



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2022-1664

Louis Savadogo
(Appellant)

v.

Registrar of the International Tribunal for the Law of the Sea
(Respondent)

ORDER No. 509 (2023)

1. On 28 December 2022, in Order No. 500, the United Nations Appeals Tribunal (UNAT or Appeals Tribunal) directed that, if the Appellant wished to have disclosed to him a number of documents in support of his appeal, he would need to seek these by interlocutory application and a timetable for doing so, and for the Respondent to reply, was set out therein.
2. Pursuant to that timetable, submissions for and against Appellant's Motion for Disclosure of Documents have been received from the parties.
3. Mr. Savadogo seeks the documents in relation to two separate cases that are pending before the Appeals Tribunal for consideration in the Tribunal's Spring 2023 session. The first is Case No. 2022-1664 which is his appeal against the decision of the Respondent's Joint Appeals Board (JAB). The second is Case No. 2022-1707 which is his application for execution of a prior UNAT judgment. Although the hearing of these two matters has been consolidated, they remain separate and will be decided as such.
4. It is appropriate to start with the proposition that while an existing relevant document may be required to be produced and available in proceedings, this does not extend to an order for the creation of an otherwise non-existent document for the purposes of the proceeding. The existence of a particular document (and if so its contents), or its non-existence may be a relevant consideration in proceedings, but otherwise what a party

wishes to know and to disclose to a tribunal must be the subject of questioning of a witness or witnesses at a hearing and submission to the tribunal. Put succinctly, the UNAT will not direct the creation of a document that did not exist at a material time in the exercise of its jurisdiction to ensure that relevant and admissible evidential material is available.

5. It is convenient at this point to address Mr. Savadogo's motion in relation to 2022-1707. This is a motion seeking to require the JAB to hear and determine proceedings that he has before it. What documents the JAB admits or calls for is a matter for the JAB and not the UNAT, at least at this stage. Mr. Savadogo may seek an order or direction for disclosure and/or production of documents from the JAB. If either party is dissatisfied with the outcome of such an application, rights of appeal exist following the JAB's substantive decision. In these circumstances the UNAT declines to make the orders sought in relation to Case No. 2022-1707.

6. Turning to the motion affecting Mr. Savadogo's appeal under Case No. 2022-1664, this is governed by Article 10 of the Appeals Tribunal Rules of Procedure (Rules). This provides materially that:

A party may seek to submit to the Appeals Tribunal, with an appeal or an answer, documentary evidence, including written testimony, in addition to that contained in the written record. In exceptional circumstances and where the Appeals Tribunal determines that the facts are likely to be established with such additional documentary evidence, it may receive the additional evidence from a party (...) provided that the Appeals Tribunal shall not receive additional written evidence if it was known to the party seeking to submit the evidence and should have been presented to the Dispute Tribunal.

7. Although Mr. Savadogo is seeking to have directed the provision of documents to him, in effect the discovery or disclosure of documents, we infer that he will then seek to put these documents before us as a part of his case so that, ultimately, Article 10 of the Rules will apply. We will treat the Motion accordingly.

8. Mr. Savadogo's challenges to the JAB's decision address, in material parts, the Respondent's decisions to terminate and then re-advertise the recruitment process, and to replace the listing of shortlisted candidates in priority order with their listing in alphabetical order.

9. Addressing each material part of Article 10 of the Rules set out above, I note: a) Mr. Savadogo seeks to introduce in his appeal documents which he says were not before the JAB; b) there must be exceptional circumstances surrounding the prior non-introduction of this material; c) the relevant facts must be likely to be established with the additional documentary evidence; d) the additional written material cannot have been known to Mr. Savadogo (as the party seeking to admit the evidence) and could not have been introduced to the JAB by him.

10. I am satisfied that each of these individual tests is met by Mr. Savadogo. In particular, the allegation that the Respondent changed the appointment process in the course of making an appointment is, if correct, an extraordinary circumstance.

11. This is not to say that the production and use of these documents will be determinative of the appeal: that will be for the Judges to decide.

12. Nor, as I have already outlined, does this Order to produce these documents require the Respondent to create a document or documents where none existed at the time of the JAB's consideration of Mr. Savadogo's appeal to it. If there is a document or class of documents sought by the Appellant that did not exist at the relevant time, the Respondent should so advise the Tribunal.

13. Finally, and as already noted, this Order relates only to Mr. Savadogo's appeal in Case No. 2022-1664. His other application (Case No. 2022-1707) seeks execution of a prior UNAT judgment and the documents relevant to the appeal are not relevant to the executory application.

14. The documents to be produced to Mr. Savadogo and to the UNAT should be anonymised so as to prevent individual persons (except Mr. Savadogo) being identified. These documents are:

- Any document that classified candidates for appointment to VA/2017/003 in order of priority.
- Any document that compared candidates with the criteria set out in the vacancy announcement including but not limited to weightings or scores assigned to written tests, interviews, and qualifications, or otherwise addressed these criteria.

15. As the parties are already aware, this case is set for consideration and decision in the latter part of March 2023 so that there will necessarily be a tight timetable required to comply with these directions. All dates refer to the date in New York, United States.

- Disclosure of the documents described in paragraph 14 hereof to the Appellant and to the UNAT by the Respondent must be concluded by 27 February 2023.
- The Appellant may have until 3 March 2023 to file and serve any supplementary submissions addressing only such disclosed documents and such submissions must not exceed 3 pages in length.
- The Respondent may have until 10 March to reply only to Mr. Savadogo's submissions and the length of this reply is similarly restricted to 3 pages in length or less.

IT IS HEREBY ORDERED that Mr. Savadogo's motion seeking leave to have disclosed and to file additional pleadings **IS GRANTED on the terms set out in paragraphs 14 and 15 of this Order.**

Original and Authoritative Version: English

Dated this 19th day of February 2023
in Auckland, New Zealand.

(Signed)
Judge Colgan,
Presiding

Entered in the Register on this 20th day
of 2023 in New York, United States.

(Signed)
Juliet Johnson
Registrar