



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/GVA/2009/066
Order No.: UNDT/NBI/O/2010/02
Date: 12 February 2010
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ISHAK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON MOTION FOR RECUSAL

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Shelly Pitterman, HRMS/UNHCR

Introduction

1. The Applicant is a Senior Inspection Officer in the Inspector General's Office (IGO), United Nations High Commissioner for Refugees (UNHCR).

2. In Judgment No. UNDT/2009/042, dated 16 October 2009, Judge Cousin considered the Applicant's Case No. UNDT/GVA/2009/24 and found the appeal inadmissible under Article 10 of the Rules of Procedure of the Geneva JAB. Consequently, Judge Cousin rejected the application.

3. Further, in Judgment No. UNDT/2009/072, dated 11 November 2009, Judge Cousin concluded that the decisions contested by the Applicant were non-appealable internal measures, which in no way affected or violated the Applicant's rights. In view of the foregoing, Judge Cousin rejected the application.

4. By a motion dated 15 January 2010, the Applicant requested that the Tribunal issue an order, pursuant to Article 28(2) of the Rules of Procedure of the United Nations Dispute Tribunal (UNDT), disqualifying Judge Jean-François Cousin from hearing his pending Application No. UNDT/GVA/2009/66 due to conflict of interest, bias and prejudice and "from taking any other action that may affect [his] legal rights".

5. In an email dated 15 January 2010, which was sent to the UNDT Registry in Geneva (Geneva Registry), the Applicant stated further that he was convinced he could not have a fair and impartial hearing of his Application No. UNDT/GVA/2009/66 before Judge Cousin due to the "pattern of disregard of [his] Due Process Rights and other mandatory provisions of the Rules of Procedure of UNDT that Judge Cousin has demonstrated in his handling of those two cases [*see paragraphs 2 and 3 above*]".

Comments from Judge Jean-François Cousin

6. In accordance with Article 4.9 of the UNDT Statute and Article 28.2 of the UNDT Rules of Procedure, Judge Cousin advised, *inter alia*, that under the UNDT

Statute and Rules of Procedure, the only justification for recusal of a judge is the existence of or the appearance of a conflict of interest, which is inapplicable in the present case. He also stated that the fact that an Applicant is dissatisfied with the way his case was handled or with the judgments that were issued cannot support a request for the recusal of the judge who presided over the case.

FINDINGS OF THE TRIBUNAL

7. The Tribunal has examined the Applicant's submissions and has taken particular note of paragraph 5 of the Applicant's motion for recusal, which lists the Applicant's grounds for his motion to disqualify Judge Cousin. It reads as follows:

“Having read the English version of said judgments [i.e. UNDT /2009/42 and UNDT/2009/72], Applicant Ishak is seriously concerned and distressed to note that Judge Cousin has summarily rejected his Applications without hearing or any meaningful opportunity to provide comments on the procedural grounds upon which Judge Cousin founded his decisions. Furthermore, Judge Cousin not only violated and disregarded Applicant Ishak's Due Process rights, but he also exceeded his competence; failed to exercise jurisdiction vested in him; erred on questions of fact and of law resulting in manifestly unreasonable decisions.”

8. The Tribunal has also taken note of the Applicant's email of 30 November 2009, whereby he informed the Geneva Registry that his provisional application was “impugning” Judge Cousin's decisions in Judgments UNDT/2009/024 and UNDT/2009/072.

9. Based on the grounds provided by the Applicant in support of his motion and in his email of 30 November 2009, the Tribunal can only come to the conclusion that, while the Applicant has filed a motion to disqualify Judge Cousin for conflict of interest, he is actually seeking to appeal the adverse judgments rendered by Judge Cousin in Judgment Nos. UNDT/2009/42 and UNDT/2009/72. In this respect, the Tribunal is of the view that an adverse finding in an earlier case by a judge, without more, cannot be the grounds for recusing him/her from hearing a different case filed by the same applicant.

10. The Tribunal is of the further view that since the Applicant considered that Judge Cousin exceeded his competence, failed to exercise the jurisdiction vested in him, and erred on questions of fact and law, his remedy was to challenge this by way of an appeal to the United Nations Appeals Tribunal. The Tribunal notes, however, that the Applicant has failed to do so.

Conclusion

11. For the reasons stated above, the application is rejected

(Signed)

Judge Vinod Boolell

Dated this 12th day of February 2010

Entered in the Register on this Dated this 12th day of February 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi