



**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

WALELE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER STRIKING OUT THE  
APPLICATION**

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

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

## **Introduction**

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.

2. The background and facts of this case are contained in Orders No. 35 (NBI/2010) and 78 (NBI/2010). In the former, the Application was struck out for want of prosecution. On 23 April 2010, the Applicant's Counsel filed a motion requesting the Tribunal to reinstate the matter and submitted the following as the reasons justifying the reinstatement:

a. 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.

b. He promised 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.

c. 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.

d. He was fully cognizant of the need for him to prosecute his cause of action and was prepared to make a determined and sustained effort to prosecute his case.

e. He was deeply remorseful for his failure to attend the last hearing and apologized to the Tribunal, the Registry and to the

Counsel for the Respondent for the inconvenience caused by his conduct.

3. On 11 May 2010, the Tribunal issued Order No. 78 (NBI/2010) reinstating the case and observed as follows:

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.

4. On 5 July 2012, the Registry sent an email to Counsel for the Applicant requiring a response as to whether his client intended to pursue his case following its reinstatement on 11 May 2010. On 24 July 2012, the Office of Staff Legal Assistance, New York, informed the Tribunal that they were making efforts to obtain further instructions from their client and that they would revert shortly. There has been no response from OSLA with respect to this case since then.

### **Considerations**

5. In spite of assuring the Tribunal that he would stay in touch with his counsel and the Tribunal if he was given another chance to participate and present his case at a hearing and in spite of having stated that he was fully cognizant of the need for him to prosecute his cause of action and declaring that he was prepared to make a determined and sustained effort to prosecute his case, the Applicant has failed to do so.

6. The Applicant is not interested in pursuing his cause of action and to maintain this state of affairs may occasion prejudice to the Respondent.

**IT IS ACCORDINGLY ORDERED THAT:**

- a. The matter of *Walele v. Secretary-General of the United Nations*, registered as Case Number UNDT/NBI/2009/035 be struck out.
  
- b. The Applicant must bring a new application in accordance with the Tribunal's applicable Rules of Procedure if he intends to proceed with this matter.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 23<sup>rd</sup> day of August 2012

Entered in the Register on this 23<sup>rd</sup> day of August 2012

*(Signed)*

Jean-Pelé Fomété, Registrar, UNDT, Nairobi