



UNITED NATIONS DISPUTE TRIBUNAL

Case Nos.: UNDT/NBI/2009/02
UNDT/NBI/2009/06
Order No.: UNDT/NBI/O/2010/049
Date: 22 March 2010
Original: English

Before: Judge Goolam Meeran

Registry: Nairobi

Registrar: Jean-Pelé Fomété

ATOGO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION TO SET
ASIDE ORDER NO. 038 DATED 15
MARCH 2010**

Counsel for applicant:
David Andati-Amwayi

Counsel for respondent:
Mr. Joerg Weich, UNON

Background

1. This is an application to set aside Order No. 38, made on 15 March 2010. The brief facts are that the Applicant, a Security Lieutenant at the G6 level, brought two claims 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.
2. By an Order dated 8 March 2010 both claims were consolidated, to be heard together.
3. On 5 February 2010 the Applicant applied to strike out the Respondent because of failure to provide a letter of authority for Mr. Joerg Weich to represent them. The Applicant further applied for a transfer of the case to Geneva or New York on the ground that he would not get a fair hearing in Nairobi because the judge and legal officer who had conduct of the case at the time attended a function on 1 February, hosted by the Inter-Agency Security Management Network (IASMN).
4. On 23 February 2010, by Order No. 28, the application to strike out the Respondent and to transfer the cases were both rejected. Further details are given in Order No. 38 dated 15 March 2010, which reiterated previous Orders for the Applicant to provide concise particulars of his claim.
5. The application to set aside the Order, including the warning to strike out the consolidated claims for non-compliance with orders was presented on 17 March 2010 before the deadline for compliance. In the circumstances, I consider it to be a valid and timeous application to be considered on its merits.

6. In support of his application to set aside the order, Mr. Andati-Amwayi presents seven paragraphs of argument and submission which will be dealt with in turn.

7. It is said that I failed to consider and appreciate all the arguments advanced in support of the application to strike out, to enter summary judgment for the applicant and to transfer the cases out of Nairobi. It is further stated that I have a perceived or actual interest in these cases. The application to strike out the response and to enter summary judgment in favour of the Applicant is misconceived because there is no requirement for a party to proceedings to produce evidence either to the Tribunal or to the other side that their representative has been properly instructed. As Mr. Andati-Amwayi will himself understand, a party is free to choose their representative. There is no basis in law to sustain this application.

8. The application to transfer the case is based, on the ground that the judge with conduct of the case, as well as the legal officer, were seen at a function at which those against whom the applicant has made complaints and allegations were present. It is an understandable application. However, when applied to the facts it lacks merit. The judge and legal officer who now have conduct of the case were not present at the particular function and there is no other rational basis upon which it could be argued that they have an interest in the case.

9. The applicant has appealed to the United Nations Appeals Tribunal (UNAT) against the order refusing the request to transfer and to strike out the response and enter judgment in favour of the applicant. This is an appeal against an interlocutory order. Given the grounds in support of the application and the reasons for its rejection it would be for the UNAT to decide whether or not it has merit. Irrespective of the outcome of the appeal any tribunal being presented with the voluminous documentation in relation to the two cases will require a concise statement of the legal and factual issues that fall to be determined by the tribunal. The purpose of case

management directions and orders, as previously explained to the applicant, is to assist the parties and the Tribunal to focus on the precise questions of law and fact. It is a matter of regret that such guidance, as is being offered through the case management orders, is being interpreted as the taking of action in favour of the Respondent and/or as being indicative of bias on the part of the judge.

10. In my judgment, the Applicant is mistaken in his belief that paragraph 5 of Article 7 of the Statute of UNAT requires the UNDT to suspend all proceedings pending the judgment of the Appeals Tribunal. An interlocutory order such as the orders in these cases refusing an application to strike out and to transfer a case is not a judgment. Furthermore, such an order does not dispose of the case. There being no judgment to execute proceedings before the UNDT will continue. The filing of the interlocutory appeal does not have the effect of staying proceedings before the UNDT

11. The Applicant is urged to consider very carefully whether it is in his interest to continue to disobey the interlocutory order to present a concise statement of the issues in the case and to facilitate its expeditious disposal in a manner that is economic, fair and just. The order, as I have previously stated, is intended to be helpful. It is not punitive. It is a necessary step in the proper preparation of a case for a hearing.

12. In all the circumstances, I have taken into account General Assembly resolution 63/253 on the *Administration of Justice at the United Nations*. The Secretary-General wishes to encourage staff members to assist other staff members in proceedings before the new system of Administration of Justice. I have taken the view that it is appropriate to offer the kind of guidance that I have offered in order to ensure that those who are in need of such guidance are assisted in the sometimes difficult task of presenting cases raising complex interactions of legal and factual issues. I hope that the Applicant and his representative will take the guidance in the spirit in which it is intended and do not interpret it as in some way indicative of bias

or a criticism of the way in which the case is being handled by them.

IT IS ORDERED THAT:

13. On or before 5 pm Nairobi time Thursday, 25 March 2010 the applicant is to comply with Order No. 28 and to present a concise statement of no more than three pages identifying the precise nature of the claim and issues they wish the tribunal to determine. Failure to do so will result in the consolidated claim being dismissed without further order.

14. The Applicant will no doubt wish to preserve his rights in relation to the appeal to the UNAT. He can do so by complying with the order to provide concise particulars and, having done so, asking for leave to stay proceedings before the Tribunal, pending a determination of his appeal to the UNAT.

(Signed)

Judge Goolam Meeran

Dated this 22nd day of March 2010

Entered in the Register on this 22nd day of March 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi