



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/056

Order No.: 85 (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 RESPONDENT'S
MOTION FOR LEAVE TO ADD A
WITNESS**

Counsel for Applicant:

Adolph Bishanga

Counsel for Respondent:

Stephen Margetts, ALS/OHRM, UN Secretariat.

1. Introduction

1.1 By a Motion dated 13 May 2010, the Respondent requested the Tribunal to allow him to add a document, a copy of the security control room logbook at UNECA for the period 10 to 17 April 2006, (“the Logbook”), to his list of documents. The Motion was granted by Order of the Tribunal dated 17 May 2010. In the said Motion, the Respondent notified the Tribunal that he may wish to call witnesses to testify in relation to the Logbook.

1.2 By this Motion, the Respondent requests leave to add Mr. Abraham Asale, the Officer who was on Duty at the security control room at UNECA on 15 April and 16 April 2006, to his list of witnesses.

1.3 The Respondent submits that:

(i) Mr. Asale was the security officer who received a telephone call from the Applicant on 16 April 2006 and made the entry in the Logbook recording that conversation;

(ii) On 15 April 2006, Mr. Asale did not receive any information in relation to the Applicant’s detention and that had anyone called the telephone number 21115445060 and reported the Applicant’s detention prior to 16 April 2006, then this information would have been recorded in the Logbook; and that

(iii) Mr. Asale is able to provide relevant and probative evidence to the Tribunal.

2. Considerations

2.1 Pursuant to Article 7 of the Statute of the UNDT and Article 36 (1) of the UNDT Rules of Procedure, the Tribunal adopts the following test in determining the Respondent’s Motion:

- (i) The timeliness of the Respondent's disclosure of his witness to allow the Applicant to prepare his response and to conduct an effective cross-examination;
- (ii) Whether the addition of the witness will infringe on the Applicant's right to have his case disposed of without undue delay; and
- (iii) The relevance of the witness' testimony to the issues in this case.

2.2 Having applied the above-stated test to the facts in this case and having received no response from the Applicant, the Tribunal concludes that it would be in the interests of justice to hear Mr. Asale's testimony in this case.

FOR THESE REASONS, the Tribunal,

GRANTS the Respondent's Motion to add Mr. Asale to the Respondent's Witness List.

(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