



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/056

Order No.: 84 (NBI/2010)

Date: 20 May 2010

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Jean-Pelé Fomété

BEKELE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE APPLICANT'S
APPLICATION FOR PRODUCTION OF
EVIDENCE**

Counsel for Applicant:

Adolph Bishanga

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat.

1. Introduction

1.1 By Application dated 18 May 2010, the Applicant requests the Tribunal to order the production of the following documents which are in the possession of the Respondent.

(i) The final investigation results and decisions made by the UNDSS and OIOS with respect to a UNECA Security Officer who was serving as Officer-in-Charge of UNECA Security and Safety Services.

(ii) Any correspondence, electronic or otherwise relating to the investigation of the said Security Officer which has not previously been disclosed.

1.2 The Applicant avers that the above-stated documents are material and relevant to his case since, at least in part, his case raises doubts as to the managerial competence of the Security Officer.

1.3 The Respondent filed a response to the Application on 18 May 2010. In his response, the Respondent submits, inter alia, that:

(i) There is nothing in the Request for Production to suggest that the documents sought are relevant to any issue in the proceeding, that the request has been brought in the most general of terms and fails to explain how the findings of any investigation against the Security Officer could be relevant to the issues in this proceeding.

(ii) This proceeding does not concern any investigation that may have been conducted against the Security Officer and the Tribunal will not be required to draw any conclusions in relation to his general managerial competence.

(iii) The documents sought do not impact in any way on the primary issues in the case.

(iv) Investigations conducted by UNDSS and/or OIOS are confidential and, accordingly, the nature, subject matter and results of these investigations should not be disclosed to third parties. The Respondent submits that in this case it is essential that confidentiality be maintained in order to protect the rights of the staff member involved.

(v) The Applicant has failed to refer to any countervailing consideration that could justify an exception to the protections afforded to the staff member concerned.

(vi) The request has been brought very late in the proceeding without any adequate reason for doing so and there is nothing in the recent witness and documentary evidence adduced by the Respondent to justify this late request.

(vii) In the interests of justice, the request should be dismissed.

2. *Considerations*

2.1 The Tribunal, having considered the parties' submissions and pursuant to Article 18(1) of the UNDT Rules of Procedure, finds that the documents sought by the Applicant are not relevant to any issue in the proceeding and,

REJECTS the Applicant's Motion requesting the Tribunal to order the production of the evidence.

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(Signed)

Judge Nkemdilim Izuako

Dated this 20th day of May 2010

Entered in the Register on this 20th day of May 2010

(Signed)

Jean-Pelé Fomété, Registrar, UNDT, Nairobi