis.

- 7.19 The main issue for determination in ***GDC Logistics Zambia Limited*** was whether the Industrial Relations Court had jurisdiction to grant interim attachment of property. One of the arguments advanced by the Appellant was that the Court could not make such an order in the absence of specific provisions in the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia and the attendant Rules.
- 7.20 In response, the Respondent argued that the Industrial Relations Court had jurisdiction and authority to grant interim attachment in the interest of justice, pursuant to **Rule 38** of the Industrial Relations Court Rules. It was further submitted that under **Rule 55**, nothing in the Rules was to be deemed to limit the Court from making any order necessary to meet the ends of justice. The Respondent also emphasized that the Industrial Relations Court was governed by its own Rules.
- 7.21 The Supreme Court guided, among other things, that the Industrial Relations Court's mandate under **Section 85(5)** to do substantial justice did not imply that the Court should fetter itself with technicalities or rigid rules. Furthermore, while the Court was indeed guided by its own Rules, the issue before the Supreme Court was not one of procedural technicalities, but rather one of interpreting the rule under which the Court was moved to grant the interim attachment.
- 7.22 Reference is also made to the case of ***ZCCM Investments Holdings PLC v. Muyangwa Mufalali and 141 Others (8)***, in which the Supreme Court was called upon to determine whether **Order 30 Rule 10** of the High Court Rules applied to an appeal arising from an assessment by a Deputy Registrar of the Industrial Relations Court. It was argued on behalf of the Respondent that the said provision did not apply to the Industrial Relations Court, which was not bound by procedural rules. The Supreme Court noted that this argument appeared to be grounded in **Section 85(5)** of the Industrial and Labour Relations Act.

- 7.23 The Supreme Court further clarified that the rules which did not apply to the Industrial Relations Court were rules of evidence. This position was based on the objective of the Court, which was to accommodate litigants who were mostly self-represented and unfamiliar with evidentiary rules. Moreover, the Court held that there was nothing in **Section 85(5)** to suggest that it extended to procedural defects.
- 7.24 In light of the circumstances, the Supreme Court held that **Order 30 Rule 10** of the High Court Rules did apply to the appeal against the judgment on assessment. This was notwithstanding the fact that the matter originated from the Industrial Relations Court prior to the enactment of the **Constitution (Amendment) Act** No. 2 of 2016, which, under Article 133, now provides that appeals against judgments on assessment of damages, including those from the Industrial Relations Court, lie directly to the Court of Appeal.
- 7.25 I also found the case of **Lackson Mukuma and 43 Others v. Barclays Bank (9)** instructive. The Supreme Court established the principle that it is incorrect to assert that the Industrial Relations Court cannot rely on a principle of law espoused in a matter emanating from the High Court. Further, that it had in a number of appeals emanating from the Industrial Relations Court, applied principles of law from cases outside the realm of employment matters.
- 7.26 A review of the foregoing authorities demonstrates that the application of the High Court Rules to matters arising from the Industrial Relations Division largely depends on the specific facts and issues involved in each case.
- 7.27 Turning to the present case, I am tasked with determining whether **Order 5 Rules 15** and **16** of the High Court Rules apply to the Industrial Relations Division.
- 7.28 It is a well-established principle of law that affidavit evidence is equivalent to oral evidence given in court (see **African Banking Corporation Zambia Limited (T/A Atlas Mara) v. Mattaniah**

Investments Limited (In Receivership), Development Bank of Zambia, John Peter Sangwa, Leasing Finance Company Limited and Agrifoods and Allied Industries Limited) (10). It follows that any matter a deponent cannot testify to in court should not be included in an affidavit.

- 7.29 Moreover, I have not encountered any authority suggesting that the laws governing affidavits in this jurisdiction do not apply to the Industrial Relations Division.
- 7.30 In the absence of specific rules governing affidavits under the Industrial Relations Court Rules, I find that **Order 5 Rules 15** and **16** of the High Court Rules are applicable in the circumstances of this case.
- 7.31 I now turn to address the objection raised in relation to paragraphs 12, 13, and 14 of the affidavit filed in support of the Respondent's application. The objection is founded on the assertion that the impugned paragraphs contain hearsay and legal arguments, rendering them inadmissible.
- 7.32 The impugned paragraphs are reproduced below:

12. That the purported letter forms the sole basis for the Complainants claim for the Respondent to pay him a redundancy package.

