



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2009/61  
Order No.: 014 (NBI/2011)  
Date: 16 February 2011  
Original: English

---

**Before:** Judge Coral Shaw  
**Registry:** Nairobi  
**Registrar:** Jean-Pelé Fomété

TRY

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

---

**ORDER ON APPLICATION FOR CLOSED  
SESSION HEARING**

---

**Counsel for applicant:**  
Edward Patrick Flaherty

**Counsel for respondent:**  
Felix Ross / UNHCR

## **Introduction**

At the commencement of the oral hearing the Respondent applied to have the court closed during the hearing of the three complainants. This oral ruling was rendered on 20 December 2010 and has been transcribed and edited for publication.

## **Ruling**

1. The substantive application concerns allegations of sexual harassment against the applicant. The Respondent has submitted that the complainants are all under emotional stress as a result of having to first bring the claims and then having to appear in the court. They are also concerned that they will have to give details of their private personal life. Counsel drew attention to the fact that the Tribunal had earlier made an interlocutory order that in the *interim*, the names of the complainants are not to be disclosed.

2. The application is opposed by the Applicant who submitted that these are not criminal matters, that it is a summary dismissal claim, that the personal background of the complainants are not relevant and will not be canvassed, and that his questions will be limited to reasons of summary dismissal.

3. The Applicant argues that much of his case has already been dealt with under wraps, has not been in the open, and that this case should not continue in that way. He finally submitted that to close the court for that evidence would be to deprive him of his due process rights.

4. The Rules of Procedure of the UNDT provide at Article 16.6 that all proceedings shall be held in public unless the Judge hearing the case decides at his or her own initiative or at the request of one of the parties, that exceptional circumstances require that the oral proceedings be closed. The starting point is that all oral proceedings shall be held in public. The question is whether there are exceptional circumstances in this case requiring that the oral proceedings be closed.

5. The circumstances in this case are that they relate to sexual harassment allegations. Whether that of itself constitutes exceptional circumstances is a matter which I do not think has been decided but, in my view, complainants who allege sexual harassment matters must be given the opportunity to air their complaints if required by the Tribunal in an atmosphere which does not inhibit their testimony in any way.

6. There are particular dynamics relating to sexual harassment which are referred to in the Secretary-General's publications on this matter and I believe that it

would inhibit the bringing of sexual harassment claims if the complainants believed that as matter of course they would be required to give evidence in public.

7. I make it clear that this does not mean the hearing of the whole of the proceedings is closed. It is closed only for the purpose of the complainants to give their evidence. In this case the Applicant and his wife are entitled to remain, but the general public should be excluded during the complainants' evidence.

8. In summary, I find that oral hearings involving sexual harassment claims may constitute exceptional circumstances which require the court to be closed. For that reason the hearing is closed for the hearing of the evidence of the three complainants.



Judge Coral Shaw  
Dated this 16<sup>th</sup> day of February 2011

Entered in the Register on this 16<sup>th</sup> day of February 2011



Jean-Pelé Fomété, Registrar, UNDT, Nairobi