



**Before:** Judge Thomas Laker

**Registry:** Geneva

**Registrar:** Víctor Rodríguez

MOUSSA

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

None

**Counsel for Respondent:**

Adèle Grant, ALU/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, former staff member of the United Nations International Independent Investigation Commission (UNMIIC), in Lebanon, contested the decision of the UN Field Personnel Division, Department of Field Support at UN Headquarters, dated 13 July 2009, to withhold its investigation report into allegations of misconduct which the Applicant reported.

## **Facts**

2. The Applicant affirms to have filed an application with the New York Registry of the United Nations Dispute Tribunal (UNDT). This application was not well received by the said Registry.

3. After a number of exchanges aiming at clarifying the above, on 19 November 2009, the Applicant resubmitted her application to the New York Registry; however, she failed to attach the 21 documents mentioned as annexes in her application.

4. In accordance with established principles of allocation of cases, the case was transferred to the Geneva branch of the Tribunal, which acknowledged receipt on 20 November 2009, while instructing the Applicant to submit “the supporting documents listed in [her] application (21 annexes)” by 7 December 2009.

5. The Applicant sent two e-mails, on 20 November 2009 and 23 November 2009 respectively, stating that she had neither filed nor authorized to file on her behalf any application before the UNDT in Geneva.

6. On 25 November 2009, the Geneva Registry sent a letter to the Applicant explaining at length the circumstances surrounding the transfer. It was clearly stated that, although geographically established in three duty stations, the UNDT was one single tribunal, and that according to the principles and criteria established for the distribution of cases among its three locations, her case was to be examined in its Geneva branch. It was further stressed that the transfer to the appropriate branch of the Tribunal - when an application was submitted to one of

the other two - is a common practice used to put in the right track the concerned applications. Finally, the Applicant was requested, in view of her two last messages, to clarify whether she wished to maintain her application before UNDT or not, and this no later than 3 December 2009. The Tribunal received no reply by the Applicant.

7. By letter to the Applicant dated 14 January 2010, the Geneva Registrar noted that she had not provided any answer to the above-cited requests. He hence urged her to confirm whether she wished the procedure to continue, and in such case, to transmit to the Tribunal all documents mentioned as annexes to her application no later than 29 January 2010. She was advised that should she not take the required action, the Tribunal will consider the possibility to strike out her case.

8. To date, the Applicant has not replied or even had any communication whatsoever with the Tribunal.

### **Considerations**

9. According to article 9 of the UNDT rules of procedure (RoP), the Tribunal may determine, on its own initiative, that summary judgment is appropriate. This may happen when there is no dispute as to the material facts of the case and judgment is restricted to a matter of law. The question of abandonment of proceedings raised by this case is such a matter of law, and the material facts relevant to determine this particular issue are not disputed.

10. In the absence of specific provisions in the Tribunal's RoP applicable in case of abandonment of proceedings, the Tribunal will deal with it under article 36 of the RoP. This article provides that all matters that are not expressly provided for in the RoP shall be dealt with by decision of the Tribunal on the particular case, by virtue of the power conferred on it by article 7 of the statute of the UNDT.

11. The Tribunal has already held that it is a general principle of procedural law that the right to institute legal proceedings is predicated upon the condition that the person using this right has a legitimate interest in initiating and maintaining legal action. Access to the court has to be denied to those who are not

in need of judicial remedy, as well as to those who are obviously no longer interested in the proceedings they instituted (see UNDT/2009/061, *Bimo & Bimo*).

12. The latter applies to the Applicant. She has been requested on two occasions to submit the documents that the Applicant herself had deemed appropriate to cite as supporting her different allegations. She was also requested twice to confirm that she wished the procedure to continue in the case she had filed. She was carefully explained the grounds for the procedural steps taken upon receipt of her application. Every time, the Applicant was granted more than sufficient time as to allow her to take any required action. Moreover, the Applicant was unambiguously warned of the potential consequences of her lack of cooperation.

13. The Applicant, nevertheless, failed to act upon the Tribunal's instructions or at least to provide a reply to its communications. At this point, it may subsist no reasonable doubt that the Applicant is no longer interested in the outcome of the legal proceedings she instituted, which must therefore be deemed to have been abandoned.

### **Conclusion**

14. For the reasons stated above,

The application is rejected in its entirety.

*(Signed)*

Judge Thomas Laker

Dated this 16<sup>th</sup> day of February 2010

Entered in the Register on this 16<sup>th</sup> day of February 2010

*(Signed)*

Victor Rodríguez, Registrar, UNDT, Geneva