13. That the Respondent has since disputed the Complainants claims and seeks to verify the authenticity of the letter exhibited by the Complainant.

14. That the examination by an expert and determination of the authenticity of the letter is necessary to enable the court to arrive at a just and fair determination.

- 7.33 In my view, while paragraph 12 touches on the foundation of the claim, it does so in a manner that borders on legal conclusion. However, the statement is not speculative nor does it purport to interpret the law, it

merely asserts what the Complainant relies upon. I find that this is a factual assertion and does not amount to hearsay or legal argument. Accordingly, paragraph 12 is admissible and shall not be struck out.

7.34 Moving on to paragraph 13, the deponent does not indicate the source of information nor does it appear to be based on personal knowledge. In the absence of such foundation, the statement amounts to hearsay. I am not at large to assume the basis of the deponent's knowledge. Accordingly, paragraph 13 is struck out.

7.35 Finally, paragraph 14 is plainly a legal submission and not a matter of fact within the deponent's personal knowledge. Affidavits are not the proper forum for advancing legal argument. Paragraph 14 is accordingly struck out.

7.36 Notwithstanding the striking out of paragraphs 13 and 14, I find that the Respondent's application is adequately supported by the remaining paragraphs and will be determined on that basis.

7.37 I therefore proceed to consider and determine the application.

Whether the Respondent is entitled to the orders sought in this application

7.38 The Respondent argued, based on **Rule 55** of the Industrial Relations Court Rules, that the Court is empowered to make any order as may be necessary for the ends of justice or to prevent abuse of the Court's process. It was therefore submitted that, in the interest of both parties and in the interest of justice, the authenticity of the purported redundancy letter should be verified by a handwriting expert to enable the Court to adjudicate the matter safely.

7.39 Furthermore, **Section 85(5)** of the Industrial and Labour Relations Act was relied upon to support the contention that the Court is not bound by the rules of evidence applicable in civil and criminal proceedings, as its aim is to do substantial justice between the parties.

7.40 Additionally, reliance was placed on the **GDC Logistics Zambia Limited** case in support of the position that substantial justice must

be afforded to both the Complainant and the Respondent, and not solely to the Complainant.

7.41 Therefore, proceeding with the trial without verifying the authenticity of the letter in issue would undermine the Court's mandate.

7.42 In opposition, it was argued, citing the learned author of ***The Law of Evidence and Practice (6th Edition)*** at page 515, that the handwriting and signature of unattested documents, or documents which, though attested, are not required by law to be so, may be proved in a number of ways, including:

- (i) Calling the writer;
- (ii) Calling the witness who saw the document signed;
- (iii) Calling a witness who has acquired knowledge of the writing in any of the three ways;
- (iv) Comparison of the documents in dispute with any other proved to the satisfaction of the Judge to be genuine;
- (v) Calling experts with or without comparison;
- (vi) Admission by the party against whom the document is tendered, whether such admissions are expressly made for the purpose of the trial or merely of evidentiary nature

7.43 Additionally, the outlined methods may be employed indifferently, subject to observation, particularly where weaker proof is presented in circumstances where stronger evidence could have been adduced.

7.44 It was further submitted that the standard of proof in civil matters is lower than that required in criminal proceedings. Accordingly, the authenticity of the document in question could have been challenged through cross-examination, which was not done in this instance. It was also argued that, provided a document is relevant, it ought to be admitted into evidence. Moreover, even in criminal cases, where the standard of proof is beyond reasonable doubt, Courts have accepted secondary evidence, such as photocopies. The case of ***George Bienga v. The People (11)*** was cited in support of this position.

