



**Before:** Judge Francesco Buffa

**Registry:** Geneva

**Registrar:** René M. Vargas M.

UDDIN

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER  
ON DISMISSAL FOR  
WANT OF PROSECUTION**

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**Counsel for Applicant:**

Donald Kaniaru

**Counsel for Respondent:**

Alister Cumming, UNICEF

## **Introduction**

1. By application dated 27 November 2019, the Applicant, a former staff member in the United Nations Children's Fund, Bangladesh Country Office, challenged the decision to dismiss him for misconduct.
2. On 30 December 2019, the Respondent filed his reply.
3. On 26 January 2021, the present case was assigned to the undersigned Judge and was included in his docket for his current deployment.
4. By email dated 6 May 2021, the Applicant's Counsel informed the Tribunal that the Applicant died on 13 April 2021.
5. By Order No. 84 (GVA/2021) of 7 May 2021, the Tribunal ordered:
  - a. The late Applicant's Counsel to file an appearance in court and his closing submission by 28 May 2021, and
  - b. The Respondent to file his closing submission by 31 May 2021, subject to the late Applicant's Counsel confirming and supporting the intention to continue the proceedings related to the present case.
6. On 25 May 2021, the Respondent requested an extension of time to file his closing submission until 1 June 2021 submitting that 31 May 2021 is an official holiday at the United Nations Headquarters in New York.
7. On 28 May 2021, the late Applicant's Counsel informed the Tribunal that the family members were yet to communicate with him regarding their intention to continue the present proceedings or not. Therefore, he requested an extension of time until 4 June 2021 to respond to Order No. 84 (GVA/2021).
8. The Tribunal granted the parties' requests accordingly by Order No. 95 (GVA/2021) of 28 May 2021.

9. By email of 4 June 2021, the late Applicant's Counsel informed the Tribunal that the family members were still in mourning and devastated by his loss and thus did not intend to proceed with the case at this stage. However, he requested the Tribunal to grant "the family an extension of time to ponder the matter further and reach their decision".

### **Consideration**

10. The Tribunal recalls that para. 11(b) of Order No. 95 (GVA/2021) of 28 May 2021 made it clear that if no appearance was lodged with the Tribunal by 4 June 2021, the proceedings would be closed.

11. Indeed, the case cannot proceed without the active involvement of the late Applicant's family members. Accordingly, in the interests of ensuring that only current proceedings are maintained before the Tribunal, the present application stands to be dismissed (see *De La Fayette* UNDT/2010/137, para. 7).

12. Should the late Applicant's family members come before the Tribunal in the future seeking the reinstatement of proceedings on his behalf, the Tribunal may consider their current state in determining the receivability of any future application.

13. Nevertheless, the Tribunal wishes to highlight that the late Applicant's family members have a one-year deadline from the date of the Applicant's death to file an application (see *Massah* Order No. 236 (NBI/2010), para. 9).

### **Conclusion**

14. In view of the foregoing, pursuant to arts. 19 and 36 of the Tribunal's Rules of Procedure, it is ORDERED THAT:

- a. The application registered under Case No. UNDT/GVA/2019/068 is dismissed for want of prosecution, without determination of its merits and without prejudice. Consequently, the case in question is hereby closed; and

b. Should the late Applicant's family members intend to reinstate the proceedings before the Tribunal, they shall file an application by **Wednesday, 13 April 2022**.

*(Signed)*

Judge Francesco Buffa

Dated this 4<sup>th</sup> day of June 2021

Entered in the Register on this 4<sup>th</sup> day of June 2021

*(Signed)*

René M. Vargas M., Registrar, Geneva