



Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

GHOSN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**JUDGMENT STRIKING OUT THE
APPLICATION**

Counsel for Applicant:

Katya Melliush, OSLA

Counsel for Respondent:

Ms. Elizabeth Mrema, Principal Legal Adviser, United Nations Environment Programme (UNEP).

Notice: The format of this judgment has been modified for publication purposes in accordance with Article 26 of the Rules of Procedure of the United Nations Dispute Tribunal

1. APPEARANCES/LEGAL REPRESENTATION

1.1 Applicant: The Applicant was absent. The Applicant's Counsel, Ms. Katya Melliush of the Office of Staff Legal Assistance, Nairobi was present.

1.2 Respondent: The Respondent's Counsel Ms. Elizabeth Mrema, Principal Legal Adviser, UNEP, appeared via audio-conference, also present for the Respondent was the Deputy Director, UNEP Division of Regional Cooperation (UNEP/DRC) and a Senior Programme Officer, UNEP/DRC.

2. FACTS

2.1 The Applicant joined the UNEP Regional Office for West Asia (ROWA), Manama, Bahrain, on a fixed-term appointment as a Programme Officer, Natural Resources at the P-4 level on 4 October 2004. On 12 May 2008, the Applicant was informed that his fixed-term appointment would not be extended beyond 3 October 2009. On 6 July 2008, the Applicant addressed a letter to the Secretary-General requesting for administrative review of the decision not to renew his appointment beyond 3 October 2009.

2.2 On 15 September 2008, the Administrative Law Unit, Office of Human Resource Management (ALU/OHRM) responded to the Applicant's request for review and informed him that they had reviewed the circumstances surrounding UNEP's decision not to renew his contract and concluded that the record did not support his contention that the decision was improper. The Applicant subsequently filed a Statement of Appeal with the now defunct Nairobi Joint Appeals Board (JAB) on 14 December 2008 contesting the administrative decision.

2.3 The Respondent's Counsel filed a Reply to the said Appeal on 20 March 2009. On 6 June 2009 the Applicant submitted his Observations on the Respondent's Reply. This Application was transferred to the Nairobi UNDT in accordance with ST/SGB/2009/11: *Transitional Measures Related to the Introduction of the New System of Administration of Justice* and both the

Applicant and the Respondent were accordingly informed on 8 July 2009 and 30 July 2009 respectively.

2.4 On 30 July 2009, the Respondent's Counsel filed a motion asking the Nairobi UNDT, which was now seised of the matter, for extension of the time to submit comments on the Applicant's Observations on the Respondent's Reply on the grounds that she had to travel to her home country on a family emergency. The Applicant's Counsel at that time did not object to the grant of an extension of time. On 31 July 2009, the Tribunal granted an extension of time as per the Respondent's motion and directed the said Respondent to file the required submission by 18 August 2009. The Respondent's Rejoinder was subsequently filed on 17 August 2009.

2.5 On 28 October 2009, the Registrar of the Nairobi UNDT invited the Parties to a status conference scheduled to take place on 2 November 2009. The Registrar informed the Parties that the general objectives of the status conference were to look into and attend to all issues having a bearing on the readiness of the case for consideration and determination by the Tribunal and to come up with a timeline for the processing of the case.

2.6 On 29 October 2009, the Applicant's Counsel filed a Notice of Withdrawal of Appearance in which she requested the leave of the Tribunal to withdraw her representation of the Applicant on the grounds that she had incomplete instructions. The Applicant's Counsel also informed the Tribunal that the Applicant was aware of the Status Conference but that he was unable to attend. On the same date, the Tribunal advised the Applicant's Counsel that her request for withdrawal had been denied and requested her to attend the status conference so that she could apprise the Tribunal of the status of the Application.

2.7 On 30 October 2009, the Respondent's Counsel filed the following documents with the Tribunal:

- (i) A copy of a letter dated 18 September 2009 from the Deputy Director and Officer in Charge of the Division of Regional Cooperation, UNEP, to the Applicant in which the latter was

informed that UNEP had decided, “to extend [his] contract for a period of one year until 3 October 2010 to allow time for the completion of the POW development and for a review of staff requirements in the various Divisions and Regional Offices. As part of this broader exercise, UNEP w[ould] examine [his] profile to determine whether [his] skills match the requirements of existing or new positions in the organization and will discuss with [him] the career opportunities that may be available.”

- (ii) A copy of a Letter of Appointment addressed to the Applicant in which he was offered a fixed-term appointment from 4 October 2009 to 3 October 2010. The said letter was signed by the Applicant in acceptance of the offer on 27 September 2009.

3. THE STATUS CONFERENCE

3.1 During the Status Conference, the Applicant’s Counsel made the following oral submissions:

- (i) That she did not wish to prejudice the Applicant’s case but that she had very limited instructions from the Applicant in respect to the Applicant’s principal contention on the non-renewal of his appointment beyond 3 October 2009.
- (ii) That she had managed to negotiate for the Applicant a 1 year extension to his contract and that at present, she did not know how the Applicant wished to proceed.
- (iii) That there were other matters that the Applicant had raised in the Application which he might wish to pursue such as bias and discrimination but that, however, the substance of his Application, that is, the non-renewal of his appointment beyond 3 October 2009, has been addressed.
- (iv) That the Applicant had another Counsel representing him when he filed his Appeal with the JAB and who was aware of the issues.

- (v) That she had reached a stalemate with the Applicant who had instructed that she ask the Tribunal to adjourn the hearing in this Application to January 2010.
- (vi) That she was formally asking the Tribunal to adjourn the Hearing of the case to January 2010 and that she beallowed to withdraw as the Applicant's Counsel at this stage.

3.2 The Respondent's Counsel on their part submitted as follows:

- (i) That there were two issues to be resolved, namely, the issue of withdrawal of the Applicant's Counsel and the issue of adjournment to January 2010.
- (ii) That as the Applicant's Counsel had indicated that the substantive matter has been resolved and that nothing remained to be resolved by the Tribunal adjourning to January 2010.
- (iii) That she had no objection to the withdrawal by the Applicant's Counsel.
- (iv) That she had submitted 2 documents to the Tribunal and that these documents were proof that this matter had been resolved.
- (v) That as the Applicant's Counsel had no further instructions the matter had been resolved.

4. CONSIDERATIONS

4.1 In considering the Parties' submissions, the Tribunal observed as follows:

- (i) The Applicant had failed to give new instructions to his Counsel in respect to the Application contesting the non-renewal of his fixed-term appointment beyond 3 October 2009.
- (ii) The Applicant had been informed about the Status Conference by his Counsel and had failed to make an appearance or to contact the Tribunal to give reasons for his absence.

- (iii) The Applicant's Counsel had advised that as far as she was concerned, the substantive matter in this Application had been resolved.
- (iv) From the documents tendered by the Respondent on 30 October 2009, the Tribunal is convinced that the substantive matter in this Application had been addressed and resolved.
- (v) The Applicant has not actively or diligently pursued his case.

5. DECISION

5.1 In view of the foregoing the Tribunal hereby:

- (i) Refuses the Application for an adjournment of the case to January 2010 or any other date;
- (ii) Grants the Applicant's Counsel, Ms. Katya Melliush, leave to withdraw from further acting for the Applicant in this matter; and
- (iii) Strikes out the present Application on the merits.

(Signed)

Judge Nkemdilim Izuako

Dated this 6th day of November 2009

Entered in the Register on this 6th day of November 2009

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi