



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2009/036  
Order No.: 63 (NBI/2010)  
Date: 26 April 2010  
Original: English

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**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

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**ORDER**

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**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 Section (ALS)/OHRM, UN Secretariat  
Stephen Margetts, ALS/OHRM, UN Secretariat  
Adele Grant, ALS/OHRM, UN Secretariat

HAVING taken note of the Respondent's motion dated 21 April 2010 for "relief against abuse of process" and the Applicant's response dated 21 April 2010;

The Tribunal notes that the Respondent filed the present motion on the basis of an email sent by the Applicant to one of the Respondent's witnesses, Mr. (...) of UNICEF, on 19 March 2010.

The Tribunal has taken note that the Respondent seeks relief on the ground that the Applicant has made some serious allegations against a potential witness. It is the view of the Respondent that the Applicant is trying to exert pressure on the witness in order to prevent him to testify in the course of the hearing.

The Respondent is requesting the following:

1. The Applicant be restrained from any further contact with the Respondent's witnesses;
2. the Applicant immediately inform the Tribunal of all contacts made with persons named on the Respondent's witness list dated 12 February 2010 ("the Witness List");
3. the Applicant produce all written records of communications with witnesses named on the Witness List;
4. that the Applicant apologize to UNICEF and Mr. (...) and advise the recipients of the E-mail that he withdraws unreservedly all of the allegations and assertions set out in the E-mail;
5. the Applicant apologize and withdraw all allegations made in communications with persons named in the Applicant's response to paragraphs (b) and (c) above;
6. By his conduct the Applicant has forfeited his right to cross-examine Mr. (...) or contest in any way the evidence presented by Mr. (...);

7. the Applicant forfeits his right to cross-examine or contest in any way the evidence of the witnesses referred to in the Applicant's response to paragraph (a) and (b) above;
8. That the Applicant immediately and unreservedly apologize to the Tribunal and the Respondent for his conduct;
9. Due to the impact that the Applicant's action have on the integrity of the proceedings, should the Applicant fail to comply with any of the above orders the proceedings be immediately struck out with no right of reinstatement.

In his response filed on the same day, the Applicant disputes that the sending of the email amounts to an abuse of process. The Applicant argues that there is no evidence whatsoever of pressure being put on the potential witness not to testify. The email, whilst copied to Mr. (...) for reasons of transparency, was not in fact addressed to him. The Applicant is of the view that if the potential witness truly felt pressurized by this email, it is surprising that it has taken in excess of one month for him to bring this email to the attention of the Respondent. The Applicant further argues that there is "no property" in a witness, and that "communication with a witness to be called by the opposing side in litigation is not in and of itself, a breach in any rule, regulation, or code of conduct"

The Tribunal is of the view that, in the email of 19 March 2009, the Applicant is indeed attempting to exercise pressure on a potential witness and is accusing the witness of having shown an aggressive attitude towards him.

In any hearing, it is the absolute right of the parties to call witnesses subject to the rule of relevance.

By acting as he has, the Applicant is trying to deny the right of the Respondent to call a witness and is interfering in the prerogative of the Tribunal to decide on the relevance of the testimony of witnesses.

The Tribunal therefore **ORDERS** the Applicant to:

1. Withdraw the email sent on 19 March 2010;
2. To apologize to the Tribunal within two days of receipt of the email;
3. The Applicant is also requested to inform the Tribunal if he has contacted any other witnesses who appear on the Respondent's Witness List and provide the documentation;
4. The Applicant is further prohibited from contacting by any means whatsoever any witness that appear on the list of the Respondent



Judge Vinod Boolell

Dated this 26<sup>th</sup> day of April 2010

Entered in the Register on this 26<sup>th</sup> day of April 2010



Jean-Pelé Fomété, Registrar, UNDT, Nairobi