



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/02  
UNDT/NBI/2009/06  
Judgment No.: UNDT/2010/048  
Date: 30 March 2010  
Original: English

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**Before:** Judge Goolam Meeran

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

ATOGO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for applicant:**  
David Andati-Amwayi

**Counsel for respondent:**  
Joerg Weich, UNON

## **Introduction**

1. The Applicant, a Security Lieutenant at the G-6 level, brought two claims with the former Joint Appeals Board (JAB) raising a series of allegations of less favourable treatment regarding what may be considered as an abuse of power on the part of senior management as well as non-promotion to the grade of security inspector at the G-7 level.

## **UNDT Proceedings**

2. In accordance with ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice, the JAB transferred its pending cases to the United Nations Dispute Tribunal (UNDT) on 1 July 2009. The Applicant's cases were transferred to the UNDT in Nairobi and were assigned case numbers UNDT/NBI/2009/02 and UNDT/NBI/2009/06.

3. By a letter dated 26 January 2010, the Tribunal instructed the parties to respond to queries set out in a document entitled "Guidelines to Parties" (Guidelines) by 9 February 2010.

4. By a letter dated 1 February 2010, the Applicant's representative requested a copy of the authority given to the Respondent's representative to act as counsel and/or co-counsel for the Respondent. By an email dated 2 February 2010, the UNDT Registry informed Applicant's representative that the Tribunal "considers that a party to a case has an absolute right to be represented by counsel of his/her choice".

5. On 5 February 2010, the Applicant's representative made an application to strike out the response and for summary judgment to be entered in favor of the Applicant. He also applied for a transfer of the case to New York or Geneva on the grounds that there was a conflict of interest because:

- i. The UNDT judge and the UNDT legal officer, who had conduct of the case at that time, were present at an evening function of the Inter-Agency Security Management Network (IASMN), hosted by UNON's Security and Safety Service (SSS), on 1 February 2010.
  - ii. The representative of the Respondent is one of the Human Resources Officers who is directly involved in the problems within SSS/UNON, including matters that are presently before the UNDT Nairobi.
  - iii. UNDT Nairobi failed to provide the Applicant with a copy of the authority given to the Respondent's representative to act as counsel and/or co-counsel for the Respondent.
  - iv. UNDT Nairobi's inability to dispense justice with the requisite independence, professionalism and impartiality in view of the factors mentioned immediately above.
6. By an Order dated 23 February 2010 (Order No. 028), as the Judge who now assumed responsibility for the conduct of the case, I refused the applications to strike out the response and to transfer the case to New York or Geneva. I considered that the pleadings needed to be clarified and ordered the Applicant to present to the Tribunal by 4 March 2010, a concise statement identifying the precise nature of his claim. The Applicant did not respond to this Order.
7. By an Order dated 8 March 2010 (Order No. 034), both of the Applicant's claims were consolidated and the Applicant was ordered to show cause, by 15 March 2010, as to why his application should not be struck out for failing to comply with Order No. 028. The Applicant was further informed that if he failed to respond by 15 March 2010, both of his claims would be struck out without further order.
8. On 12 March 2010, the Applicant's representative informed the Tribunal that he had filed an appeal to the United Nations Appeals Tribunal (UNAT) against Order

No. 028 and that since the matter was now before the UNAT; the Applicant “avoids discussing the matter outside the jurisdiction of UNAT New York”.

9. By an Order dated 15 March 2010 (Order No. 038), the Judge explained at length, the importance of the Applicant complying with the Tribunal’s Order and gave the Applicant a final extension of time to 17 March 2010 to comply with Order No. 28. The Applicant was informed that failure to comply with the Order No. 038 would result in both of his applications being struck out in their entirety.

10. By an application dated 17 March 2010, the Applicant’s representative requested that the Tribunal set aside Order No. 038.

11. In view of the fact that the application to set aside Order No. 038 was presented on 17 March 2010, before the deadline for compliance, the Judge considered the application to be valid and timeous and decided, by Order dated 22 March 2010 (Order No. 049), to extend the deadline for compliance with Order No. 028 to 25 March 2010. Once again, the Applicant was informed that failure to comply would result in the consolidated claim being dismissed without further order. Additionally, the Applicant was informed by Order No. 049 that he could preserve his rights in relation to the appeal to UNAT by complying with the Order No. 028 and by asking for leave to stay proceedings before the Tribunal, pending a determination of his appeal to UNAT. Such guidance seemed sensible and appropriate and, if followed, would avoid the collision course which the Applicant seemed to have embarked on.

12. On 25 March 2010, the Applicant’s representative filed an objection to Order No. 049, asserting that he is prevented from complying with any subsequent Order in this matter issued after Order No. 028, pending a judgment on his appeal to UNAT.

## **Assessment**

13. Parties to proceedings before the Tribunal have a right to fair consideration of their respective claims within a reasonable time. They are also entitled to receive, if the Judge so considers, guidance in relation to the conduct of the case.

14. Article 19 of the UNDT Rules of Procedure provide for case management orders to be made for the fair and expeditious disposal of cases and to do justice to the parties. Such orders, as was explained to the Applicant by Order Nos. 038 of 15 March 2010 and 049 of 22 March 2010, were intended to be of assistance to all concerned.

15. A party to proceedings has a duty to comply with an Order of the Tribunal and particularly, an interlocutory case management order pursuant to Article 19. To persist in disobeying such orders despite full explanations being provided as to their purpose will risk the claim or the response, as the case may be, being struck out.

## **Conclusion**

16. The Applicant was given several opportunities to comply with Order No. 028 by simply presenting a concise statement identifying the precise nature of the claim and issues that he wants the Tribunal to determine. The Tribunal hoped that the Applicant and his representative would reconsider the stance they had taken so that a determination of the substantive merits of the Applicant's claims could take place without further delay. I am satisfied that the Tribunal has made every effort possible to ensure that justice is done in this case.

17. The efforts of the Tribunal notwithstanding, the Applicant and his representative have steadfastly refused to comply with the Order.

18. For the reasons given above, I order that the consolidated claim (in applications UNDT/NBI/2009/02 and UNDT/NBI/2009/06) be struck out in its entirety.



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Judge Goolam Meeran

Dated this 30<sup>th</sup> day of March 2010

Entered in the Register on this 30<sup>th</sup> day of March 2010



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Jean-Pelé Fomété, Registrar, UNDT, Nairobi