



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2010/24/
UNAT/1671
Judgment No.: UNDT/2010/183
Date: 15 October 2010
Original: English

Before: Judge Coral Shaw

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ANDATI-AMWAYI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Self Represented

Counsel for respondent:
Saidou N'Dow, UN-HABITAT

Introduction

1. The applicant appealed to the former United Nations Administrative Tribunal against the recommendations of the Nairobi Joint Appeals Board (JAB) to the Secretary-General (SG) in his case. As the appeal documents filed by the applicant were diffuse and voluminous, the former UN Administrative Tribunal requested that the applicant summarise his application. He complied with that request. The appeal was then transferred to the United Nations Dispute Tribunal (UNDT) pursuant to the provisions of section 2 of ST/SGB/2009/11 on Transitional Measures Related to the Introduction of the New System of Administration of Justice.

Background to the appeal

2. The JAB had previously found the Applicant's appeal in respect of a number of decisions and actions to have been vexatious and an abuse of process. It described applicant's behaviour and submissions as being scandalous and embarrassing. The Board found the Applicant's appeal to be frivolous and recommended that the Secretary-General dismiss his appeal in its entirety. The Secretary-General agreed with the JAB and decided to take no further action in the matter.

The Appeal

3. Following the directions of the former UN Administrative Tribunal, the Applicant summarises his grounds of appeal as follows:

- i. The JAB panel was misleading
- ii. The JAB panel acted on wrong principles in reaching the findings stated in his report to the Secretary-General.
- iii. The JAB based its findings of fact on a misapprehension of the evidence
- iv. The JAB panel acted on wrong principles of law in reaching its facts
- v. The respondent is dishonest.

4. The applicant requests remedies under twelve separate headings including compensation for moral and material damage and costs totaling USD35,000 and KES633,845,552.

5. The respondent objects to the appeal on grounds that it is not receivable because in addition to the appeal being frivolous, the applicant has not provided any evidence of irregularities in the JAB proceedings that would warrant the Tribunal from overturning the findings of the JAB.

Considerations

6. In its preliminary review the Tribunal noted that the case file did not contain a copy of the applicant's original application to the JAB. This document is necessary for the Tribunal to identify the nature of the disputed administrative decisions which the applicant relies on to support his appeal and claim for remedies. The precise nature of these is not apparent from a close reading of the applicant's other documents. As it stands the application before the Tribunal refers only to the actions of the JAB rather than any administrative decisions taken by the respondent.

7. The Tribunal cannot rely on the summaries of the applicant's case proffered by the JAB or the respondent. It is clear from the applicant's documents that he has no faith in either of these and therefore it would be unfair for the Tribunal to attempt to discern the applicant's case from those sources.

8. For the purposes of proper and effective management of this case, on 8 September 2010, the Tribunal ordered the applicant (Order 168) "to provide the Tribunal with a copy of his appeal to the JAB by Friday 17 September 2010." The Tribunal indicated that "[f]ailure to comply with this order by the due date may result in the Applicant's appeal being struck out."

9. On 17 September 2010, the applicant sent an e-mail to the Registry of the UNDT in Nairobi which reads:

Dear Registrar,

I acknowledge receipt of Order No. 168 (NBI/2010).

The delay in replying to the Order was occasioned by emergency leave, and immense pressure of work thereafter.

As shown here below, ..., one of your current staff members, confirmed receipt of the Appeal by the defunct JAB.

I request the UNDT to follow-up ... in finding my Appeal to the JAB and availing it to the UNDT. ...[A]...current member of UNDT, was the then Secretary to the defunct JAB should also be able to avail the Appeal to the UNDT.

I trust the clarification will assist the UNDT in locating the Appeal.

Thank you.

David Andati-Amwayi

Applicant/Counsel

10. This letter does not comply with the order of the Tribunal

11. On 22 September 2010 the Tribunal issued a second order to the applicant (Order 187). The Order is reproduced in full as follows:

1. The Tribunal has examined the applicant's appeal to the former United Nations Administrative Tribunal (UNAT). In order to clarify the issues to be determined, the applicant is ORDERED to provide the following information to the Tribunal:

A. Details of each of the administrative decisions which he alleges did not comply with the terms of his appointment, including:

- i. the name and title of the author of each decision;
- ii. the name and title of the author of each communication by which he was informed of each decision;
- iii. the date of each decision;
- iv. the date he was notified of each decision;
- v. a copy of each contested decision.

B. Details of each request made by the applicant for administrative review of each contested decision. These details are to include:

- i. the date on which each request was made;
- ii. a copy of the request made by the applicant;
- iii. a copy of the response to each request.

C. A 2 page summary of the facts relevant to each contested administrative decision.

2. This information is to be provided to the Tribunal by close of business on 5 October 2010.

12. The applicant has neither responded to nor complied with the requirements of Order 187.

13. The applicant has therefore failed to comply with two orders of this court. He did not provide the document requested in order 168 and has not responded to Order 187.

14. The consequences of these failures are two-fold.

15. First, the Tribunal is not seized of an intelligible application. The applicant has failed to identify the impugned administrative decision or decisions for which he is seeking relief. He has also failed to identify any steps taken by him to seek administrative review of the impugned administrative decisions. The Tribunal therefore has no jurisdiction pursuant to Article 2 (1) (a) and Article 8(1) of the Statute of the UNDT or the equivalent provisions of the Statute of the former UN Administrative Tribunal to consider the application.

16. Second, the applicant has failed to comply with two orders of the Tribunal. The first response was both informal and inadequate, the second, non-existent. The consequences of failure to comply with orders of the tribunal were clearly spelt out in *Atogo* UNDT/2010/048:

A party to a proceeding 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.

17. As the applicant was counsel for the applicant *Atogo* he will be well aware of his obligations to the court and the consequences of not meeting those obligations.

Decision

18. In spite of being afforded the opportunity, the applicant has failed to provide the Tribunal with material from which it can adjudicate his case. On the face of the documents filed, it is not receivable pursuant to Article 2 of the UNDT Statute.

19. In addition, the repeated failure to comply with the orders of the Tribunal disqualifies the applicant from prosecuting his application.

THE TRIBUNAL therefore ORDERS that the matter of *Andati-Amwayi v Secretary-General of the United Nations*, registered as UNDT/NBI/2010/24/UNAT/1671, be struck out.



Judge Coral Shaw

Dated this 15th day of October 2010

Entered in the Register on this 15th day of October 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi