



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/021
Order No.: 101 (NBI/2012)
Date: 26 July 2012
Original: English

Before: Judge Vinod Boolell

Registry: Nairobi

Registrar: Jean-Pelé Fomété

MANCO

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON THE ADMISSIBILITY OF
EXPERT EVIDENCE**

Counsel for Applicant:
Seth Levine, OSLA

Counsel for Respondent:
Miouly Pongnon, Office of the Director-General, UNON

Introduction

1. On 10 July 2012, the Tribunal issued Case Management Order No. 098 (NBI/2012).
2. The Parties submitted their responses to Case Management Order No. 098 on 19 July 2012.
3. In his response to the Order the Applicant contests the admissibility of an “expert report”, written by Mr. Patrick Voigt, which was submitted by the Respondent as part of his Reply.
4. The Respondent seeks to have this expert report admitted to the Tribunal “to provide guidance to the Tribunal on the origin, and continued importance to UN General Assembly of enforcing the policy underlying staff rule 1.5(c).” The rule reads: “A staff member who intends to acquire permanent residence status in any country other than that of his or her nationality or who intends to change his or her nationality shall notify the Secretary-General of that intention before the change in residence status or the change in nationality becomes final.”
5. The Respondent has not explained nor given any details on how Mr. Voigt is an expert in matters of the right to residency and/or citizenship in different countries. It is trite law that it is not for a party to decide who an expert is, but for the Tribunal.

Consideration

6. In the opinion of the Tribunal, the “expert report” prepared by Mr. Voigt offers only a litany of the procedural steps for the implementation of article 1.5(c). The expert report fails to offer more than a chronological account of the implementation of the policy. All of the facts presented in the report are well within the grasp of the Tribunal’s comprehension.
7. “An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without

help, then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult.”¹

8. Following the International Criminal Tribunal for Rwanda’s jurisprudence, any report which “fails to enlighten or assist the Chamber in understanding the evidence or in determining any issues which are relevant” is inadmissible.²

9. Further, evidence on ultimate issues is inadmissible. “[A]s a general rule, a long-standing rule of common law, evidence is inadmissible if it is on the very issue the court has to determine.”³

10. At any rate, there is no indication in any of the pleadings of the Respondent on the qualifications held by Mr. Voigt that confer upon him the status of “expert”. Neither does his “expert report” contain a sworn affidavit that its contents are true and accurate, nor any statement that he fully understands and complies with his duty to the court.

11. Mr. Voigt has not previously testified before the Tribunal, and the Respondent will not call him as a witness in the approaching hearing. Without the oral testimony of Mr. Voigt, the Respondent cannot substantiate the content of the written “expert report”.

In light of the above,

12. The Tribunal ORDERS that the expert report of Mr. Patrick Voigt will not be admitted in evidence in this case.

¹ Per Lawton LJ, *R v Turner* [1975] QB 834 at 84

² *The Prosecutor v Dominique Ntawukulilyayo*, Case No ICTR-05-82-T, Decision on Prosecution Motion to Reject Joseph Ufiteyezu as an Expert Witness (TC), 25 November 2009

³ Per Lord Parker CJ, *DPP v A & B C Chewing Gum Ltd* [1968] 1 QB 159 at 164

Judge Vinod Boolell

Dated this 26th day of July 2012

Entered in the Register on this 26th day of July 2012

Jean-Pelé Fomété, Registrar, Nairobi