



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2011/023

Order No.: 132 (NBI/2012)

Date: 16 October 2012

Original: English

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**Before:** Judge Vinod Boolell

**Registry:** Nairobi

**Registrar:** Jean-Pelé Fomété

IGBINEDION

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

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**Counsel for Applicant:**

Samson Nyaberi Omweri, Ombeta & Associates  
Dominic Osoro, Osoro Advocate

**Counsel for Respondent:**

UN-HABITAT

## **Introduction**

1. The hearing in this case started in September 2011 and was adjourned for the Respondent to present his case. Counsel representing the Respondent at that time was Mr. Saidou N'Dow. The Tribunal heard evidence on both the merits of the case and the Application to Commit the Management of UN-Habitat for Contempt of the Tribunal and Disobedience of the Order of the Tribunal.

2. During the course of the proceedings on 26 September 2011, Mr. Saidou N'Dow made certain statements in relation to the contempt proceedings which the Tribunal considered to amount to a situation where counsel was giving evidence. Further, the Applicant's motion on contempt cited Mr. N'Dow as a possible contemnor.

3. On 18 October 2011, the Tribunal directed Mr. Saidou N'Dow to appear to testify on the issues arising out of the Applicant's motion for contempt.

4. The Tribunal further directed the Respondent to make appropriate arrangements to be legally represented.

5. The Parties were informed that the proceedings would continue on 2 November 2011.

6. On 31 October 2011, that is two weeks after the order was made directing the appearance of Mr. Saidou N'Dow as a witness in the case, and two days before the hearing scheduled on 2 November 2011, the Respondent filed a motion for adjournment.

7. The proceedings continued on 8 November 2011. On that day Mr. Saidou N'Dow, in the full knowledge that he was to testify in the case, attempted to address the Tribunal from the Bar in spite of the fact that the Respondent was already represented by alternative Counsel, Ms. Kariuki.

8. The Tribunal pointed out to Mr. Saidou N'Dow that he had no *locus standi* to address the Tribunal from the Bar as he was a witness in the case but he insisted on doing so. After further exchanges, Mr. Saidou N'Dow submitted to the

decision of the Tribunal not to hear him from the Bar, and took the stand to testify.

9. Subsequently, after a perusal of the oral evidence in the case the Tribunal considered that it would be appropriate and fair to hear the Executive Director of UN-Habitat. Based on the availability of the Executive Director, a hearing was set down for 9 October 2012 to hear him. An order to this effect issued on 16 August 2012.

10. On 8 October 2012, the Tribunal issued Order No. 127 (NBI/2012) directing the Respondent to make appropriate arrangements to be represented by counsel other than Mr. Saidou N'Dow in the pending matters of *Igbinedion v. Secretary-General of the United Nations*.

11. Following this Order, the Respondent forwarded a request to the Tribunal moving for an adjournment to enable him to finalise arrangements for different legal representation and to properly brief Counsel.

12. The Respondent also pointed out that when Ms. Kariuki represented the Respondent on 8 October 2011, she was briefed in relation to the aspect of the proceedings relating to the testimonies of Mr. Saidou N'Dow and of Mr. Antoine King.

### **Considerations**

13. While the order of 18 October 2011 directed the Respondent to make arrangements for a replacement counsel only during the testimonies of Mr. King and Mr. N'Dow, the Tribunal made it clear at the beginning of the hearing on 8 November 2011 that Mr. N'Dow no longer had any standing to address the Tribunal from the Bar on matters pertaining to the contempt application.

14. In any case, Mr. N'Dow should have realised that he should not and could not appear for a party in a case in which he had been called as a witness.

15. The Tribunal therefore DIRECTS the Respondent to inform the Registry by Monday Friday, **19 October 2012** as to who has carriage of this matter on his behalf.

16. The parties are hereby directed to attend a hearing on **25 October 2012** at **1400hrs (Nairobi time, GMT+3)**.

*(Signed)*

Judge Vinod Boolell

Dated this 16<sup>th</sup> day of October 2012

Entered in the Register on this 16<sup>th</sup> day of October 2012

*(Signed)*

Jean-Pelé Fomété, Registrar, Nairobi