- 7.45 The Complainant was, therefore, at liberty to rely on photocopied documents or to adduce oral evidence, which he had already done. From the outset, he consistently maintained that he had been declared redundant and produced similar copies of relevant documents. It was, therefore, incumbent upon the Respondent to call appropriate witnesses, still in its employ, to testify regarding the authenticity of the letter in question.
- 7.46 In light of the foregoing, the Respondent's application ought to be dismissed.
- 7.47 In reply, the Respondent's skeleton arguments conceded that secondary evidence is admissible. However, the authenticity of the letter in question remained disputed. The discrepancies between the disputed letter and the version held in the Respondent's records raised concerns that, in the interest of substantial justice, should prompt the Court to order the production and examination of the original redundancy letter.
- 7.48 It was further submitted that the Complainant's own reference to ***The Law of Evidence and Practice*** demonstrated that one method of proving authenticity is through comparison with other documents or by expert analysis. On this basis, the Respondent was within its rights to request that the document be examined by a handwriting expert.
- 7.49 The Respondent reiterated its position that substantial justice must be afforded to both parties, not solely to the Complainant. Accordingly, the Court should compel the Complainant to produce the original copy of the letter in question so that it may be examined by a handwriting expert to verify its authenticity.

Resolution of rival contentions

- 7.50 Having considered the competing arguments, it is not disputed that the Respondent served a Notice to Produce upon the Complainant's Advocates on 25th July 2022. The said notice requested the production

of the "Original Redundancy letter addressed to Mr. Kuwola Mwale marked 'KIM1'."

- 7.51 It is apparent that no response was made to the said request.
- 7.52 A Notice to Produce, also referred to as a Request for Production, is a party's written request that another party provide specified documents or other tangible items for inspection and copying (see ***Black's Law Dictionary***, 10th Deluxe Edition, 2014, Bryan A. Garner, ed. p.1497).
- 7.53 Furthermore, **Rule 40** of the Industrial Relations Court Rules provides as follows:

40. A party to any proceedings may apply to the Court for an order directing any other party to make discovery or further discovery, either on oath or otherwise, of the documents relating to the proceedings which are or have been in his possession or power, and on the hearing of the application the Court may make such order, either generally or limited to certain classes of documents or to particular documents, as it thinks fit, including an order for the production or inspection of any documents.

- 7.54 It follows that where a document is relevant to proceedings before the Court, a party in the Industrial Relations Division is at liberty to apply for its production through a formal application. This implies that the Respondent's initial approach, serving a Notice to Produce directly on the Complainant's Advocates, was procedurally flawed, as such a request ought to have been made through a Court order. Nonetheless, having now properly filed the present application, there is no procedural defect in the Respondent's conduct. Accordingly, the argument that the Respondent's application is misplaced due to the availability of witnesses who can attest to the contents of the copy produced is untenable.

- 7.55 It is apparent from paragraph 13 of the Complainant's affidavit in opposition that the original document has allegedly been misplaced. The effect of this averment is that the document is currently unavailable, according to the Complainant.
- 7.56 Consequently, although the Court is empowered to order the production of the original letter in question, doing so would amount to an academic exercise, as the order would be incapable of enforcement. This aligns with the established principle that the Court will not compel disclosure of a document that is not in a party's possession and the party cannot produce it. (See **CRG Quarries (PVT) Ltd v. The Provincial Mining Director Mashonaland East Province N.O & The Permanent Secretary -Ministry of Mines and Mining Development & Natural Stone Export Company (PVT) Ltd (12)**)
- 7.57 I shall refrain from making any further comments on the issue of the letter at this stage, as doing so may pre-empt matters that are properly reserved for determination at the conclusion of trial in my final judgment.

8. CONCLUSION

- 8.1 Based on the foregoing reason that a Court cannot order a party to produce a document not in their possession, I make the following orders:
- (i) The Respondent is not entitled to an order compelling the Complainant to produce the original copy of the redundancy letter dated 14th June 2029, exhibited in the affidavit in reply and marked "KIM1".
 - (ii) Consequently, the Respondent is not entitled to an order for the said redundancy letter to be examined by a forensic handwriting expert.

(iii) The matter shall come up for continued trial on 19th September 2025 at 08:30 hours, and the parties are hereby directed to prepare accordingly.

(iv) Each party shall bear its own costs.

DATED THIS 26TH DAY OF AUGUST 2025



T.S. MUSONDA

JUDGE

