



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/035

Order No.: 78 (NBI/2010)

Date: 11 May 2010

Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

WALELE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON APPLICANT'S MOTION  
REQUESTING THE REINSTATEMENT  
OF HIS CASE**

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**Counsel for Applicant:**  
Duke Danquah, OSLA.

**Counsel for Respondent:**  
Stephen Margetts, ALS/OHRM, UN Secretariat.

**1. *Brief Facts***

1.1 The Applicant entered the service of the International Criminal Tribunal for Rwanda (ICTR) on 19 July 2006 as a Driver and was assigned to the position of Dispatcher in 1997. The Applicant is appealing a decision dated 2 November 2007 by the Assistant-Secretary-General for Human Resource Management to summarily dismiss him.

1.2 On 13 November 2009, the Registrar of the Nairobi UNDT invited the Parties to a status conference scheduled to take place on 17 December 2009. On 1 February 2010, following the Status Conference, the Parties were served a Hearing Notice for 4 February 2010.

1.3 During the hearing on 4 February 2010, the Applicant's Counsel informed the Tribunal as follows: that he did not wish to prejudice the Applicant's case but that he had very limited instructions from the Applicant in respect to the conduct of his case; that he had last heard from the Applicant on 27 January 2010 when the Applicant informed him that he had been unsuccessful in contacting two witnesses; and that he did not wish to compromise the Applicant's rights by proceeding with the case; and that he would not be opposed to the striking out of the matter by the Tribunal for want of prosecution.

1.4 By Order dated 9 March 2010, the matter was struck out for want of prosecution. The Tribunal also directed the Applicant to provide written submissions to the Tribunal setting out the reasons justifying the reinstatement of this matter by 9 May 2010.

1.5 On 23 April 2010, the Applicant's Counsel filed a motion requesting the Tribunal to reinstate the matter.

**2. *Applicant's Submission***

2.1 The Applicant submits the following as the reasons justifying the reinstatement of his case:

- (i) He missed the hearing because of economic difficulties. He had been working at a campsite in Ruaha National Park in Tanzania on temporary assignments and was unable to communicate with his counsel because his mobile telephone was not functioning well.
- (ii) He promises to stay in touch with his counsel and the Tribunal if he is given another chance to participate and present his case at a hearing.
- (iii) He has no other forum at which he could pursue his cause of action and therefore his rights would be permanently quashed should his request to have his case reinstated be denied.
- (iv) He is now fully cognizant of the need for him to prosecute his cause of action and is prepared to make a determined and sustained effort to prosecute his case.
- (v) He is deeply remorseful for his failure to attend the last hearing and apologizes to the Tribunal, the Registry and to the Counsel for the Respondent for the inconvenience caused by his conduct.

### **3. *Considerations***

3.1 It is the responsibility of all involved in proceedings before the Tribunal to ensure that their matters before it are determined with minimal cost and within a reasonable period of time. An Applicant must actively prosecute his/her case with reasonable diligence and must provide credible reasons for failing to do so. As the UNDT Rules of Procedure are silent on what the Tribunal ought to consider in determining whether to reinstate a case, the Tribunal, in this instance, adopts the following test:

- (i) Apart from the failure to issue directions to his Counsel prior to the last hearing date, has the Applicant prosecuted his case with reasonable diligence?
- (ii) Are the reasons submitted by the Applicant for failing to issue directions to his Counsel excusable?

- (iii) Do the interests of justice require that the matter be allowed to continue?
- (iv) Has the Applicant's failure to prosecute his case with due diligence caused serious prejudice to the Respondent?

3.2 Having applied the above-stated test to the facts in this case, the Tribunal grants the Applicant's motion for reinstatement.

**ORDER**

- (i) The Order striking out the case on 9 March 2010 is vacated and the case is hereby reinstated.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 11<sup>th</sup> day of May 2010

Entered in the Register on this 11<sup>th</sup> day of May 2010

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi