



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/036
Order No.: UNDT/NBI/O/2010/51
Date: 23 March 2010
Original: English

Before: Judge Vinod Boolell, Presiding
Judge Nkemdilim Izuako
Judge Goolam Meeran

Registry: Nairobi

Registrar: Jean-Pelé Fomété

TADONKI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

Counsels for applicant:

Robert Amsterdam, Solicitor, Amsterdam & Peroff LPP
Katya Melliush, Office of Staff Legal Assistance
Geoff Gelbrat, 1 Gray's Inn Square
Andrew Durkovic, Amsterdam & Peroff LLP

Counsel for respondent:

Steven Dietrich, Administrative Law Unit (ALU)
Stephen Margetts, ALU

The Tribunal having taken note of the Respondent's response to Order Nos. 2010/37 and 46 dated 18 March 2010 and the Applicant's motion to strike the Respondent's witness statements and for an order requiring *viva voce* the testimony of Mr. Agostinho Zacarias dated 22 March 2010 in the hearing of this matter.

The Tribunal notes that, in paragraph 8 of the Respondent's response, it is stated that the Respondent intends to call the following witnesses:

- Mr. Rudolf Muller, Deputy Director, Coordination and Response Division, OCHA, New York
- Ms. Lourdes Thomas Administrative Officer, OCHA, Harare Office;
- Mr. Roeland Monash, Officer in Charge, UNICEF, Zimbabwe

The Tribunal takes note that these witnesses will testify via video-conference.

The Tribunal further notes that, in paragraph 6 of his response, the Respondent indicates that Mr. Holmes and Ms. Bragg are "willing to attend the hearings in Nairobi and will make all efforts to ensure their personal appearance in Nairobi". However, the Respondent is unable to confirm the precise dates on which they will be available to appear in Nairobi within the period of 21 to 28 April 2010.

The Tribunal also notes that in respect of Mr. Zacarias, who was informed by the Respondent that his physical presence at the hearing was required, replied that he is coping with the illness of his wife and the taking care of his 11 years-old son. He also mentioned that he is very much involved in many programmes of the Organization. The key message in that response is that he is grounded to travel from where he is located at present.

The Tribunal further takes note of the comments given by the Respondent in respect of saving costs insofar as the physical presence of the witnesses at the hearing is concerned. Whilst it is legitimate for the Respondent to bring to the attention of the Tribunal the

logistical difficulties in relation to the physical presence of the witnesses, the Respondent is clearly not mandated to direct the Tribunal as to when and how the physical presence of a witness becomes necessary. In this regard, the Tribunal recalls the provisions of Article 16.5 of the Rules of Procedure in respect of the physical presence of a party or any other persons at the hearing. Whilst noting the views expressed by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) on the travel of senior managers referred to in paragraph 3 of the Respondent's response, the Tribunal wishes to emphasize that the normal well established rule is for witnesses to be physically present at a hearing. However, given the nature of the duties of the Tribunal and the geographical location of potential witnesses, the Tribunal will not adopt an invariable rule requiring the physical presence of parties and witnesses in each and every case.

The Tribunal wishes to bring to the attention of the Respondent that, in an Inter-Office-Memorandum to all Heads of Departments and Offices on Guidance to Managers on Internal Justice Issues dated 12 March 2010 the Under-Secretary-General for Management, Ms. Angela Kane, wrote the following:

“I also wish to emphasize the obligation of all UN staff to comply with the requirement of the new system of administration of justice, including the obligation to appear as witnesses before the UNDT when so requested by the Tribunal¹”.

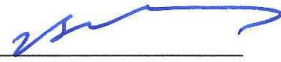
Therefore, in the light of the foregoing, the Tribunal ORDERS that;

1. In the interest of justice and a proper determination of the present matter witnesses Bragg and Zacarias must be physically present at the hearing that will resume from 21 to 28 April 2010 in Nairobi;
2. The other witnesses may be heard via videoconference.

¹ Paragraph 6 of the Inter-Office-Memorandum

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Judge Vinod Boolell

Dated this 23rd day of March 2010

Entered in the Register on this 23rd day of March 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi